

## *Unified Judicial System Presentation Reference Document*

### Relevant Terms and Statutes

**“CHINS- Child in Need of Supervision:” A child that has engaged in certain statutorily identified at-risk behavior.**

#### 26-8B-2. Child in need of supervision defined

For purposes of this chapter, a child in need of supervision is a child:

(1) Of compulsory school age who is habitually absent from school without legal excuse;

(2) Who has run away from home or is otherwise beyond the control of the child's parent, guardian, or custodian;

(3) Whose behavior or condition endangers the child's own welfare or the welfare of others;

(4) Who has violated any federal or state law or regulation or local ordinance for which there is not a penalty of a criminal nature for an adult, other than a violation of subdivision 34-46-2(2) or a petty offense;

(5) Who has violated §32-23-21 or 35-9-2; or

(6) Who engages in prostitution by offering to engage in sexual activity for a fee or other compensation.

**“Delinquent:” A child age 10 or over that has committed a law violation.**

#### 26-8C-2. "Delinquent child" defined.

In this chapter and chapter 26-7A, the term, delinquent child, means any child ten years of age or older who, regardless of where the violation occurred, has violated any federal, state, or local law or regulation for which there is a penalty of a criminal nature for an adult, except state or municipal hunting, fishing, boating, park, or traffic laws that are classified as misdemeanors, or petty offenses or any violation of §35-9-2 or 32-23-21.

**“Recidivism:” A measurement demonstrating the tendency to reoffend.**

#### 26-8D-1 (5) Definitions.

“Recidivism” for the Department of Corrections for the purposes of this chapter, within one year, two years, or three years of discharge from the custody of the Department of Corrections, a juvenile commitment or conviction in adult court for a felony resulting in a sentence to the Department of Corrections. For the Unified Judicial System for the purposes of this chapter, the term means being

adjudicated delinquent while on probation or adjudicated delinquent or convicted of a felony in adult court within one year, two years, or three years after discharge from juvenile probation.”

**“Diversions:” An alternative method to resolve an infraction in lieu of formal court proceedings.**

26-7A-10. Preliminary investigation by state's attorney-Authorized procedure on basis of investigation

If a state's attorney is informed by a law enforcement officer or any other person that a child is, or appears to be, within the purview of this chapter and chapter 26-8A, 26-8B, or 26-8C, the state's attorney shall make a preliminary investigation to determine whether further action shall be taken. On the basis of the preliminary investigation, the state's attorney may:

- (1) Decide that no further action is required;
- (2) If the report relates to an apparent abused or neglected child and if additional information is required, refer the matter to the Department of Social Services for further investigation and recommendations;
- (3) If the report relates to a juvenile cited violation, proceed on the citation;
- (4) If the report relates to an apparent child in need of supervision, an apparent delinquent child, or a juvenile cited violation, refer the matter to a court services officer for any informal adjustment to the supervision of the court that is practicable without a petition or refer the matter to a court-approved juvenile diversion program for any informal action outside the court system that is practicable without the filing of a petition; or
- (5) File a petition to commence appropriate proceedings in any case that the youth does not meet the criteria provided in §26-7A-11.1.

26-7A-11. Requirements for referral for informal adjustment or action

A report of a preliminary investigation involving any apparent child in need of supervision, any apparent delinquent child, or any juvenile cited violation, may be referred to a court services officer for informal adjustment or to a court-approved juvenile diversion program for informal action pursuant to subdivision 26-7A-10(4) only if:

- (1) The child and the child's parents, guardian, or other custodian were informed of their constitutional and legal rights, including being represented by an attorney at every stage of the proceedings if a petition is filed;
- (2) The facts are admitted and establish prima facie jurisdiction; and
- (3) Written consent is obtained from the child's parents, guardian, or custodian and from the child if the child is of sufficient age and understanding. Efforts to effect informal adjustment or informal action may extend no longer than four months from the date of the consent.

The state's attorney may include in the referral to a court-approved juvenile diversion program a requirement that restitution as defined in subdivision 23A-28-2(4) be imposed as a condition of the diversion program.

26-7A-11. Requirements for referral for informal adjustment or action.

Any apparent child in need of supervision or any apparent delinquent child shall be referred for informal adjustment or informal action pursuant to subdivision 26-7A-10(4) if the following criteria are met:

- (1) The child has no prior adjudications;
- (2) The child has had no informal adjustment or informal action within the last twelve months;
- (3) The child is an apparent child in need of supervision pursuant to §26-8B-2 or an apparent delinquent pursuant to §26-8C-2 and the alleged conduct constitutes a misdemeanor;
- (4) The child's alleged conduct did not include use of violence or force against another; and
- (5) All of the requirements in §26-7A-11 are met.

