

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

770B0721

HOUSE BILL NO. 1306

Introduced by: Representative Jorgensen and Senator Daugaard

1 FOR AN ACT ENTITLED, An Act to revise reunification of a parent and child if a child has
2 been removed from a home and to revise termination of parental rights.

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

4 Section 1. That § 26-8A-21 be amended to read as follows:

5 26-8A-21. The Department of Social Services shall make reasonable efforts prior to the
6 removal of an alleged or adjudicated abused or neglected child from the home of the child's
7 parents, guardian, or custodian to prevent or eliminate the need for removal of the child. If the
8 child has been removed from the home and has been placed in temporary custody of the
9 department of social services, the department shall make reasonable efforts to make it possible
10 for the child to return to the home of the child's parents, guardian, or custodian. If the child is
11 to be or has been removed from the home, the court shall first make a judicial determination that
12 removal of the child from the home is or was necessary because continued presence of the child
13 in the home would be contrary to the welfare of the child and that reasonable efforts by the
14 department of social services to avoid removal of the child from the home have been made. If
15 the child has been removed from the home and has not been returned to the home, the court shall
16 first make a judicial determination that reasonable efforts have been made by the department of

1 ~~social services~~ to return the child to the home and that the child cannot be returned to the home
2 because it would be contrary to the welfare of the child.

3 Reasonable efforts to prevent the necessity for removal of a child from the home of the child's
4 parents, guardian, or custodian and reasonable efforts to return the child to the home mean
5 provision by the department ~~of social services~~ of any assistance or services that:

- 6 (1) Are appropriate for the child's parents, guardian, custodian or any other caretaker
7 family of the child existing at the time of removal or possible return of the child;
- 8 (2) Are available pursuant to the comprehensive plan of preventive services of the
9 department ~~of social services~~;
- 10 (3) Could be made available without undue financial burden on the department ~~of social~~
11 ~~services~~; or
- 12 (4) Would have a significant likelihood of protecting the child from substantial danger to
13 the child's physical health or from severe emotional damage while enabling the child
14 to remain in the home or to be returned to the home.

15 In determining the adequacy of reasonable efforts, the court shall consider the assistance,
16 services, and efforts of the department ~~of social services~~. The court shall also consider the good
17 faith efforts or the lack of good faith efforts made by the child's parents, guardian, custodian, or
18 other caretaker family to cooperate with the department and to effectively utilize the assistance
19 or services for the benefit and welfare of the child.

20 Section 2. That chapter 26-8A be amended by adding thereto a NEW SECTION to read as
21 follows:

22 Nothing in § 26-8A-21 requires reunification of a child with a parent who:

- 23 (1) Committed a crime defined in § 22-16-4, 22-16-7, 22-16-9, 22-16-15, 22-16-20, 22-
24 16-41, 22-22-1, 22-22-19.1, 22-22-22, or 26-10-1;
- 25 (2) Aided or abetted in the commission of a crime defined in § 22-16-4, 22-16-7, 22-16-

- 1 9, 22-16-15, 22-16-20, 22-16-41, 22-22-1, 22-22-19.1, 22-22-22, or 26-10-1;
- 2 (3) Committed a crime defined in § 22-18-1.1 against the child or another child of such
- 3 parent;
- 4 (4) Has been convicted and imprisoned for any other felony for such a duration that there
- 5 is no expectation of the parent's release for at least four years;
- 6 (5) Has had parental rights to another child terminated by a prior proceeding under § 26-
- 7 8A-26;
- 8 (6) Is a protected person under guardianship or limited guardianship, if reunification of
- 9 the child with the parent would be contrary to the welfare of the child; or
- 10 (7) Is a chemically dependent person determined as being incapable of self-management
- 11 or management of personal affairs by reason of the habitual and excessive use of
- 12 alcohol, drugs, or other mind-altering substances and whose recent conduct as a result
- 13 of habitual and excessive use of alcohol, drugs, or other mind-altering substances
- 14 poses a substantial likelihood of physical harm or serious neglect to self or others.

15 Section 3. That § 26-8A-26 be amended to read as follows:

16 26-8A-26. If an adjudicated, abused, or neglected child whose parental rights have not been

17 terminated has been in the custody of the Department of Social Services without a court

18 approved plan for long-term foster care and it appears at a dispositional or review hearing that

19 all reasonable efforts have been made to rehabilitate the family, that the conditions which led to

20 the removal of the child still exist, and there is little likelihood that those conditions will be

21 remedied so the child can be returned to the custody of the child's parents, the court shall

22 affirmatively find that good cause exists for termination of the parental rights of the child's

23 parents and the court shall enter an order terminating parental rights. If the court does not find

24 at the hearing, which shall be conducted in the same manner as a dispositional hearing, that good

25 cause exists for termination of parental rights, the court may make further disposition of the child

1 as follows:

- 2 (1) Return custody of the child to the child's parents, guardian, or custodian, with or
3 without supervision;
- 4 (2) Continue foster care placement of the child for a specified period of time, and, if the
5 child is sixteen years of age or older, direct the department ~~of social services~~ to
6 determine the services needed to assist the child to make the transition from foster
7 care to independent living and, if appropriate, provide a plan for independent living
8 for the child;
- 9 (3) Place the child in the custody of the department ~~of social services~~, a child placement
10 agency, foster home, or other child care facility for long-term foster care under a
11 court-approved plan which names a specific foster home for the child, with or without
12 guardianship of the child, and determines visitation rights of the child's parents,
13 guardian, or custodian. Under this subdivision, the court may retain jurisdiction of the
14 action and proceedings for future consideration of termination of parental rights if
15 termination of parental rights is the least restrictive alternative available in keeping
16 with the best interests of the child.

17 In no case may a child remain in foster care for a period in excess of twelve months without
18 the court making a dispositional decree setting forth one of the above options.

19 Section 4. That chapter 26-8A be amended by adding thereto a NEW SECTION to read as
20 follows:

21 In addition to the provisions of § 26-8A-26, the court may find that good cause exists for
22 termination of parental rights of a parent who:

- 23 (1) Committed a crime defined in § 22-16-4, 22-16-7, 22-16-9, 22-16-15, 22-16-20, 22-
24 16-41, 22-22-1, 22-22-19.1, 22-22-22, or 26-10-1;
- 25 (2) Aided or abetted in the commission of a crime defined in § 22-16-4, 22-16-7, 22-16-

- 1 9, 22-16-15, 22-16-20, 22-16-41, 22-22-1, 22-22-19.1, 22-22-22, or 26-10-1;
- 2 (3) Committed a crime defined in § 22-18-1.1 against the child or another child of such
- 3 parent;
- 4 (4) Has been convicted and imprisoned for any other felony for such a duration that there
- 5 is no expectation of the parent's release for at least four years;
- 6 (5) Has had parental rights to another child terminated by a prior proceeding under § 26-
- 7 8A-26;
- 8 (6) Is a protected person under guardianship or limited guardianship, if termination of
- 9 parental rights would be in the best interest of the child; or
- 10 (7) Is a chemically dependent person determined as being incapable of self-management
- 11 or management of personal affairs by reason of the habitual and excessive use of
- 12 alcohol, drugs, or other mind-altering substances and whose recent conduct as a result
- 13 of habitual and excessive use of alcohol, drugs, or other mind-altering substances
- 14 poses a substantial likelihood of physical harm or serious neglect to self or others.