

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

975N0013

HOUSE BILL NO. 1208

Introduced by: Representatives Moore and Peters and Senators Koetzle and Napoli

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions relating to the designation of
2 a juvenile corrections monitor.

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

4 Section 1. That § 26-11A-24 be repealed.

5 ~~—26-11A-24. Terms used in this chapter mean:~~

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

11 ~~—(2)—"Monitor," the person or entity designated by the Governor to protect the legal rights~~
12 ~~of individuals in the custody or care of juvenile corrections facilities;~~

13 ~~—(3)—"Juvenile corrections facility," all juvenile correctional facilities established and~~
14 ~~maintained in accordance with § 26-11A-1;~~

15 ~~—(4)—"Individual in the custody or care of a juvenile corrections facility," an individual~~
16 ~~who:~~



1 ~~_____ (a) Is in the process of being admitted to a juvenile corrections facility, including~~
2 ~~an individual who is being transported to such a facility; or~~

3 ~~_____ (b) Is involuntarily confined in a juvenile corrections facility;~~

4 ~~_____ (5) "Neglect," a negligent act or omission by any individual responsible for providing~~
5 ~~custody, care, or services in a juvenile corrections facility which caused or may have~~
6 ~~caused injury or death to an individual in the care or custody of a juvenile corrections~~
7 ~~facility or which placed such individual at undue risk of injury or death;~~

8 ~~_____ (6) "Records," reports prepared or received by any staff of a juvenile corrections facility,~~
9 ~~or reports prepared by an entity or staff person charged with investigating reports of~~
10 ~~incidents of abuse or neglect, injury or death occurring at such facility that describes~~
11 ~~incidents of abuse, neglect, injury, or death occurring at such facility and the steps~~
12 ~~taken to investigate such incident.~~

13 Section 2. That § 26-11A-25 be repealed.

14 ~~_____ 26-11A-25. The Governor shall designate a person or entity to serve as the monitor and~~
15 ~~whose primary responsibility is to protect the rights of individuals in the custody or care of~~
16 ~~juvenile corrections facilities. Such person or entity shall be independent of the Department of~~
17 ~~Corrections and shall be administered by the Department of Human Services, office of the~~
18 ~~secretary.~~

19 Section 3. That § 26-11A-26 be repealed.

20 ~~_____ 26-11A-26. Any allegation of abuse and neglect of individuals within the juvenile~~
21 ~~corrections facilities received by the Office of the Governor, the Department of Corrections, or~~
22 ~~other agencies of the executive branch shall be promptly reported in writing to the monitor.~~

23 Section 4. That § 26-11A-27 be repealed.

24 ~~_____ 26-11A-27. The monitor created in § 26-11A-25 shall:~~

- 1 ~~— (1) Investigate incidents of abuse or neglect of such individuals within the juvenile~~
2 ~~corrections facilities, if the incidents are reported to the monitor or if there is~~
3 ~~reasonable suspicion to believe that the incidents occurred;~~
- 4 ~~— (2) Access any individual in the custody or care of juvenile corrections facilities and any~~
5 ~~employee in the employ of the State of South Dakota or any of its political~~
6 ~~subdivisions;~~
- 7 ~~— (3) Access any records of or relating to any individual in the custody or care of juvenile~~
8 ~~facilities;~~
- 9 ~~— (4) Provide a semi-annual report to the Governor, the Legislature, the Corrections~~
10 ~~Commission established by § 1-15-1.13, the secretary of the Department of Human~~
11 ~~Services, and the secretary of the Department of Corrections. The report shall contain~~
12 ~~the activities of the monitor for the six-month period immediately prior to the report.~~
13 ~~Activities shall reflect the number of referrals to the monitor, the number of~~
14 ~~investigations completed, results of the investigations, corrective actions taken, and~~
15 ~~a summary of other activities performed by the monitor;~~
- 16 ~~— (5) Provide training and assistance to employees of the Department of Corrections in~~
17 ~~areas within the scope of the monitor's position;~~
- 18 ~~— (6) Review Department of Corrections' policies dealing with juvenile's rights to ensure~~
19 ~~compliance with federal and state laws, rules, and policy;~~
- 20 ~~— (7) Provide reasonable notification of the existence and role of the monitor to all~~
21 ~~individuals in the custody or care of a juvenile corrections facility and the custodial~~
22 ~~parent or guardian.~~

23 Section 5. That § 26-11A-28 be repealed.

24 ~~— 26-11A-28. It shall be the responsibility of the monitor to report immediately, in writing, any~~

1 ~~findings of abuse or neglect in a juvenile corrections facility to the secretary of the Department~~
2 ~~of Corrections, the Government Operations and Audit Committee created in § 2-6-2, and the~~
3 ~~Governor, and to state in the report the facts found by the monitor and the names of any~~
4 ~~individuals who perpetrated the abuse or neglect.~~

5 Section 6. That § 26-11A-30 be repealed.

6 ~~—26-11A-30. For purposes of any audit, report, evaluation, or public testimony that may be~~
7 ~~permitted or required under §§ 26-11A-24 to 26-11A-33, inclusive, no disclosure of the identity~~
8 ~~of, or any other personally identifiable information related to, any juvenile or any individual~~
9 ~~requesting assistance under §§ 26-11A-24 to 26-11A-33, inclusive, shall be required. The~~
10 ~~identity of the person making a report to the monitor shall be kept confidential.~~

11 Section 7. That § 26-11A-31 be repealed.

12 ~~—26-11A-31. A person who knowingly hinders the lawful actions of the monitor is guilty of~~
13 ~~a Class 1 misdemeanor.~~

14 Section 8. That § 26-11A-32 be repealed.

15 ~~—26-11A-32. No state agency nor any individual acting for a state agency may take any~~
16 ~~adverse action against an individual in retaliation because the individual cooperated with or~~
17 ~~provided information to the monitor. A violation of this section is a Class 1 misdemeanor.~~

18 Section 9. That § 26-11A-33 be repealed.

19 ~~—26-11A-33. The identity of the juvenile and of any person or agency making a report to the~~
20 ~~monitor shall be kept confidential.~~