If the state's attorney has good cause to believe that informal adjustment or informal action is insufficient to meet the purposes of this chapter and chapters 26-8B and 26-8C, the state's attorney may file a delinquency or child in need of supervision petition pursuant to subdivision 26-7A-10(5). The petition shall include notice of the departure from informal adjustment or informal action and notice to the child of the child's right to move for informal adjustment or informal action. Upon motion of the child and upon a finding that no good cause exists, the court may refer the child to informal adjustment or informal action pursuant to subdivision 26-7A-10(4).

**“Sanctioning Grid:” A grid used by court services officers to determine the appropriate response based on the juveniles behavior and risk level.**

26-7A-125. Graduated sanctions and incentives program for responding to probation violations

The Supreme Court shall establish rules, pursuant to §16-3-1, to develop a graduated sanctions and incentives procedure and grid to guide court services officers in determining the appropriate response to a violation of terms or conditions of probation in juvenile cases. If the graduated sanctions program includes detention, a stay may not exceed forty-eight hours, and may not exceed twenty-four hours for children in need of supervision pursuant to §26-8B-3. The Unified Judicial System shall collect data related to the use of sanctions, grid compliance and program outcomes, and shall include a process for reviewing sanctions that are challenged by the juvenile. The system of graduated sanctions shall be created with the following objectives:

- (1) Responding to violations of probation quickly, consistently, and proportionally;
- (2) Reducing the time and resources expended by the court to respond to violations; and
- (3) Reducing the likelihood of a new delinquent act.

**“Commitment Criteria:” What is required as a matter of law to be demonstrated to commit a youth to the South Dakota Department of Corrections by a court.**

Juvenile Delinquency Commitment Criteria:

26-8C-15. Provisions for violation of terms and conditions of probation

The following provisions apply if the child is alleged to have violated the terms and conditions of probation and a formal allegation of a probation violation is filed:

- (1) The court shall set a hearing on the alleged violation and shall give five days' notice to the child, to the child's parents, guardian, or custodian, and to any other parties to the proceedings;
- (2) The child and the child's parents, guardian, or custodian shall be given a written statement concerning the alleged violation;
- (3) The child may be represented by legal counsel at the probation violation hearing and the child is entitled to the issuance of compulsory process for the attendance of witnesses;
- (4) If the court finds by a preponderance of the evidence that the child violated the terms and conditions of probation, the court may modify the terms and conditions of probation, revoke probation, or take other action as permitted by this chapter or chapter 26-7A which is in the best interests of the child and the public, except commitment to the Department of Corrections. The court may only commit a child to the Department of Corrections if the court finds that the violation committed constitutes a new law violation and finds that the aggravated circumstances as provided in subdivision 26-8C-7(10)\* exist;
- (5) For the purposes of this section, new law violation is defined as delinquent behavior pursuant to §26-8C-2, a Class 1 misdemeanor violation of title 32, or a violation of §32-23-21; and
- (6) If the court finds that the child did not violate the terms and conditions of probation as alleged, the court shall dismiss the proceedings and continue the child on probation under the terms, conditions, and duration previously prescribed. If the duration of probation previously prescribed has expired, the court shall release the child from probation and terminate jurisdiction.

\*26-8C-7(10):

(10) The court may only commit a child to the Department of Corrections if the judge finds that:

(a) No viable alternative exists; and

(b) The Department of Corrections is the least restrictive alternative; and one of the following:

(i) The child is currently adjudicated delinquent for an offense eligible for transfer proceedings pursuant to §26-11-3.1; the child is currently adjudicated delinquent for a crime of violence pursuant to subdivision 22-1-2(9), sex offense pursuant to §22-24B-1, felony sexual registry offense pursuant to chapter 22-24B, or burglary in the second degree pursuant to §22-32-3; or the court finds from evidence presented at the dispositional hearing or from the pre-dispositional report that the youth presents a significant risk of physical harm to another person; or

(ii) The court finds from evidence presented at the dispositional hearing or from the pre-dispositional report that the child is at high risk for re-offense based on a validated risk assessment, and the child has either had a previous unsuccessful discharge from probation for a felony offense or is on supervised probation for a felony offense; and

(A) The child has been adjudicated for intentional damage to property and the property damage exceeds five thousand dollars; or

(B) The child has been adjudicated for a drug distribution offense that is punishable at least as a Class 4 felony.

