

The South Dakota Juvenile Justice System

Guidebook

for Youth and Parents

Third Edition

Prepared by



The South Dakota Juvenile Justice System:
A Guidebook for Youth and Parents

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SOUTH DAKOTA VOICES FOR CHILDREN

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PREFACE

South Dakota Voices for Children developed this guidebook to improve advocacy for children in South Dakota’s juvenile justice system. The legal system is complex and often confusing for parents and youth. They often lack knowledge of the legal process and the rights the child has under the law. The situation is clouded even further because of strong emotions at the time a child is apprehended and court proceedings unfold. As a result, parents and youth often do not hear and understand everything they are told about their rights and options. Opportunities for advocacy for a child may be missed. This guidebook has been prepared to assist youth and their parents by providing information about the juvenile justice system in South Dakota.

To find out the things youth and parents wanted to know, South Dakota Voices for Children sought input from youth and parents. Listening meetings were held in Sioux Falls, Aberdeen, and Rapid City for youth who had been in the juvenile justice system. Parents with children in the system were interviewed by telephone.

To understand perspectives of the juvenile court, interviews were conducted with judges, a state’s attorney, court services staff, and a public defender. These individuals were asked what they thought youth and parents should know and what advice they would give.

The Guidebook Workgroup included four attorneys, two college professors, a youth corrections practitioner, and a parent with a child in the system. The guidebook has been reviewed by professionals from all sectors of the system as well as youth and parents.

This guidebook is addressed to youth. However, the information will also be useful for parents. A separate section addresses often-asked questions from parents.

IN THIS GUIDEBOOK:

- the term **police** is used generically to refer to all law enforcement.
- the term **parents** is used generically to refer to the individual(s) responsible for the child including guardian or custodian.
- the term **apprehended** is used instead of arrest because children can not legally be “arrested.”

YOUTH SAY...

“There is hope even though you are in trouble. It doesn’t mean you can’t have a life. You may have troubles in your life but that doesn’t mean you won’t succeed.”

– Youth

PARENTS SAY...

“I had no idea what was going on.”

– Parent

“I felt uninformed. I never understood anything that was happening.”

– Parent

“It was as if it was a process I wasn’t part of. I just wanted to know what was going on.”

– Parent

Source: phone interviews with parents of children in the South Dakota juvenile justice system, Spring, 2001

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SOUTH DAKOTA'S JUVENILE JUSTICE SYSTEM

Why is there a separate juvenile justice system?

Children are growing and learning on their path to adulthood and are developmentally different from adults. Therefore, a separate juvenile justice system was created in the United States over 100 years ago. The purpose of the juvenile court was to “get children out of adult institutions, to focus more on rehabilitative treatment rather than punishment, and to provide for greater informality and confidentiality in court proceedings.”¹ The juvenile justice system continues today out of a belief that children and youth “need to be separated from adults in institutional and procedural settings, and that individualized justice can best rehabilitate juveniles and protect society.”²

One principle of the juvenile justice system is the importance of confidentiality to protect a child from becoming labeled and to enable the child’s redirection on a lawful path. There are limits to this confidentiality, however. (See section on this page, “Who May Know About My Case?”)

In the juvenile justice system, a child is viewed as having committed an “offense”, not a crime. Therefore, the child may be apprehended, not arrested. Only an adult can be charged with a crime. There are, however, exceptions to this rule for a child who is at least 16 years old and commits a serious felony offense. (See “The Juvenile Court - Transfer Hearings” on page 6 for an explanation of the exceptions.)

What is the juvenile justice system?

There are several parts to the juvenile justice system and each has its own role to play: the **police** determine whether or not a particular act or behavior by a child appears to violate a law. The **state’s attorney** decides whether refer the case informally or petition the child to court. The **juvenile court** hears the case and decides if the child is guilty and if so what the disposition should be. **Diversion programs** and **juvenile corrections** try to change the child’s behavior (“rehabilitation”). Some of the more common questions about these processes – especially as they pertain to a child’s rights – are explained in this Guidebook.

Who is a juvenile?

