

AN ACT

ENTITLED, An Act to revise certain provisions concerning the detention of children in need of supervision and delinquent children.

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

Section 1. That subdivision (16) of § 26-7A-1 be amended to read as follows:

(16) "Detention facility," a secured physically restricting facility where children are physically separated from adult prisoners;

Section 2. That § 26-7A-21 be amended by adding a NEW SUBDIVISION to read as follows:

The child has failed to comply with court services or a court ordered program.

Section 3. That § 26-7A-26 be amended to read as follows:

26-7A-26. No apparent, alleged or adjudicated abused or neglected child may be securely detained at any time in a jail, lockup, or in any type of detention or temporary care facility containing adult prisoners.

An apparent, alleged, or adjudicated child in need of supervision or an apparent, alleged, or adjudicated delinquent child fourteen years of age or older may be held in detention in an adult lockup or jail if physically separated from adult prisoners subject to any restrictions under this chapter or chapter 26-8A, 26-8B, or 26-8C.

An apparent, alleged, or adjudicated child in need of supervision or an apparent, alleged, or adjudicated delinquent child may be held in an adult lockup or jail for up to six hours for purposes of identification, processing, interrogation, transfer to juvenile facility, or release to parents if the child is physically separated from adult prisoners.

A child who has been transferred to adult court pursuant to § 26-11-4 or a child who is being tried in circuit court as an adult pursuant to section 1 of Senate Bill 122 as previously enacted by the Seventy-second Legislative Assembly of the South Dakota Legislature may be held in detention in an adult lockup or jail if physically separated from adult prisoners.

A child who has attained the age of majority who is under the continuing jurisdiction of the court may be held in detention in an adult jail or lockup.

Section 4. That § 26-8B-3 be amended to read as follows:

26-8B-3. An apparent or alleged child in need of supervision 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 be placed in detention for no more than twenty-four hours, excluding Saturdays, Sundays, and court holidays, if 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 has failed to comply with court services or a court-ordered program;
- (2) The child is being held for another jurisdiction as a parole or probation violator, as a runaway or as a person under court-ordered detention;
- (3) The child has a demonstrated propensity to run away from the child's home, from court-ordered placement outside of the child's home or from agencies charged with providing temporary care for the child;
- (4) The child is under court-ordered home detention in this jurisdiction; or
- (5) There are specific, articulated circumstances which justify the detention for the protection of the child from potentially immediate harm to the child or to others.

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

If the child is accused of or has been found in violation of a valid court order, the child may be placed in detention for more than twenty-four hours, if a temporary custody hearing, pursuant to § 26-7A-14, is held within twenty-four hours of the child being placed in a detention facility.

If the child is being held for another jurisdiction as a parole or probation violator, as runaway or

as a person under court-ordered detention, the child may be placed in detention for more than twenty-four hours, and up to seven days, if a temporary custody hearing, pursuant to § 26-7A-14, is held within twenty-four hours of the child being placed in a detention facility.

Section 5. That § 26-11-1 be amended to read as follows:

26-11-1. If any child under the age of eighteen years is arrested, with or without a warrant, for violation of any law or municipal ordinance for which the child is not subject to proceedings as a delinquent child as defined in § 26-8C-2, the child shall be brought before the judge of a court having jurisdiction over the offense and proceedings shall be conducted as though the child were eighteen years of age or older.

A child under the age of eighteen years, subject to proceedings pursuant to this section and accused of a Class 2 misdemeanor, may be held in or sentenced to an adult lockup or jail or a detention or temporary care facility for up to seven days if physically separated from adult prisoners.

A child under the age of eighteen years, subject to proceedings pursuant to this section and accused of a Class 1 misdemeanor, may be held in or sentenced to an adult lockup or jail or a detention or temporary care facility for up to thirty days if physically separated from adult prisoners.

Section 6. That § 26-7A-23 be amended to read as follows:

26-7A-23. A board of county commissioners may provide and maintain at public expense temporary care, shelter or detention facilities, physically separated from adult prisoners, where children coming within the provisions of this chapter or chapter 26-8A, 26-8B, 26-8C, or §§ 26-11A-13 and 26-11A-14, may, if necessary or appropriate, be placed for temporary care, temporary custody, shelter or detention as designated by the court, or temporary detention or shelter by the Department of Corrections. Section 26-11A-19 and § 26-7A-94 governs the costs of custodial care of children.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1218

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

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

Attest:

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

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

Attest:

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

House Bill No. 1218  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office this \_\_\_\_ day of \_\_\_\_\_ ,

19\_\_ at \_\_\_\_ M.

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

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The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_ , A.D., 19\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_ , 19\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

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

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