

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

885H0622

SENATE BILL NO. 147

Introduced by: Senators McIntyre, Dennert, Hutmacher, Koetzle, Moore, Staggers, and Sutton (Dan) and Representatives Gillespie, Bartling, Bradford, Davis, Elliott, Flowers, Hargens, Kloucek, McCoy, Nachtigal, Nesselhuf, Olson (Mel), Valandra, and Van Norman

1 FOR AN ACT ENTITLED, An Act to provide for a bill of rights for children in the care of the
2 state.

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

4 Section 1. The Legislature finds that children in the care of the state continue to be citizens
5 protected by the United States Constitution and the Constitution of the State of South Dakota.
6 Their civil liberties should not be restricted more than necessary to prevent escape from custody.
7 Children have highly protected associational rights with their parents and families. They also have
8 educational rights that rarely come into discussions of adult's rights. To implement these general
9 principles, the Legislature recognizes the following rights of children in the care of the state:

10 (1) The right to freedom of speech:

11 (a) Uncensored communications with their families, the press, legal service
12 providers and advocacy organizations, government agents and officials, and
13 elected representatives, absent a showing of an attempt to use correspondence
14 in furtherance of escape;



- 1 (2) The right to freedom of religion:
 - 2 (a) Possession of religious, spiritual, or moral treatises and supplies necessary to
 - 3 the practice of each child's individual religion;
 - 4 (b) Visitation with religious, spiritual, or moral leaders or teachers of the child's
 - 5 religious persuasion;
 - 6 (c) Diet acceptable to the child's religion;
 - 7 (d) Release from normal prison activities at times appropriate and necessary to the
 - 8 practice of the child's religion;
- 9 (3) The right to associate with their families and friends:
 - 10 (a) Clear, uniform, written, published rules of contact which facilitate rather than
 - 11 hamper maintaining the parent-child bond;
 - 12 (b) Weekly visitation with parents which should not be revoked as a means of
 - 13 discipline;
 - 14 (c) Reasonable visitation with extended family members and friends;
 - 15 (d) Next day visitation with their parents after any significant injury or episode
 - 16 such as fainting, seizure, asthma attack, or suicide attempt;
 - 17 (e) Twice weekly telephone calls to their parents; and
 - 18 (f) Reasonable telephone access to contact others;
 - 19 (g) Reasonable releases to attend significant family events, such as sickbeds,
 - 20 funerals, weddings, and births;
- 21 (4) The right to protection from cruel and unusual punishment:
 - 22 (a) Minor offenses or status offenses should not be subjected to the same restraints
 - 23 and punishments as violent offenses;
 - 24 (b) Children in need of supervision should not be incarcerated and they should

- 1 always be kept separate from violent delinquents;
- 2 (c) Use of force should be limited to the minimum necessary to prevent injury;
- 3 (d) Use of restraints should be limited both in duration and in situation when
- 4 applied and it should be used only to prevent imminent physical harm to self or
- 5 others. Four pointing, spine boarding, and hog tying should be specifically
- 6 prohibited;
- 7 (e) Discipline should be used rather than punishment;
- 8 (f) Solitary confinement should not be used for extended periods of time;
- 9 (g) Mattresses and bedding should not be denied;
- 10 (h) Food should not be used as a form of discipline;
- 11 (i) An ombudsman should investigate alleged abuses of discipline and use of force
- 12 policies;
- 13 (5) The right to due process of law:
 - 14 (a) Children who enter the system as children in need of supervision should not be
 - 15 treated as delinquents without a hearing before a judge and legal
 - 16 representation;
- 17 (6) The right to education:
 - 18 (a) Children should attend classes regardless of disciplinary status or facility
 - 19 staffing needs;
 - 20 (b) Each child in state custody should be academically evaluated and assigned an
 - 21 educational program that is appropriate to that child;
 - 22 (c) State facilities should have a full range of educational opportunities available
 - 23 to address both the learning disabled and the gifted;
- 24 (7) The right to adequate health care and a healthy living environment:

- 1 (a) Health care should be provided by qualified medical professionals;
- 2 (b) Mental health care should be provided on a regular, consistent, and frequent
- 3 basis;
- 4 (c) As part of their mental health care children should be treated with dignity at all
- 5 times;
- 6 (d) Mental health care should continue for a reasonable period after release from
- 7 incarceration;
- 8 (e) Living areas and cells should be adequately heated and cooled;
- 9 (f) Sleeping arrangements should include mattresses and bedding;
- 10 (g) Clothing should be adequate to maintain a comfortable body temperature;
- 11 (h) Food should be nutritionally balanced and reasonably palatable.

12 Section 2. This Act shall be known as Gina's Law.