

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

400I0759

## SENATE BILL NO. 202

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise certain provisions to comply with the requirements  
2 of the Juvenile Justice and Delinquency Act.

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

4 Section 1. That § 26-7A-1 be amended to read as follows:

5 26-7A-1. Terms used in this chapter and in chapters 26-8A, 26-8B, and 26-8C mean:

6 (1) "Abused or neglected child," a child as defined in § 26-8A-2;

7 (2) "Adjudicatory hearing," a hearing to determine whether the allegations of a petition  
8 alleging that a child is abused or neglected are supported by clear and convincing  
9 evidence or whether the allegations of a petition alleging a child to be in need of  
10 supervision or a delinquent are supported by evidence beyond a reasonable doubt;

11 (3) "Adult," a person eighteen years of age or over, except any person under twenty-one  
12 years of age who is under the continuing jurisdiction of the court or who is before the  
13 court for an alleged delinquent act committed before the person's eighteenth birthday;

14 (4) "Advisory hearing," the initial hearing conducted by the court to inform the child and  
15 the child's parents, guardian, custodian, or other interested parties of their statutory  
16 and constitutional rights;



- 1 (5) "Association," an association, institution, or corporation which includes in its  
2 purposes the care or disposition of children coming within the provisions of this  
3 chapter or chapter 26-8A, 26-8B, or 26-8C;
- 4 (6) "Child," a person less than eighteen years of age and any person under twenty-one  
5 years of age who is under the continuing jurisdiction of the court or who is before the  
6 court for an alleged delinquent act committed before the person's eighteenth birthday;
- 7 (7) "Child in need of supervision," a child as defined in § 26-8B-2;
- 8 (8) "Commit," to transfer custody of a person;
- 9 (9) "Conservator," a conservator of a child as defined in § 29A-1-201;
- 10 (10) "Court" or "juvenile court," the circuit court;
- 11 (11) "Custodian," any foster parent, employee of a public or private residential home or  
12 facility, other person legally responsible for a child's welfare in a residential setting,  
13 or person providing in-home or out-of-home care; for purposes of this definition,  
14 out-of-home care means any day care as defined in §§ 26-6-14, 26-6-14.1, and  
15 26-6-14.8;
- 16 (12) "Delinquent child," a child as defined in § 26-8C-2;
- 17 (13) "Department of Social Services" or "department," the South Dakota Department of  
18 Social Services;
- 19 (14) "Deprivation of custody," transfer of custody of a child by the court from the child's  
20 parents, guardian, or other custodian to another person, agency, department, or  
21 institution;
- 22 (15) "Detention," the temporary custody of a child in secured physically restricting  
23 facilities for children, sight and sound separated from adult prisoners;
- 24 (16) "Detention facility," a secured, physically-restricting facility ~~where~~ designed, staffed,

1 and operated for children are physically and separated by sight and sound from adult  
2 prisoners or a facility for children in the same building or secure perimeter as an adult  
3 jail or lockup, where children are sight and sound separated from adult prisoners,  
4 where staff in the detention facility are trained and certified by the entity operating  
5 facility to work with children, and the facility had been approved as a collocated  
6 facility by the Office of Juvenile Justice and Delinquency Prevention;

7 (17) "Dispositional hearing," a hearing after adjudication at which the court makes an  
8 interim or final decision in the case;

9 (18) "Guardian," a guardian of a child as defined in § 29A-1-201;

10 (19) "Guardian ad litem," a representative of a child as defined in subdivision 15-6-17(c),  
11 including a court-appointed special advocate for a child;

12 (20) "Intake officer," a judge of a circuit court or the court's designee who may not be a  
13 court services officer, law enforcement officer, or prosecuting attorney. For purposes  
14 of chapters 26-7A, 26-8A, 26-8B, and 26-8C, intake officers may administer oaths  
15 or affirmations as provided by chapter 18-3;

16 (21) "Minor," a person who has not reached his or her eighteenth birthday;

17 (22) "Parents," biological or adoptive parents of a child, including either parent, any single  
18 or surviving parent, and any custodial or noncustodial parent, jointly or severally;

19 (23) "Protective supervision," a legal status created by court order under which an alleged  
20 or adjudicated abused or neglected child is permitted to remain in the home of the  
21 child's parents, guardian, or custodian or is placed with a relative or other suitable  
22 person and supervision and assistance is provided by the court, Department of Social  
23 Services, or another agency designated by the court;

24 (24) "Qualified mental health professional," a person as defined in § 27A-1-3;

1 (25) "Shelter," a physically-unrestricting home or facility for temporary care of a child;

2 (26) "Temporary care," the care given to a child in temporary custody;

3 (27) "Temporary custody," the physical and legal control of a child prior to final  
4 disposition.

