

AN ACT

ENTITLED, An Act to revise certain provisions related to the placement of juveniles under the jurisdiction of the Department of Corrections.

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

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

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

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

26-7A-26. No apparent, alleged, or adjudicated abused or neglected child may be securely detained at any time in a jail, lockup, or in any type of detention or temporary care facility containing adult prisoners. An apparent, alleged, or adjudicated child in need of supervision may not be securely detained in a jail, lockup, or in any type of detention or temporary care facility containing adult prisoners except for approved collocated detention centers as defined in § 26-7A-1 and as authorized in §§ 26-8B-3, 26-8B-6, and 26-7A-20.

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

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

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

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

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

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

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

- (1) The court may place the child on probation or under protective supervision in the custody of one or both parents, guardian, custodian, relative, or another suitable person under conditions imposed by the court;
- (2) The court may require as a condition of probation that the child report for assignment to a supervised work program, provided the child is not placed in a detention facility and is not deprived of the schooling that is appropriate to the child's age, needs, and specific rehabilitative goals. The supervised work program shall be of a constructive nature designed to promote rehabilitation, shall be appropriate to the age level and physical ability of the child, and shall be combined with counseling by a court services officer or other guidance personnel. The supervised work program assignment shall be made for a period of time consistent with the child's best interests, but may not exceed ninety days;
- (3) If the court finds that the child has violated a valid court order, the court may place the

child in a detention facility for not more than ninety days, which may be in addition to any period of temporary custody, for purposes of disposition if:

- (a) The child is not deprived of the schooling that is appropriate for the child's age, needs, and specific rehabilitative goals;
 - (b) The child had a due process hearing before the order was issued; and
 - (c) A plan of disposition from a court services officer is provided to the court;
- (4) The court may require the child to pay for any damage done to property or for medical expenses under conditions set by the court if payment can be enforced without serious hardship or injustice to the child;
- (5) The court may commit the child to the Department of Corrections for placement in a juvenile correctional facility, foster home, group home, group care center, residential treatment center, or other community-based services, if those community-based services were not provided prior to commitment, pursuant to chapter 26-11A. Prior to placement in a juvenile correctional facility, an interagency team comprised of representatives from the Department of Human Services, Department of Social Services, Department of Education, the Department of Corrections, and the Unified Judicial System shall make a written finding that placement at a Department of Corrections facility is the least restrictive placement commensurate with the best interests of the child. Subsequent placement in any other Department of Corrections facility may be authorized without an interagency review;
- (6) The court may place a child in an alternative educational program;
- (7) The court may order the child to be examined and treated at the Human Services Center;
- (8) The court may impose a fine not to exceed five hundred dollars;
- (9) The court may order the suspension or revocation of the child's driving privilege or

restrict the privilege in such manner as the court sees fit or as required by § 32-12-52.4, including requiring that financial responsibility be proved and maintained;

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

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

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

26-11A-8. If a juvenile is committed to the Department of Corrections, the department shall determine the extent of security and treatment services that are in the best interest of the juvenile and in the best interest of the state. When the department makes its determination, it shall place the juvenile in a juvenile correctional facility under the department's control pursuant to § 1-15-1.4 or a group home, group care center, residential treatment center, or other community-based services, if those community-based services were not provided prior to commitment.

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

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

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

26-11A-20. The secretary of corrections may discharge a juvenile from the Department of Corrections upon the following:

- (1) As a reward for good conduct and upon satisfactory evidence of reformation;
- (2) As a result of a conviction for a new crime as an adult, if the juvenile is placed on adult

probation or sentenced to the county jail or state penitentiary;

- (3) If the juvenile, upon reaching the age of majority, lives outside the jurisdiction of the State of South Dakota and the interstate compact on juveniles is not available due to the juvenile's age or circumstances; or
- (4) If the juvenile is on aftercare and has a suitable placement, and a discharge is determined to be in the best interests of the juvenile.

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

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

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

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1058

Chief Clerk
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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1058
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
=====

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

Governor

=====
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