

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

625B0713

## SENATE JUDICIARY ENGROSSED NO. **HB 1195** 3/6/2019

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

Introduced by: Representatives Jensen (Kevin), Brunner, Dennert, Livermont, Marty, and Weis and Senators Smith (VJ) and Stalzer

1 FOR AN ACT ENTITLED, An Act to revise provisions regarding juvenile justice.

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

3 Section 1. That § 26-8C-7 be amended to read:

4 26-8C-7. If a child has been adjudicated as a delinquent child, the court shall enter a decree  
5 of disposition according to the least restrictive alternative available in keeping with the best  
6 interests of the child. The decree shall contain one or more of the following:

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

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

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

13 (4) The court may require a child as a condition of probation to participate in a  
14 supervised community service program, if the child is not deprived of the schooling



1 that is appropriate for the child's age, needs, and specific rehabilitative goals. The  
2 supervised community service program shall be of a constructive nature designed to  
3 promote rehabilitation, appropriate to the age level and physical ability of the child,  
4 and shall be combined with counseling by the court services officer or other guidance  
5 personnel. The supervised community service program assignment shall be made for  
6 a period of time consistent with the child's best interests, but for not more than ninety  
7 days;

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

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

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

13 (8) The court may order the suspension or revocation of the child's right to apply for a  
14 driving privilege, suspend or revoke an existing driving privilege, or restrict the  
15 privilege in such manner as it sees fit, including requiring that financial responsibility  
16 be proved and maintained;

17 (9) The court may assess or charge costs and fees permitted by §§ 16-2-41, 23-3-52,  
18 23A-27-26, 23A-28B-42, and 23A-27-27 against the child, parent, guardian,  
19 custodian, or other party responsible for the child; ~~or~~

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

22 (a) No viable alternative exists;

23 (b) The Department of Corrections is the least restrictive alternative; and

24 (c) The child is currently adjudicated delinquent for an offense eligible for

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

8 (11) The court may only commit the child to the Department of Corrections for placement  
9 in a foster home, group home, group care center, residential treatment center, or other  
10 community-based services, if those community-based services were not provided  
11 prior to commitment, pursuant to chapter 26-11A, and if the judge finds that:

12 (a) No viable alternative exists;

13 (b) The Department of Corrections is the least restrictive alternative; and

14 (c) From evidence presented at the dispositional hearing or from the pre-  
15 dispositional report that the child is currently on probation, that probation has  
16 been unsuccessful and that no other appropriate services are available in the  
17 child's community.

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

19 Section 2. That § 26-8C-15 be amended to read:

20 26-8C-15. The following provisions apply if the child is alleged to have violated the terms  
21 and conditions of probation and a formal allegation of a probation violation is filed:

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

- 1       (2)    The child and the child's parents, guardian, or custodian shall be given a written  
2            statement concerning the alleged violation;
- 3       (3)    The child may be represented by legal counsel at the probation violation hearing and  
4            the child is entitled to the issuance of compulsory process for the attendance of  
5            witnesses;
- 6       (4)    If the court finds by a preponderance of the evidence that the child violated the terms  
7            and conditions of probation, the court may modify the terms and conditions of  
8            probation, revoke probation, or take other action as permitted by this chapter or  
9            chapter 26-7A which is in the best interests of the child and the public, except  
10           commitment to the Department of Corrections. The court may only commit a child  
11           to the Department of Corrections if the court finds that the violation committed  
12           constitutes a new law violation and finds that the aggravated circumstances as  
13           provided in subdivision 26-8C-7(10) or (11) exist;
- 14       (5)    For the purposes of this section, new law violation is defined as delinquent behavior  
15           pursuant to § 26-8C-2, a Class 1 misdemeanor violation of title 32, or a violation of  
16           § 32-23-21; and
- 17       (6)    If the court finds that the child did not violate the terms and conditions of probation  
18           as alleged, the court shall dismiss the proceedings and continue the child on  
19           probation under the terms, conditions, and duration previously prescribed. If the  
20           duration of probation previously prescribed has expired, the court shall release the  
21           child from probation and terminate jurisdiction.