A person under the age of 18 is considered a CHILD under the law and is therefore subject to the juvenile justice system. Children in certain circumstances, however, are transferred to adult court. These circumstances are explained in the section The Juvenile Court - Transfer Hearings.

Can a person 18 or older ever be in juvenile court?

Yes, in two situations:

- If a child is under the court’s jurisdiction when they turn 18, the child may remain subject to the juvenile justice system until age 21.
- If the alleged act was committed before a person’s 18th birthday, the person may be tried in juvenile court even though the person is now older.

Who may know about my case?

The name of a child and proceedings in the juvenile court are closed to the public unless the judge finds compelling reasons to require otherwise or unless a youth is sixteen years of age or older and is alleged to have committed certain serious offenses. However, the police, court personnel, and detention center staff will know you. The victim(s) may attend all court hearings.³ Furthermore, the judge may order release of information concerning you to persons or agencies that have a legitimate interest in you such as your parents, your attorney, the department of social services, your school. If you are suspected of violating drug or alcohol laws or threatening violence, law enforcement may notify school officials. If you commit certain felony offenses and are found guilty, the court must notify the superintendent of your school.

THE POLICE⁴

What rights do police have?

The police have the general right to stop you for questioning and to ask for an explanation of your behavior. The police also have the right to request that you produce identification. If you are not carrying any identification, it is not a crime. However, if you are apprehended or engaging in suspicious behavior, the police can detain you until they find out who you are.

Do not give the police a false name or date of birth or the name of another person because this can be a crime. Be honest if an officer questions you regarding your name and address, and the reasons why you are there. You do not, however, have to say anything that could become evidence against you.

Can police take my picture without my permission?

Yes, but only after you have been apprehended.⁵ If you are apprehended, you will be taken through what is called a “booking” process, which is the entry of your apprehension in the official police records. The booking process may include fingerprinting and photographing you.

When can police take money or possessions from me?

Generally, the police can only take money or possessions from you without your permission

when you are apprehended or through an order of the court. When you are apprehended, the police may take some or all of the belongings you have with you and inventory them. You may request a receipt for the items being held for you. When you are released, your property should be returned to you. However, if some of your property is evidence of a crime or the proceeds from a drug-related crime, the court may allow the police to keep it.

How cooperative must I be with the police?

