

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

777D0363

SENATE BILL NO. 141

Introduced by: Senators Whiting, Albers, Brosz, Brown (Arnold), Daugaard, Duxbury,
Flowers, Lawler, and Madden and Representatives Michels, Fischer-Clemens,
Haley, Hunt, Lucas, Smidt, and Wilson

1 FOR AN ACT ENTITLED, An Act to establish an independent protection and advocacy entity
2 within the juvenile corrections system.

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

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

6 Terms used in this chapter mean:

7 (1) "Abuse," any act or failure to act by an employee of a juvenile corrections facility or
8 program, or by a contract person or entity providing services to a juvenile corrections
9 facility or program, which act was performed or was failed to be performed,
10 knowingly, recklessly, or intentionally, and which caused, or may have caused, injury
11 or death to an individual in the custody or care of a juvenile corrections facility or
12 program;

13 (2) "Entity," the entity established to protect and advocate the rights of individuals in the
14 custody or care of juvenile corrections facilities or programs;

15 (3) "Juvenile corrections facility or program," all juvenile correctional facilities and
16 programs established and maintained in accordance with § 26-11A-1;

1 (4) "Individual in the custody or care of a juvenile corrections facility or program," an
2 individual who:

3 (a) Is in the process of being admitted to a juvenile corrections facility or program,
4 including an individual who is being transported to such a facility or program;

5 or

6 (b) Is involuntarily confined in a juvenile corrections facility or is a participant in
7 a juvenile corrections program;

8 (5) "Neglect," a negligent act or omission by any individual responsible for providing
9 custody, care, or services in a juvenile corrections facility or program which caused
10 or may have caused injury or death to an individual in the care or custody of a juvenile
11 corrections facility or program or which placed such individual at risk of injury or
12 death;

13 (6) "Records," reports prepared or received by any staff of a juvenile corrections facility
14 or program, or reports prepared by an entity or staff person charged with investigating
15 reports of incidents of abuse or neglect, injury or death occurring at such facility or
16 program that describes incidents of abuse, neglect, injury, or death occurring at such
17 facility or program and the steps taken to investigate such incident.

18 Section 2. The Governor shall create an entity to protect and advocate the rights of
19 individuals in the custody or care of juvenile corrections facilities or programs. The entity shall
20 be independent of the Office of the Governor and all other departments or agencies of the
21 executive branch.

22 Section 3. The entity created in section 2 of this Act may:

23 (1) Pursue legal, administrative, and other appropriate remedies to ensure the protection
24 of, and advocacy for, the rights of an individual in the care or custody of juvenile
25 correction facilities or programs;

- 1 (2) Investigate incidents of abuse or neglect of such individual, independently or in
2 cooperation with other entities authorized to conduct such investigations, if the
3 incidents are reported to the entity or if there is probable cause to believe that the
4 incidents occurred;
- 5 (3) Access at reasonable times and locations any individual in the custody or care of
6 juvenile corrections facilities or programs;
- 7 (4) Access all records of or relating to any individual in the custody or care of juvenile
8 facilities or programs;
- 9 (5) Hire and maintain adequate staff, qualified by training and experience, to carry out the
10 entity's functions; and
- 11 (6) Provide reports and testimony to the executive, legislative, and judicial branches of
12 government as may be necessary or convenient to affect policy or carry out the
13 purposes for which the entity was established.

14 Section 4. The entity provided for in section 2 of this Act may be organized as a public or
15 private nonprofit entity or may be an adjunct to an existing protection and advocacy program or
16 other entity independent of the executive branch. If the entity is organized as an adjunct to an
17 existing entity, an advisory council shall be formed to direct the entity. The advisory council or
18 other governing body of the entity shall consist of seven members with knowledge and
19 experience in juvenile corrections, not more than three of whom shall be appointed by the
20 Governor or other agent of the executive branch nor may be an employee of the executive
21 branch. Such governing body shall establish bylaws, policies, and procedures designed to
22 effectuate the purposes of the entity as set forth in this section. The director of the entity shall
23 be appointed and may be removed by the governing body of the entity, which shall also establish
24 the director's compensation. The budget for the entity shall be appropriated annually by the
25 Legislature.