Any finding made pursuant to this section shall be made in the written decree.

#### Child in Need of Supervision (CHINS) Commitment Criteria:

##### 26-8B-9. Provisions for violation of terms and conditions

The following provisions apply if the child is alleged to have violated the terms and conditions of probation and a formal petition is filed with the court:

(1) The court shall set a hearing on the alleged violation and shall give five days' notice to the child, to the child's parents, guardian, or custodian, and to any other parties to the proceedings;

(2) The child and the child's parents, guardian, or custodian shall be given a written statement concerning the alleged violation;

(3) The child may be represented by legal counsel at the probation violation hearing and the child is entitled to the issuance of compulsory process for the attendance of witnesses;

(4) If the court finds by a preponderance of the evidence that the child violated the terms and conditions of probation, the court may modify the terms and conditions of probation, revoke probation, or take other action as permitted by this chapter or chapter 26-7A, according to the least restrictive alternative which is in the best interests of the child and the public, except commitment to the Department

of Corrections. The court may only commit a child to the Department of Corrections if the court finds that the violation committed constitutes a new law violation and finds that the aggravated circumstances provided in subdivision 26-8B-6(10)\* exist;

(5) For the purposes of this section, a new law violation is defined as delinquent behavior pursuant to §26-8C-2, a Class 1 misdemeanor violation of title 32, or a violation of §32-23-21; and

(6) If the court finds that the child did not violate the terms and conditions of probation as alleged, the court shall dismiss the proceedings and continue the child on probation under the terms, conditions, and duration previously prescribed. If the duration of probation previously prescribed has expired, the court shall release the child from probation and terminate jurisdiction.

\*26-8B-6(10):

(10) The court may only commit a child to the Department of Corrections if the judge finds that:

- (a) No viable alternatives exist;
- (b) The Department of Corrections is the least restrictive alternative; and
- (c) The court finds from evidence presented at the dispositional hearing or from the pre-dispositional report that the youth presents a significant risk of physical harm to another person.

Any finding made pursuant to this section shall be made in the written decree.

After disposition, but prior to placement in a juvenile correctional facility, a state interagency team comprised of representatives from the Department of Human Services, the Department of Social Services, the 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.

No adjudicated child in need of supervision may be incarcerated in a detention facility except as provided in subdivision (3) of this section and §26-7A-20.

**“Probation Terms:” The duration of time a juvenile may be placed on probation and the terms required for successful completion.**

26-8B-8. Terms and conditions of probation-Duration-Written statement and explanation required-Review-Release-Modification

The terms and conditions of probation of a child in need of supervision shall be specified by rules or orders of the court and by a court services officer.

The duration of juvenile probation shall be specified by order of the court but may not exceed six months unless:

- (1) The child is placed in the intensive juvenile probation program; or

(2) The child's probation is extended as provided under this section.

If the child is placed on intensive juvenile probation, the duration of probation ordered by the court may be up to twelve months.

If the child is placed on juvenile probation, a court services officer may request two extensions up to six months each or one extension up to six months for intensive juvenile probation. The court may authorize the same in accordance with Unified Judicial System procedure if the extension is necessary for the child to complete evidence-based treatment as required by the case plan. If evidence-based treatment is not available, an extension may be granted if the youth is engaged in alternative court-approved treatment that will not be completed before the previously ordered term of probation expires.

The total duration of probation, including juvenile intensive probation and extensions in all cases, may not exceed eighteen months unless the court provides written authorization to allow a child to complete evidence-based treatment that will not be completed before probation expires. Probation may not be extended solely to collect restitution. If probation is terminated with restitution owing, Unified Judicial System procedure may govern the collection.

Each child placed on probation shall be given a written statement of the terms and conditions of probation and the probation policy. The terms and conditions, as well as the probation extension policy, shall be explained to the child.

The court shall review the terms and conditions of probation and the progress of each child placed on probation at least once every six months. The court may release a child from probation or modify the terms and conditions of the child's probation at any time, but any child who has complied satisfactorily with the terms, conditions, and duration of probation shall be released from probation and the jurisdiction of the court terminated. If the duration of probation previously prescribed has expired, the court shall release the child from probation and terminate jurisdiction.

**“Community Response Teams (CRT):” A multidisciplinary team that makes recommendations about a juvenile disposition.**

#### 26-8D-1. Definitions

- (1) "Community response team" or "team," a support team tasked with finding viable community resources to help rehabilitate delinquent children and children in need of supervision in community-based settings who are at risk for commitment to the Department of Corrections.

