

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0379

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1058 - 02/14/2007

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the placement of
2 juveniles under the jurisdiction of the Department of Corrections.

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

4 Section 1. That chapter 26-6 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Notwithstanding the provisions of §§ 26-1-1, 26-6-6.1, and 26-7A-101, a child welfare
7 agency and the Department of Corrections may provide foster care for a person over the age of
8 majority but less than twenty-one years of age if the person is under the continuing juvenile
9 jurisdiction of the Department of Corrections.

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

11 26-7A-26. No apparent, alleged, or adjudicated abused or neglected child may be securely
12 detained at any time in a jail, lockup, or in any type of detention or temporary care facility
13 containing adult prisoners. An apparent, alleged, or adjudicated child in need of supervision may
14 not be securely detained in a jail, lockup, or in any type of detention or temporary care facility
15 containing adult prisoners except for approved collocated detention centers as defined in § 26-



1 7A-1 and as authorized in §§ 26-8B-3, 26-8B-6, and 26-7A-20.

2 An apparent or alleged delinquent child may be held in an adult lockup or jail for up to six
3 hours for purposes of identification, processing, interrogation, transfer to juvenile facility, or
4 release to parents if the child is sight and sound separated from adult prisoners.

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

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

14 A child who has attained the age of majority who is under the continuing jurisdiction of the
15 court or the Department of Corrections may be held in an adult jail or lockup.

16 A child under the age of eighteen years who has been transferred to adult court pursuant to
17 §§ 26-11-3.1 or 26-11-4 and who has been convicted of a felony as an adult may be held in an
18 adult jail or lockup.

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

20 26-8B-6. If a child has been adjudicated as a child in need of supervision, the court shall
21 enter a decree of disposition according to the least restrictive alternative available in keeping
22 with the best interests of the child. The decree shall contain one or more of the following
23 alternatives:

24 (1) The court may place the child on probation or under protective supervision in the

1 custody of one or both parents, guardian, custodian, relative, or another suitable
2 person under conditions imposed by the court;

3 (2) The court may require as a condition of probation that the child report for assignment
4 to a supervised work program, provided the child is not placed in a detention facility
5 and is not deprived of the schooling that is appropriate to the child's age, needs, and
6 specific rehabilitative goals. The supervised work program shall be of a constructive
7 nature designed to promote rehabilitation, shall be appropriate to the age level and
8 physical ability of the child, and shall be combined with counseling by a court
9 services officer or other guidance personnel. The supervised work program
10 assignment shall be made for a period of time consistent with the child's best
11 interests, but may not exceed ninety days;

12 (3) If the court finds that the child has violated a valid court order, the court may place
13 the child in a detention facility for not more than ninety days, which may be in
14 addition to any period of temporary custody, for purposes of disposition if:

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

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

18 (c) A plan of disposition from a court services 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, or other community-based services, if those community-

1 based services were not provided prior to commitment, pursuant to chapter 26-11A.
2 Prior to placement in a juvenile correctional facility, an interagency team comprised
3 of representatives from the Department of Human Services, Department of Social
4 Services, Department of Education, the Department of Corrections, and the Unified
5 Judicial System shall make a written finding that placement at a Department of
6 Corrections facility is the least restrictive placement commensurate with the best
7 interests of the child. Subsequent placement in any other Department of Corrections
8 facility may be authorized without an interagency review;

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

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

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

13 (9) The court may order the suspension or revocation of the child's driving privilege or
14 restrict the privilege in such manner as the court sees fit or as required by § 32-12-
15 52.4, including requiring that financial responsibility be proved and maintained;

16 (10) The court may assess or charge the same costs and fees as permitted by §§ 16-2-41,
17 23-3-52, 23A-27-26, and 23A-27-27 against the child, parent, guardian, custodian,
18 or other party responsible for the child.

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

21 Section 4. That § 26-11A-8 be amended to read as follows:

22 26-11A-8. If a juvenile is committed to the Department of Corrections, the department shall
23 determine the extent of security and treatment services that are in the best interest of the juvenile
24 and in the best interest of the state. When the department makes its determination, it shall place

1 the juvenile in a juvenile correctional facility under the department's control pursuant to § 1-15-
2 1.4 or a group home, group care center, ~~or~~ residential treatment center, or other community-
3 based services, if those community-based services were not provided prior to commitment.

4 Section 5. That § 26-11A-9 be amended to read as follows:

5 26-11A-9. After the juvenile's initial placement pursuant to § 26-11A-8, the secretary of
6 corrections may transfer a juvenile to a different Department of Corrections facility or program,
7 the Human Services Center, detention, shelter, or a group home, group care center, ~~or~~ residential
8 treatment center, or other community-based services.

9 Section 6. That § 26-11A-20 be amended to read as follows:

10 26-11A-20. The secretary of corrections may ~~at any time order the discharge of a child from~~
11 ~~the Department of Corrections as a reward for good conduct upon satisfactory evidence of~~
12 ~~reformation. The discharge of a juvenile from the Department of Corrections as a reward for~~
13 ~~good conduct upon satisfactory evidence of reformation or for having arrived at the age of~~
14 ~~twenty-one years shall be a complete release from all penalties incurred by adjudication for the~~
15 ~~offense for which he was committed.~~ discharge a juvenile from the Department of Corrections
16 upon the following:

17 (1) As a reward for good conduct and upon satisfactory evidence of reformation;

18 (2) As a result of a conviction for a new crime as an adult, if the juvenile is placed on
19 adult probation or sentenced to the county jail or state penitentiary;

20 (3) If the juvenile, upon reaching the age of majority, lives outside the jurisdiction of the
21 State of South Dakota and the interstate compact on juveniles is not available due to
22 the juvenile's age or circumstances; or

23 (4) If the juvenile is on aftercare and has a suitable placement, and a discharge is
24 determined to be in the best interests of the juvenile.

1 No adjudicated juvenile may remain within the jurisdiction of the Department of Corrections
2 beyond the age of twenty-one years. The discharge of a juvenile from the Department of
3 Corrections constitutes a complete release from all penalties, excluding unpaid fines, fees, or
4 restitution.

5 Section 7. That chapter 26-11A be amended by adding thereto a NEW SECTION to read
6 as follows:

7 A risk and needs evaluation shall be conducted for any juvenile under the jurisdiction of the
8 department who reaches the age of nineteen years who has not been discharged pursuant to § 26-
9 11A-20. The evaluation shall focus on the amount of progress made while under the jurisdiction
10 of the department, the ongoing needs of the juvenile, and what risks the juvenile would present
11 to the community or self if discharged at that point. Additionally, the evaluation shall identify
12 recommendations regarding treatment and transition services that will prepare the juvenile for
13 discharge from the jurisdiction of the department. The secretary shall initiate any actions
14 necessary, including referral or civil commitment to service systems for the mentally ill or
15 developmentally disabled, to ensure the treatment needs of the juvenile and the safety interests
16 of the public are best served.