5 Section 2. That § 26-7A-14 be amended to read as follows:

6 26-7A-14. An apparent abused or neglected child taken into temporary custody and not  
7 released to the child's parents, guardian, or custodian may be placed in the temporary care of the  
8 Department of Social Services, foster care, or a shelter as designated by the court to be the least  
9 restrictive alternative for the child. A child apparently in need of supervision or an apparent  
10 delinquent child taken into temporary custody and not released to the child's parents, guardian,  
11 or custodian may be placed in foster care, shelter, or detention as designated by the court to be  
12 the least restrictive alternative for the child. The temporary caretaker of the child shall promptly  
13 notify the state's attorney of the child's placement.

14 No child may be held in temporary custody longer than forty-eight hours, or twenty-four  
15 hours pursuant to §§ 26-8B-3 and 26-7A-15, excluding Saturdays, Sundays, and court holidays,  
16 unless a petition has been filed, the child is within the jurisdiction of the court and the court  
17 orders longer custody during a noticed hearing or a telephonic hearing.

18 The court may at any time order the release of a child from temporary custody without  
19 holding a hearing, either with or without restriction or condition or upon written promise of the  
20 child's parents, guardian, or custodian regarding the care and protection of an apparent abused  
21 or neglected child or regarding custody and appearance in court of an apparent child in need of  
22 supervision or an apparent delinquent child at a time, date, and place to be determined by the  
23 court.

24 Provisions of this chapter on temporary custody do not abrogate or limit the authority of the

1 court to order temporary custody of any child during any noticed hearing after an action has been  
2 commenced.

3 Section 3. That § 26-7A-23 be amended to read as follows:

4 26-7A-23. A board of county commissioners may provide and maintain at public expense  
5 temporary care, shelter, or detention facilities, physically sight and sound separated from adult  
6 prisoners, where children coming within the provisions of this chapter or chapter 26-8A, 26-8B,  
7 26-8C, or §§ 26-11A-13 and 26-11A-14, may, if necessary or appropriate, be placed for  
8 temporary care, temporary custody, shelter, or detention as designated by the court, or  
9 temporary detention or shelter by the Department of Corrections. Sections 26-11A-19 and  
10 26-7A-94 governs the costs of custodial care of children.

11 Section 4. That § 26-7A-26 be amended to read as follows:

12 26-7A-26. No apparent, alleged, or adjudicated abused or neglected child may be securely  
13 detained at any time in a jail, lockup, or in any type of detention or temporary care facility  
14 containing adult prisoners. An apparent, alleged, or adjudicated child in need of supervision may  
15 not be securely detained in a jail, lockup, or in any type of detention or temporary care facility  
16 containing adult prisoners except for approved collocated detention centers as defined in § 26-  
17 7A-1 and as authorized in §§ 26-8B-3 and 26-8B-6.

18 ~~An apparent, alleged, or adjudicated child in need of supervision or an apparent, alleged, or~~  
19 ~~adjudicated delinquent child fourteen years of age or older may be held in detention in an adult~~  
20 ~~lockup or jail if physically separated from adult prisoners subject to any restrictions under this~~  
21 ~~chapter or chapter 26-8A, 26-8B, or 26-8C.~~

22 ~~An apparent, alleged, or adjudicated child in need of supervision or an apparent, alleged, or~~  
23 ~~adjudicated delinquent child may be held in an adult lockup or jail for up to six hours for~~  
24 purposes of identification, processing, interrogation, transfer to juvenile facility, or release to

1 parents if the child is ~~physically~~ sight and sound separated from adult prisoners. In any area not  
2 designated as a metropolitan statistical area by the United States Bureau of the Census, an  
3 apparent or alleged delinquent child may be held in an adult lockup or jail for up to forty-eight  
4 hours excluding holidays and weekends or until the temporary custody hearing, whichever is  
5 earlier, if the facility has been certified by the Department of Corrections as providing sight and  
6 sound separation of juveniles from adults and if no suitable juvenile facility is available.