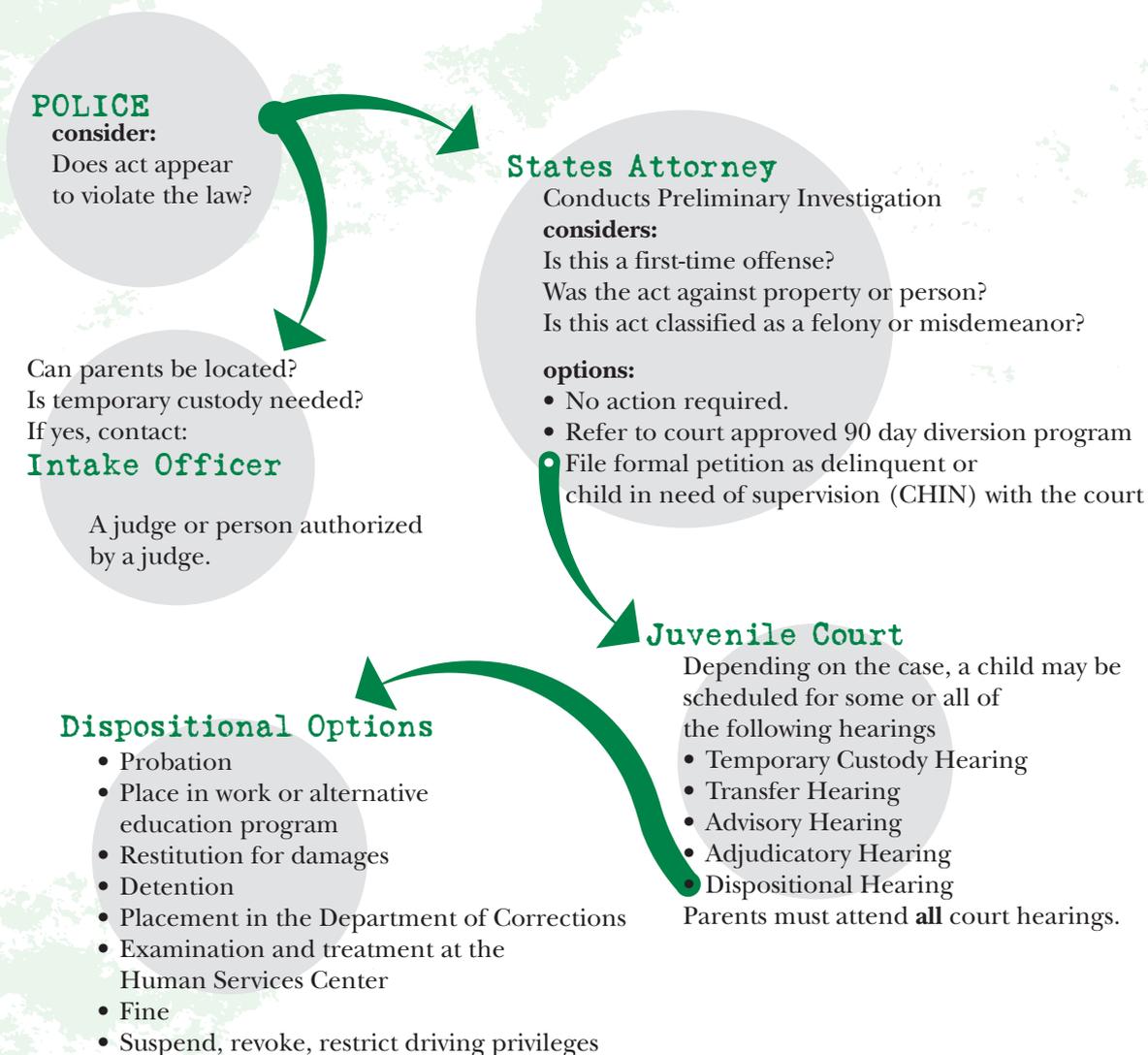
In any encounter with a law enforcement officer, remember that the officer’s observations of your attitude and conduct affect his or her judgement of your trustfulness. This is an important factor in an officer’s decision on whether to apprehend you. Even though police are trained to deal with difficult situations, they are also human. If you are negative and challenging, you can tip the scales against you. In any interaction with police, remember it is always in your best interest to remain calm, civil, and courteous.

If an officer attempts to apprehend you and you resist or flee, you are committing a crime that may lead to forceful apprehension. If you are cooperative, you are less likely to be injured, restrained further, or have additional criminal charges filed against you. If you disagree with the officer’s decisions, the proper place to express those views is in the court, not through resistance or arguing with the officer.

If I am apprehended, what are my rights?

- You have the right to remain silent as anything you say may be used against you.
 - You have the right to a lawyer. The court will appoint a lawyer if you can not afford one.
- These are known as the “Miranda rights.” An officer will inform you of these rights if the officer is going to question you. However, once apprehended, it is always best to be quiet unless your parents or attorney are present. Small talk with other people in the police station or detention center may come back as evidence against you in the future.

The South Dakota Juvenile Justice System



*When can the police search my car, my house, or me?
Must they have a search warrant?*

Usually the police need a warrant to search either you or the things you own, such as your car and house. If you are ever handed a search warrant, you should read it carefully to make sure the police have the right person and correct address, and that the judge's name and signature are included.⁶ The warrant should also tell you what the police are looking for and what they have a right to search. However, sometimes a warrant is not needed. Here are a few examples of when a warrant is not needed by a police officer:

- If you are lawfully apprehended, the police may search you and the area within your immediate reach and control;
- If the police reasonably believe that you are armed and dangerous, they may conduct a pat-down search of your body;
- If you are apprehended, the police may do an inventory search to identify all articles in your car;
- In emergency situations that could involve the loss of life or serious injuries, the police may conduct a search.

