

AN ACT

ENTITLED, An Act to establish a monitor within the juvenile corrections system and to provide for certain legislative review and study of the state's correctional system.

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

Section 1. That chapter 26-11A be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this chapter mean:

- (1) "Abuse," any act or failure to act by an employee of a juvenile corrections facility or by a contract person or entity providing services to a juvenile corrections facility, which act was performed or was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual in the custody or care of a juvenile corrections facility;
- (2) "Monitor," the person or entity designated by the Governor to protect the legal rights of individuals in the custody or care of juvenile corrections facilities;
- (3) "Juvenile corrections facility," all juvenile correctional facilities established and maintained in accordance with § 26-11A-1;
- (4) "Individual in the custody or care of a juvenile corrections facility," an individual who:
 - (a) Is in the process of being admitted to a juvenile corrections facility, including an individual who is being transported to such a facility; or
 - (b) Is involuntarily confined in a juvenile corrections facility;
- (5) "Neglect," a negligent act or omission by any individual responsible for providing custody, care, or services in a juvenile corrections facility which caused or may have caused injury or death to an individual in the care or custody of a juvenile corrections facility or which placed such individual at undue risk of injury or death;
- (6) "Records," reports prepared or received by any staff of a juvenile corrections facility, or

reports prepared by an entity or staff person charged with investigating reports of incidents of abuse or neglect, injury or death occurring at such facility that describes incidents of abuse, neglect, injury, or death occurring at such facility and the steps taken to investigate such incident.

Section 2. The Governor shall designate a person or entity to serve as the monitor and whose primary responsibility is to protect the rights of individuals in the custody or care of juvenile corrections facilities. Such person or entity shall be independent of the Department of Corrections and shall be administered by the Department of Human Services, office of the secretary.

Section 3. Any allegation of abuse and neglect of individuals within the juvenile corrections facilities received by the Office of the Governor, the Department of Corrections, or other agencies of the executive branch shall be promptly reported in writing to the monitor.

Section 4. The monitor created in section 2 of this Act may:

- (1) Investigate incidents of abuse or neglect of such individuals within the juvenile corrections facilities, if the incidents are reported to the monitor or if there is reasonable suspicion to believe that the incidents occurred;
- (2) Access any individual in the custody or care of juvenile corrections facilities and any employee in the employ of the State of South Dakota or any of its political subdivisions;
- (3) Access any records of or relating to any individual in the custody or care of juvenile facilities;
- (4) Provide an annual report to the Governor, the Legislature, the Corrections Commission established by § 1-15-1.13, the secretary of the Department of Human Services, and the secretary of the Department of Corrections. The report shall contain the activities of the monitor for the fiscal year immediately prior to the report. Activities shall reflect the number of referrals to the monitor, the number of investigations completed, results of the investigations, corrective actions taken, and a summary of other activities performed by

the monitor;

- (5) Provide training and assistance to employees of the Department of Corrections in areas within the scope of the monitor's position;
- (6) Review Department of Corrections' policies dealing with juvenile's rights to ensure compliance with federal and state laws, rules, and policy;
- (7) Provide reasonable notification of the existence and role of the monitor to all individuals in the custody or care of a juvenile corrections facility.

Section 5. It shall be the responsibility of the monitor to report immediately, in writing, any findings of abuse or neglect in a juvenile corrections facility to the secretary of the Department of Corrections, the Government Operations and Audit Committee created in § 2-6-2, and the Governor, and to state in the report the facts found by the monitor and the names of any individuals who perpetrated the abuse or neglect.

Section 6. The Department of Corrections or such other executive branch agency that the Governor directs, shall, on or before December 1, 2000, submit to the Government Operations and Audit Committee a report and recommendation regarding the desirability and feasibility of the Department of Corrections seeking American Correctional Association accreditation of all juvenile corrections facilities under the direction of the Governor.

Section 7. For purposes of any audit, report, evaluation, or public testimony that may be permitted or required under this Act, no disclosure of the identity of, or any other personally identifiable information related to, any juvenile or any individual requesting assistance under this Act shall be required. The identity of the person making a report to the monitor shall be kept confidential.

Section 8. A person who knowingly hinders the lawful actions of the monitor is guilty of a Class 1 misdemeanor.

Section 9. No state agency nor any individual acting for a state agency may take any adverse action against an individual in retaliation because the individual cooperated with or provided

information to the monitor. A violation of this section is a Class 1 misdemeanor.

Section 10. The identity of the juvenile and of any person or agency making a report to the monitor shall be kept confidential.

Section 11. That § 2-6-2 be amended to read as follows:

2-6-2. There shall be appointed at each regular session of the Legislature a government operations and audit committee of ten, consisting of five members of the Senate appointed by the president pro tempore of the Senate, one of whom shall be a member of the Judiciary Committee, and five members of the house appointed by the speaker of the house, one of whom shall be a member of the Judiciary Committee, for the purpose of inquiry and review of any phase of the operations and the fiscal affairs of any department, institution, board, or agency of the state, to review any findings of abuse or neglect in a juvenile corrections facility, to make a continuing study of the operation of the state's correctional system, and to make a detailed report to the Senate and House of Representatives and submit a copy of its report to the appropriation committee of each house of the Legislature at the next succeeding session of the Legislature or any special session of the Legislature upon request of the body.

The Department of Legislative Audit shall provide assistance, including clerical help, to the committee upon request.

Section 12. That § 2-6-4 be amended to read as follows:

2-6-4. The government operations and audit committee may examine all records and vouchers, summon witnesses, and thoroughly examine all expenditures and the general management of each department.

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I certify that the attached Act originated in the

SENATE as Bill No. 141

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 141
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State