#### 26-8C-5. Plan of disposition by court services officer following adjudication-Recommendation of community response team

Following adjudication of a child as a delinquent child, the court may continue the case and may require a court services officer to present to the court a plan of disposition. Where a community response team as defined in §26-8D-1 has

been established, prior to any disposition to the Department of Corrections, the court may seek a recommendation for a viable community alternative disposition from the team. If the team is unable to provide any recommendation within seven days of the referral, the disposing court may exercise its discretion and make a disposition decision without the input of the team, pursuant to §26-8C-7. In each case, the court may adopt the recommendation of the team in part, in full, or reject the recommendation of the team in its entirety.

#### 26-8D-10. Community response teams-Confidentiality of records

The presiding judge of each judicial circuit may appoint one or more community response teams to assist judges by recommending viable community-based interventions for children in need of supervision and delinquent children. Each team appointed shall include the court services officer in the jurisdiction where the team is to operate, and designees of the secretaries of the Departments of Social Services and Corrections. Each team may include a representative of a public school district in which the team is to operate and one or more representatives of the public. The Unified Judicial System shall maintain a record of the membership of each team and report nonidentifying data to the oversight council. The team may operate telephonically or through electronic communications.

The records prepared or maintained by the team are confidential. However, the records may be inspected by, or disclosed to, justices, judges, magistrates, and employees of the Unified Judicial System in the course of their duties, the attorney for the child and child's parents, guardian, or other custodian, the state's attorney prosecuting the case, and to any person specifically authorized by order of the court. The record of the team may only be released to a third party upon good cause shown to the satisfaction of the court that the release is necessary and the information contained in the record is not available elsewhere.

**“Juvenile Citations:” A designated delinquency or children in need of supervision violation handled by law enforcement with the uniform traffic ticket.**

26-7A-126. Law enforcement treatment as juvenile cited violation-Procedure-Report to state's attorney

The following allegations of delinquency and children in need of supervision shall be treated as juvenile cited violations by law enforcement:

- (1) Petty theft in the second degree pursuant to §22-30A-17.3;
- (2) Intentional damage to property, four hundred dollars or less, pursuant to §22-34-1;
- (3) Purchase, possession, or consumption of alcoholic beverage by person under twenty-one years pursuant to §35-9-2 in accordance with subdivision 26-8B-2(5); and



(4) Truancy pursuant to subdivision 26-8B-2(1).

The issuing officer shall notify the child and the child's parent, guardian, or custodian that a hearing on the citation for a cited violation shall be held before a judicial circuit court judge within ten days of issuance of the citation or on the next available court date and be treated as a confidential juvenile matter. The hearing shall be held pursuant to §26-7A-36 and the case records shall be treated as confidential consistent with the provisions of §§26-7A-114, 26-7A-115, 26-7A-116, 26-7A-120, and 26-7A-27. A cited violation is not an adjudication or a child in need of supervision or delinquency proceeding. In lieu of a citation, pursuant to subdivision 26-7A-126(4), a school official may file a report with the state's attorney. A report may also be filed with the state's attorney in lieu of a citation if the conduct occurs in conjunction with another offense that is not subject to the juvenile cited violation process.

#### 26-7A-127 Action by state's attorney for juvenile cited violation

If a state's attorney is informed that a citation or report has been issued for a juvenile cited violation, the state's attorney may take any action permitted pursuant to §26-7A-10, except that a state's attorney may only file a petition pursuant to subdivision 26-7A-10(5) if:

(1) The child is cited or a report is filed pursuant to subdivision 26-7A-126(1), (2), or (4); or

(2) The child is cited pursuant to subdivision 26-7A-126(3), and has two or more prior judgments for the same violation.

If the state's attorney intends to proceed on a petition for a violation of the provisions in §26-7A-126 pursuant to subdivision (1) or (2) in this section, the provisions of §26-7A-11.1 apply.

#### 26-7A-128 Admission or denial of alleged juvenile cited violation-Procedure

If the state's attorney elects to proceed on the citation pursuant to subdivision 26-7A-10(3), the child shall be asked for an admission or denial of the alleged violation. If the child admits to the violation, the court shall accept the admission and enter a judgment pursuant to §26-7A-129. If the child denies committing the violation, the case may be tried according to procedure adopted by the presiding judge of each judicial circuit and approved by the Supreme Court, but a jury trial may not be granted.

