



2024 South Dakota Legislature  
**House Bill 1245**  
**ENROLLED**

AN ACT

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

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

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

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

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

the alleged offense and is necessary for the physical safety of the child, the public, and others;

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

The shelter or detention authorized must be the least restrictive alternative available.

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

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

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

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

\_\_\_\_\_  
I certify that the attached Act originated in  
the:  
House as Bill No. 1245

\_\_\_\_\_  
Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_,  
2024 at \_\_\_\_\_ M.

\_\_\_\_\_  
Chief Clerk

By \_\_\_\_\_  
for the Governor

\_\_\_\_\_  
Speaker of the House

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 2024

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

\_\_\_\_\_  
President of the Senate

Attest:

Filed \_\_\_\_\_, 2024  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Secretary of State

House Bill No. 1245  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State