

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

495B0738

## HOUSE BILL NO. 1230

Introduced by: Representatives Healy, Beal, Bordeaux, Duba, Hunhoff, Lesmeister, McCleerey, Olson, Pourier, Reed, Reimer, Ring, Saba, Schoenfish, Smith (Jamie), Willadsen, and Zikmund and Senators Nesiba, Foster, Heinert, Kennedy, Langer, and Wismer

1 FOR AN ACT ENTITLED, An Act to add clergy to the list of mandatory reporters for  
2 suspected child abuse or neglect.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 26-8A-3 be amended to read:

5 26-8A-3. Any physician, dentist, doctor of osteopathy, chiropractor, optometrist, emergency  
6 medical technician, paramedic, mental health professional or counselor, podiatrist, psychologist,  
7 religious healing practitioner, social worker, hospital intern or resident, parole or court services  
8 officer, law enforcement officer, teacher, school counselor, school official, nurse, licensed or  
9 registered child welfare provider, employee or volunteer of a domestic abuse shelter, employee  
10 or volunteer of a child advocacy organization or child welfare service provider, chemical  
11 dependency counselor, coroner, member of the church staff or clergy as defined in § 19-19-505,  
12 or any safety-sensitive position as defined in § 3-6C-1, who has reasonable cause to suspect that  
13 a child under the age of eighteen has been abused or neglected as defined in § 26-8A-2 shall  
14 report that information in accordance with §§ 26-8A-6, 26-8A-7, and 26-8A-8. Any person who



1 intentionally fails to make the required report is guilty of a Class 1 misdemeanor. Any person  
2 who knows or has reason to suspect that a child has been abused or neglected as defined in § 26-  
3 8A-2 may report that information as provided in § 26-8A-8.

4 Section 2. That chapter 26-8A be amended by adding a NEW SECTION to read:

5 Any member of the clergy or church staff is exempt from reporting under § 26-8A-3 if the  
6 basis for the reasonable cause to suspect abuse arose from a communication made to a member  
7 of the clergy or church staff in his or her professional character as spiritual advisor in  
8 accordance with the rule for religious privilege contained in § 19-19-505.

9 Section 3. That § 19-19-505 be amended to read:

10 19-19-505. (a) Definitions. As used in this section:

11 (1) A "~~clergyman~~" member of the clergy is a minister, priest, rabbi, accredited Christian  
12 Science practitioner, or other similar functionary of a religious organization, or an  
13 individual reasonably believed so to be by the person consulting him or her;

14 (2) A communication is "confidential" if made privately and not intended for further  
15 disclosure except to other persons present in furtherance of the purpose of the  
16 communication.

17 (b) General rule of privilege. A person has a privilege to refuse to disclose and to prevent  
18 another from disclosing a confidential communication by the person to a ~~clergyman in his~~  
19 member of the clergy in the member's professional character as spiritual adviser.

20 (c) Who may claim privilege. The privilege may be claimed by the person, by ~~his~~ the  
21 person's guardian or conservator, or by ~~his~~ a personal representative if ~~he~~ the person is deceased.  
22 The person who was the ~~clergyman~~ member of the clergy at the time of the communication is  
23 presumed to have authority to claim the privilege but only on behalf of the communicant.