

# State of South Dakota

SEVENTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 1997

781A0203

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB1218** - 2/18/97

Introduced by: Representatives Jaspers and Matthews and Senator Halverson

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the detention of  
2 children in need of supervision and delinquent children.

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

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

5 (16) "Detention facility," a secured physically restricting facility ~~designed, staffed and~~  
6 ~~operated exclusively for~~ where children ~~and separated by sight and sound~~ are  
7 physically separated from adult prisoners;

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

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

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

12 26-7A-26. No apparent, alleged or adjudicated abused or neglected child may be securely  
13 detained at any time in a jail, lockup, or in any type of detention or temporary care facility  
14 containing adult prisoners.

15 ~~—An apparent or alleged delinquent child may be held in an adult lockup or jail for up to six~~

1 hours for purposes of identification, processing, interrogation, transfer to juvenile facility, or  
2 release to parents if the delinquent child is physically separated from adult prisoners.

3 ~~Any apparent, alleged, or adjudicated child in need of supervision or adjudicated delinquent~~  
4 ~~child between the ages of fourteen and seventeen years of age may be held in an adult lockup or~~  
5 ~~jail for up to seven days if physically separated from adult prisoners.~~

6 ~~A child who has been formally transferred to adult court pursuant to § 26-11-4 may be held~~  
7 ~~in an adult lockup or jail if the child is fifteen, sixteen, or seventeen years old and the child is~~  
8 ~~alleged to have committed an offense defined as a crime of violence under subdivision 22-1-2(9)~~  
9 ~~or of sexual contact under § 22-22-7.~~

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

14 A child who has been transferred to adult court pursuant to § 26-11-4 may be held in  
15 detention in an adult lockup or jail if physically separated from adult prisoners.

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

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

19 26-8B-3. An apparent or alleged child in need of supervision taken into temporary custody  
20 by a law enforcement officer prior to a temporary custody hearing shall be released to the child's  
21 parents, guardian, or custodian unless the parents, guardian, or custodian cannot be located or  
22 in the judgment of the intake officer are not suitable to receive the child, in which case the child  
23 shall be placed in shelter. A child may be placed in detention for no more than twenty-four hours,  
24 excluding Saturdays, Sundays, and court holidays, if the intake officer finds that the parents,  
25 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.

~~No 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 an adult jail or lockup or in any type of detention or temporary care facility containing adult prisoners.~~

~~However, any child under the age of eighteen years, subject to proceedings pursuant to this section and accused of a Class 1 misdemeanor, may be detained in an adult jail or lockup for up to six hours for purposes of identification, processing, interrogation, or release to parents if the child is separated by sight and sound from adult prisoners.~~

~~No child under the age of eighteen years convicted of an offense pursuant to this section may be sentenced to an adult jail or lockup or to any type of detention or temporary care facility containing adult prisoners.~~

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 by sight and sound from any jail 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

1     § 26-7A-94 governs the costs of custodial care of children.

1    **BILL HISTORY**

2    1/31/97 First read in House and referred to Judiciary. H.J. 242

3    2/6/97 Scheduled for Committee hearing on this date.

4    2/6/97 Deferred to another day. H.J. 360

5    2/12/97 Scheduled for Committee hearing on this date.

6    2/14/97 Scheduled for Committee hearing on this date.

7    2/15/97 Scheduled for Committee hearing on this date.

8    2/15/97 Judiciary Do Pass Amended, AYES 10, NAYS 3. H.J. 510