7 A child who has been transferred to adult court pursuant to § 26-11-4 or a child who is being  
8 tried in circuit court as an adult pursuant to § 26-11-3.1 may be held ~~in detention~~ in an adult  
9 lockup or jail if physically separated from adult prisoners.

10 A child who has attained the age of majority who is under the continuing jurisdiction of the  
11 court may be held ~~in detention~~ in an adult jail or lockup.

12 A child under the age of eighteen years who has been transferred to adult court pursuant to  
13 § 26-11-3.1 or 26-11-4 and who has been convicted of a felony as an adult may be held ~~in~~  
14 ~~detention~~ in an adult jail or lockup.

15 Section 5. That § 26-8B-2 be amended to read as follows:

16 26-8B-2. In this chapter and chapter 26-7A, the term, child in need of supervision, means:

- 17 (1) Any child of compulsory school age who is habitually absent from school without  
18 legal excuse;
- 19 (2) Any child who has run away from home or is otherwise beyond the control of the  
20 child's parent, guardian, or custodian;
- 21 (3) Any child whose behavior or condition endangers the child's own welfare or the  
22 welfare of others; ~~or~~
- 23 (4) Any child who has violated any federal, state, or local law or regulation for which  
24 there is not a penalty of a criminal nature for an adult, except violations of subdivision

1           34-46-2(2), or petty offenses; or

2           (5)   Any child who has violated § 35-9-2.

3           Section 6. That § 26-8B-3 be amended to read as follows:

4           26-8B-3. An apparent or alleged child in need of supervision taken into temporary custody  
5 by a law enforcement officer prior to a temporary custody hearing shall be released to the child's  
6 parents, guardian, or custodian unless the parents, guardian, or custodian cannot be located or  
7 in the judgment of the intake officer are not suitable to receive the child, in which case the child  
8 shall be placed in shelter. A child may be placed in detention for no more than twenty-four hours,  
9 excluding Saturdays, Sundays, and court holidays, if the intake officer finds that the parents,  
10 guardian, or custodian are not available or are not suitable to receive the child, and finds at least  
11 one of the following circumstances exists:

- 12           (1)   The child has failed to comply with court services or a court-ordered program;
- 13           (2)   The child is being held for another jurisdiction as a parole or probation violator, as a  
14                runaway or as a person under court-ordered detention;
- 15           (3)   The child has a demonstrated propensity to run away from the child's home, from  
16                court-ordered placement outside of the child's home or from agencies charged with  
17                providing temporary care for the child;
- 18           (4)   The child is under court-ordered home detention in this jurisdiction; or
- 19           (5)   There are specific, articulated circumstances which justify the detention for the  
20                protection of the child from potentially immediate harm to the child or to others.

21           The shelter or detention authorized shall be the least restrictive alternative available. The  
22 child may be held in detention up to an additional twenty-four hours following the temporary  
23 custody hearing pending transfer to shelter or release.

24           If the child is accused of or has been found in violation of a valid court order, the child may

1 be placed in detention for more than twenty-four hours, if a temporary custody hearing, pursuant  
2 to § 26-7A-14, is held within twenty-four hours of the child being placed in a detention facility,  
3 an interview is conducted with the child, and a written assessment of the child's immediate needs  
4 is provided at the temporary custody hearing. The interview and assessment may be conducted  
5 by law enforcement, states attorney, court services, or other public employee. The child may not  
6 be held in detention greater than seventy-two hours unless probation revocation proceedings  
7 have been initiated.

8 If the child is being held for another jurisdiction as a parole or probation violator, as runaway  
9 or as a person under court-ordered detention, the child may be placed in detention for more than  
10 twenty-four hours, and up to seven days, if a temporary custody hearing, pursuant to  
11 § 26-7A-14, is held within twenty-four hours of the child being placed in a detention facility.

