

2024 South Dakota Legislature

House Bill 1245**AMENDMENT 1245B
FOR THE INTRODUCED BILL**

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

1 **An Act to revise provisions related to the custody of an alleged delinquent child**
2 **before and after a temporary custody hearing.**

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

4 **Section 1. That § 26-8C-3 be AMENDED:**

5 **26-8C-3.** An apparent or alleged delinquent child taken into temporary custody by
6 a law enforcement officer prior to a temporary custody hearing shall be released to the
7 child's parents, guardian, or custodian unless the parents, guardian, or custodian cannot
8 be located, or in the judgment of the intake officer, are not suitable to receive the child,
9 in which case the child shall be placed in shelter. A child may not be placed in detention
10 unless the intake officer finds that the parents, guardian, or custodian are not available
11 or are not suitable to receive the child, and finds at least one of the following circumstances
12 exists:

- 13 (1) The child is a fugitive from another jurisdiction;
14 (2) The child is charged with a violation of § 22-22-7, a crime of violence under
15 subdivision 22-1-2(9), or a serious property crime, which, if committed by an adult,
16 would be a felony;
17 (3) The child is already held in detention or on conditional release in connection with
18 another delinquency proceeding;
19 (4) The child has a demonstrable recent record of willful failures to appear for juvenile
20 court proceedings;
21 (5) The child has a demonstrable recent record of violent conduct;
22 (6) The child has a demonstrable recent record of adjudications for serious property
23 offenses;
24 (7) The child is under the influence of alcohol, inhalants, or a controlled drug or
25 substance and detention is the least restrictive alternative in view of the gravity of

1 the alleged offense and is necessary for the physical safety of the child, the public,
2 and others;~~or~~

3 (8) The child has failed to comply with court services or a court ordered program; or
4 (9) There are specific, articulated circumstances that justify detention, not to exceed
5 five days, for the protection of the child from potentially immediate harm to the
6 child or to others.

7 The shelter or detention authorized ~~shall~~ must be the least restrictive alternative
8 available.

9 **Section 2. That § 26-7A-21 be AMENDED:**

10 **26-7A-21.** If the child is an apparent, alleged, or adjudicated delinquent child,
11 after the temporary custody hearing the court shall release the child from temporary
12 custody to the child's parents, guardian, or custodian, with or without restriction or
13 condition or upon written promise of the child's parents, guardian, or custodian regarding
14 the custody and supervision of the child and the subsequent appearance of the child in
15 court at a time, date, and place to be determined by the court, unless the court finds that
16 the child should continue to be held in temporary custody of court services for any of the
17 following reasons:

- 18 (1) The child is a fugitive from another jurisdiction;
- 19 (2) The child is charged with a violation of § 22-22-7, a crime of violence under
20 subdivision 22-1-2(9), or a property crime, which, if committed by an adult, would
21 be a felony;
- 22 (3) The child is already held in detention or on conditional release in connection with
23 another delinquency proceeding;
- 24 (4) The child has a demonstrable recent record of willful failures to appear at juvenile
25 court proceedings;
- 26 (5) The child has a demonstrable recent record of violent conduct;
- 27 (6) The child has a demonstrable recent record of adjudications for serious property
28 offenses;
- 29 (7) The child is still under the influence of alcohol, inhalants, or a controlled drug or
30 substance;~~or~~
- 31 (8) The child has failed to comply with court services or a court ordered program; or
- 32 (9) There are specific, articulated circumstances that justify detention, not to exceed
33 five days, for the protection of the child from potentially immediate harm to the
34 child or to others.