

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

Ninety-Eighth Session
2023 South Dakota Legislature

Senate Bill 129

An Act to include school employees in certain assault provisions and provide a penalty therefor.

A prison/jail population cost estimate statement is required for SB129 because it establishes a new felony under South Dakota law. Simple assault, per SDCL 22-18-1, is commonly a Class 1 misdemeanor, while aggravated assault, per SDCL 22-18-1.1, is commonly a Class 3 felony. SDCL 22-18-1.05 enhances the penalties of both crimes to a Class 6 felony and Class 2 felony, respectively, when the assault is "committed against a law enforcement officer, firefighter, ambulance service personnel, Department of Corrections employee or person under contract assigned to the Department of Corrections, or other public officer, which assault occurred while the officer or employee was engaged in the performance of the officer's or employee's duties[.]"

The bill would add any public or non-public school employee while the employee was engaged in a school activity to SDCL 22-18-1.05 for the purposes of penalty enhancement. A simple assault against a school employee would be a Class 6 felony, and aggravated assault would be a Class 2 felony.

A recent American Psychological Association publication found 99% of aggressors in incidents of physical violence against school employees are students. SDCL 26-11-4 states a court may, after a hearing, permit a delinquent child against whom criminal felony charges have been filed to be transferred to a circuit court to be tried as an adult. Per SDCL 26-11-3.1, "Any delinquent child sixteen years of age or older against whom . . . Class 2 felony charges have been filed shall be tried in circuit court as an adult." However, such a child may still request a transfer hearing to determine whether the child should be tried as an adult.

"At the transfer hearing, the court shall consider only whether it is contrary to the best interest of the child and of the public to retain jurisdiction over the child." SDCL 26-11-4. Several factors may be considered by the court, including the seriousness of the alleged felony to the community, whether the alleged felony was committed in an aggressive manner, and the likelihood of reasonable rehabilitation of the juvenile.

It is unknown how often a delinquent child would be tried as an adult for violating the felonies in the bill due to the individualized nature of transfer hearings. This data is necessary because SDCL 26-7A-26 states, "A child under the age of eighteen years who has been transferred to adult court pursuant to SDCL 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." Due to existing discretion affecting when a juvenile may be confined that cannot be accurately predicted for a new felony, the impact of the bill on the state's prison and jail populations cannot be determined.

APPROVED BY: /s/ Reed Holwegner
Director, Legislative Research Council

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