

2023 South Dakota Legislature

Draft 149

Requested by: at the request of the Study Committee on Juvenile Justice

1 **An Act to modify a court's authority to commit a habitual juvenile offender to the**
2 **Department of Corrections.**

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

4 **Section 1. That § 26-8C-7 be AMENDED:**

5 **26-8C-7.** If a child has been adjudicated as a delinquent child, the court shall enter
6 a decree of disposition according to the least restrictive alternative available in keeping
7 with the best interests of the child. The decree shall contain one or more of the following:

8 (1) The court may require the child to pay restitution, as defined in subdivision 23A-
9 28-2(4) and under conditions set by the court, if payment can be enforced without
10 serious hardship or injustice to the child;

11 (2) The court may impose a fine not to exceed one thousand dollars;

12 (3) The court may place the child on probation under the supervision of a court services
13 officer or another designated individual pursuant to § 26-8C-14;

14 (4) The court may require a child as a condition of probation to participate in a
15 supervised community service program, if the child is not deprived of the schooling
16 that is appropriate for the child's age, needs, and specific rehabilitative goals. The
17 supervised community service program shall be of a constructive nature designed
18 to promote rehabilitation, appropriate to the age level and physical ability of the
19 child, and shall be combined with counseling by the court services officer or other
20 guidance personnel. The supervised community service program assignment shall
21 be made for a period of time consistent with the child's best interests, but for not
22 more than ninety days;

23 (5) The court may place the child at the Human Services Center for examination and
24 treatment;

25 (6) The court may place the child in a detention facility for not more than ninety days,
26 which may be in addition to any period of temporary custody;

27 (7) The court may place the child in an alternative educational program;

28 (8) The court may order the suspension or revocation of the child's right to apply for
29 a driving privilege, suspend or revoke an existing driving privilege, or restrict the

1 privilege in the manner the court sees fit, including requiring that financial
2 responsibility be proved and maintained;

3 (9) The court may assess or charge costs and fees permitted by §§ 16-2-41, 23-3-52,
4 23A-27-26, 23A-28B-42, and 23A-27-27 against the child, parent, guardian,
5 custodian, or other party responsible for the child; or

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

8 (a) No viable alternative exists; and

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

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

20 (ii) The child has been previously adjudicated delinquent for separate
21 delinquent acts, arising out of separate and distinct criminal
22 episodes, three or more times within the preceding six-month
23 period; or

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

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

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

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