If the child fails to appear in court at the time set in the citation or set by subsequent postponement, the court may either issue a summons to appear and set a new date for hearing to show cause, the court may consider that failure to appear constitutes an admission to the allegations contained in the complaint and may accordingly enter a judgment for payment, or may grant permission to the state's attorney to file a petition pursuant to subdivision 26-7A-10(5).

If the child fails to comply with the terms of the judgment, the court may issue a summons to appear and show cause, or assess against the child's parents or guardians the amount of the citation and any restitution owed pursuant to §26-7A-129 or may grant permission to the state's attorney to file a petition pursuant to subdivision 26-7A-10(5).

#### 26-7A-129 Judgment on juvenile cited violation

If a child is found to be in violation of the citation, the court shall enter a judgment against the child for one or more of the following:

- (1) Require the child to complete a court-approved juvenile diversion program or informal adjustment administered by a court services officer;
- (2) A fine and court costs not to exceed one hundred dollars;
- (3) Community service;
- (4) Restitution as defined in subdivision 23A-28-2(4) and as determined appropriate by the court; or
- (5) Suspension or revocation of the child's driving privilege if the judgment is entered on a violation pursuant to subdivision 26-7A-126(3).

The court may set a hearing to review compliance with the judgment. If a child is unable to pay a fine, court costs, or restitution as ordered by the court, any party may request that the court order community service in lieu of the monetary judgment. At no time may a court order a child to probation or detention upon entry of a judgment on a cited violation. A judgment on a cited violation shall be a confidential matter pursuant to subsection 15-15A-7(p) but the state's attorney may maintain a nonpublic record of the judgment for purposes of determining eligibility under §26-7A-127.

#### **“Fiscal Incentive Program for Diversion Opportunities:” A financial incentive for counties to use diversion programming administered by the Department of Corrections.**

##### 26-8D-2. Fiscal incentive program for diversion opportunities-Requirements

The Department of Corrections shall develop a fiscal incentive program to incentivize county use of diversion opportunities. Beginning on September 1, 2016, any application for funding from the fiscal incentive program shall be submitted to the Department of Corrections before September first each year by a county. The fiscal incentive program includes the following requirements:

- (1) An application shall include data on the number of children annually referred by the county to a diversion program, as well as the number of referred children that successfully completed a diversion program. In addition, each application shall provide specific data about the children the county referred to diversion, including the type of program or type of diversion referred to, the name and location of each diversion provider, and whether the child completed a diversion program;

(2) The allotment of funds shall be based on the number of children referred by each county that complete a court-approved diversion program at a rate of two hundred fifty dollars per child. That amount shall be prorated if the number of children completing a diversion program statewide results in an amount that exceeds the allotted funds;

(3) No county may receive any state funds provided by this section until its application has been received; and

(4) Payments to counties shall be transferred on or about November first each year.

The Department of Corrections shall report data collected from participating counties semiannually to the oversight council.

**“Evidence-Based Treatment:” Treatment programming that has been rigorously evaluated and proven to be appropriate for an individual or population.**

SDCL 26-8D-1(8) Definitions:

“[W]hen used in a juvenile justice context, targeted interventions that utilize evidence-based practices to focus on juvenile risk factors, to improve mental health, and to reduce the likelihood of delinquent behavior.”

**“FFT- Functional Family Therapy:”**

FFT is a family-based therapy that focuses on building skills to improve family relationships, reduce behavioral issues and improve school performance. FFT is a clinical model that increases a family’s motivation to change and tailors interventions to each family’s unique risk and protective factors. Source:

[JJRI flyer.pdf \(sd.gov\)](#)

**“ART- Aggression Replacement Training:”**

ART is designed to alter behaviors of chronically aggressive youth by using guided group discussions to correct anti-social thinking. ART uses repetitive learning techniques to teach coping skills for managing anger and impulsiveness. ART includes three interventions; social skills, anger control, and moral reasoning.

Source: [JJRI flyer.pdf \(sd.gov\)](#)

**“MRT- Moral Reconation Therapy:”**

MRT is an evidence-based program combining education and structured exercises to assist participants in addressing negative thought and behavior patterns. MRT includes 12 steps which focus on issues such as honesty, trust, acceptance, healing relationships, and setting goals.

Source: [JJRI flyer.pdf \(sd.gov\)](#)

**“JJRI- Juvenile Justice Reinvestment Initiative:”** SB 73 from the 2015 Legislative Session.