12 Section 7. That § 26-8B-6 be amended to read as follows:

13 26-8B-6. If a child has been adjudicated as a child in need of supervision, the court shall enter  
14 a decree of disposition according to the least restrictive alternative available in keeping with the  
15 best interests of the child. The decree shall contain one or more of the following alternatives:

16 (1) The court may place the child on probation or under protective supervision in the  
17 custody of one or both parents, guardian, custodian, relative, or another suitable  
18 person under conditions imposed by the court;

19 (2) The court may require as a condition of probation that the child report for assignment  
20 to a supervised work program, provided the child is not placed in a detention facility  
21 and is not deprived of the schooling that is appropriate to the child's age, needs, and  
22 specific rehabilitative goals. The supervised work program shall be of a constructive  
23 nature designed to promote rehabilitation, shall be appropriate to the age level and  
24 physical ability of the child and shall be combined with counseling by a court services

1 officer or other guidance personnel. The supervised work program assignment shall  
2 be made for a period of time consistent with the child's best interests, but may not  
3 exceed ninety days;

4 (3) If the court finds that the child has violated a valid court order, the court may place  
5 the child in a detention facility, for purposes of disposition if:

6 (a) The child is not deprived of the schooling that is appropriate for the child's age,  
7 needs, and specific rehabilitative goals;

8 (b) The child had a due process hearing before the order was issued;

9 (c) ~~Before the issuance of such order, a local interagency team, authorized~~  
10 ~~pursuant to § 27A-15-56 shall review the behavior of the child and the~~  
11 ~~circumstances under which such child was brought before the court and made~~  
12 ~~subject to such order; determine the reasons for the behavior that caused such~~  
13 ~~child to be brought before the court and made subject to such order; determine~~  
14 ~~that all dispositions, including treatment, other than placement in a detention~~  
15 ~~facility or the Department of Corrections, have been exhausted or are clearly~~  
16 ~~inappropriate; and submit to the court a written report stating the results of the~~  
17 ~~review and determinations made~~ A plan of disposition from a court services  
18 officer is provided to the court;

19 (4) The court may require the child to pay for any damage done to property or for  
20 medical expenses under conditions set by the court if payment can be enforced  
21 without serious hardship or injustice to the child;

22 (5) The court may commit the child to the Department of Corrections for placement in  
23 a juvenile correctional facility, foster home, group home, group care center, or  
24 residential treatment center pursuant to chapter 26-11A. Prior to placement in a

1 juvenile correctional facility, an interagency team comprised of representatives from  
2 the Department of Human Services, Department of Social Services, Department of  
3 Education and Cultural Affairs, ~~and~~ the Department of Corrections, and the Unified  
4 Judicial System shall make a written finding that placement at a Department of  
5 Corrections facility is the least restrictive placement commensurate with the best  
6 interests of the child. Subsequent placement in any other Department of Corrections  
7 facility may be authorized without an interagency review;

8 (6) The court may place a child in an alternative educational program;

9 (7) The court may order the child to be examined and treated at the Human Services  
10 Center;

11 (8) The court may impose a fine not to exceed five hundred dollars;

12 (9) The court may order the suspension or revocation of the child's driving privilege or  
13 restrict the privilege in such manner as it sees fit or as required by § 32-12-52.4;

14 (10) The court may assess or charge the same costs and fees as permitted by §§ 16-2-41,  
15 23-3-52, 23A-27-26, and 23A-27-27 against the child, parent, guardian, custodian,  
16 or other party responsible for the child.

17 No adjudicated child in need of supervision may be incarcerated in a detention facility except  
18 as provided in subdivision (3) or (5) of this section.

19 Section 8. That § 26-8C-2 be amended to read as follows:

20 26-8C-2. In this chapter and chapter 26-7A, the term, delinquent child, means any child ten  
21 years of age or older who, regardless of where the violation occurred, has violated any federal,  
22 state, or local law or regulation for which there is a penalty of a criminal nature for an adult,  
23 except state or municipal hunting, fishing, boating, park, or traffic laws that are classified as  
24 misdemeanors, or petty offenses or any violation of § 35-9-2.

1 Section 9. That § 26-11-1 be amended to read as follows:

2 26-11-1. If any child under the age of eighteen years is arrested, with or without a warrant,  
3 for a violation of any law or municipal ordinance for which the child is not subject to proceedings  
4 as a child in need of supervision as defined in § 26-8B-2 or a delinquent child as defined in  
5 § 26-8C-2 or for a violation of subdivision 34-46-2(2), the child shall be brought before the  
6 judge of a court having jurisdiction over the offense and proceedings shall be conducted as  
7 though the child were eighteen years of age or older.

8 A child under the age of eighteen years, subject to proceedings pursuant to this section and  
9 accused of a Class 2 misdemeanor, may be held in or sentenced to ~~an adult lockup or jail~~ or a  
10 detention or temporary care facility for up to seven days if physically sight and sound separated  
11 from adult prisoners. No child may be held in or sentenced to a detention facility for a violation  
12 of subdivision 34-46-2(2).

13 A child under the age of eighteen years, subject to proceedings pursuant to this section and  
14 accused of a Class 1 misdemeanor, may be held in or sentenced to ~~an adult lockup or jail~~ or a  
15 detention or temporary care facility for up to thirty days if physically sight and sound separated  
16 from adult prisoners.

17 Section 10. That § 24-11-1 be amended to read as follows:

18 24-11-1. The ~~word "jail"~~ term, jail, as used in this chapter includes any building or place  
19 provided or used by any county, municipality, or civil township for the detention of adult persons  
20 convicted or accused of the violation of any law of this state, any ordinance or bylaw of any  
21 municipality; or civil township, or any rule or regulation of any board, commission, or public  
22 officer having the effect of law; or for the detention of adult persons held as witnesses or  
23 committed for contempts, except juvenile detention facilities located outside jails and lockups  
24 and approved collocated detention facilities operated by counties. The governing body or

1 commission responsible for the operation of a jail shall classify its jails based upon the types of  
2 persons detained therein and the maximum length of detention of persons in such jails.

3 Section 11. That § 24-11-16 be amended to read as follows:

4 24-11-16. The sheriff or other officer having charge of any jail shall keep jail records. These  
5 records shall be carefully kept and preserved and delivered to such officer's successor in office.  
6 ~~Such~~ The officer shall exhibit these records to any judge of the circuit court ~~when,~~ if requested  
7 to do so, and to the Department of Corrections for the purposes on monitoring compliance with  
8 the requirements of the Juvenile Justice and Delinquency Prevention Act pursuant to § 1-15-28.

9 Section 12. That § 32-12-52.4 be amended to read as follows:

10 32-12-52.4. Upon a first conviction or a first adjudication ~~of delinquency~~ as a child in need  
11 of supervision for a violation of § 35-9-2 while in a motor vehicle, the court shall suspend the  
12 driver license or driving privilege of any driver of a vehicle who was under the age of twenty-one  
13 when the offense occurred, for a period of six months.

14 Upon a second or subsequent conviction or a second or subsequent adjudication ~~of~~  
15 ~~delinquency~~ as a child in need of supervision for a violation of § 35-9-2 while in a motor vehicle,  
16 the court shall suspend the driver license or driving privilege of any driver of a vehicle who was  
17 under the age of twenty-one when the offense occurred, for a period of one year. For any offense  
18 under this section, the court may issue an order permitting the person to operate a motor vehicle  
19 for purposes of the person's employment, attendance at school, or attendance at counseling  
20 programs.

21 Notwithstanding the provisions of chapters 26-7A, 26-8A, 26-8B, and 26-8C, the Unified  
22 Judicial System shall notify the Department of Commerce and Regulation of any conviction or  
23 adjudication for a violation, while in a motor vehicle, of § 35-9-2 or chapter 32-23. The period  
24 of suspension shall begin on the date the person's suspended driver license is received by the

1 court or the Department of Commerce and Regulation. At the expiration of the period of  
2 suspension, a person may make application to have the license reinstated and pay the license fee  
3 as prescribed in § 32-12-47.1.