If the police ask you or your parents to consent to a search, you are not obligated to give consent. However, parents can consent to a search of their child's room even though the child opposes it because the child is a minor living under the parents' supervision and care.

Can a police officer of the opposite sex search me?

If you are stopped, an officer of either sex may conduct a "frisk," or pat-down search. In contrast, a full-body search should be conducted by someone of the same sex as you. The procedure may be regulated by state law or by a local police department's regulation. The policy in most South Dakota Law Enforcement Departments is that someone of the same sex should conduct a full-body search.

If I have been apprehended and taken into custody, what can the apprehending officer do?

The officer may...

- Let you go.
- Contact your parents and have them come and get you or, in some instances, take you home.
- Contact an intake officer for an intake hearing (see explanation on this page) to determine if you can be placed in detention or shelter. This hearing may be held in person or by telephone.

DETENTION

Legal reasons for placing a child in detention or shelter include these:

- the parents could not be reached;
- the parents are not suitable to care for the child (if, for example, they are drunk);
- the offense for which a child is charged is of a serious nature;
- officials believe that the child poses a serious threat to self or others;
- the child is accused of violating probation or a court order.

What are my rights if I am detained?

If an officer detains you, the officer is required to contact your parents or guardian. If you ask to call a lawyer, they must let you call a lawyer.

If the officer has you in custody and is going to question you about what happened, the officer must tell you that you have the right to remain silent, that anything you say may be used against you, that you have the right to be represented by a lawyer, and that the court will appoint a lawyer if you cannot afford one. If the officer is not going to question you, the officer will not necessarily explain these rights.

Who can detain me?

Law enforcement officers may detain you to complete a brief onsite investigation. Detaining you is not considered apprehension and does not constitute a police record.

What process is required to place me in detention or shelter?

If a law enforcement officer thinks you may need to be placed in custody, the official must immediately notify an intake officer who will conduct an **Intake Hearing** to determine if you should be held or be released to your parent(s) or other suitable person. The decision to hold you will be based upon objective criteria that classifies you as a child in need of supervision (CHINS), or a delinquent child (these terms are explained in next section). The intake officer is required to place you in the least restrictive environment suitable for your situation. The alternatives include shelter care, a detention center, or jail. The official taking you into custody must notify your parents of your right to have a prompt Temporary Custody Hearing. This hearing is explained in the section **Juvenile Court - Temporary Custody Hearings**, page 6.

How long can I be held?

You cannot be held longer than 24 hours if you are an alleged child in need of supervision (CHIN) or not longer than 48 hours if you are an alleged delinquent without having a Temporary Custody Hearing before a judge. Weekends and holidays

are not counted in this time limit so a youth detained on a Friday night may wait until Monday morning for the Temporary Custody Hearing.

How long may I have to stay in the detention center?

At the Temporary Custody Hearing, the judge may decide to release you to your parents under certain restrictions or to continue detention until the next hearing. You may remain in detention until your case is finished.

THE JUVENILE COURT

Who are the major players in the juvenile court?

The judge, the state's attorney, and the court services officer.

The **judge** presides over the court and makes all final decisions about your case. Judges are individuals and they run their court according to their own preferences within the confines of law and legal procedure... so small variations may arise from one courtroom to another. Remember that the judge decides your case.

The **state's attorney** is a lawyer who represents the state and is elected in each county. The state's attorney and staff decide whether to take your case before the judge. If they do, they will file a petition with the court stating what you are alleged to have done and they will present the evidence before the court.

The **court services officer** works for and assists the judge on your case. If the judge determines you have violated the law, court services staff will interview you to understand you and your situation and will present recommendations to the judge. If you are placed on probation, the court services officer will supervise you according to your conditions of probation.

If I have been apprehended, what will happen next?

The police report will go to the state's attorney. The state's attorney must make a preliminary investigation to determine whether further action should be taken. The state's attorney has several choices in handling your case. The state's attorney may decide...

- that no action is required.
- to refer the matter to a court-approved 90-day diversion program outside the court system.
- to file a petition to commence formal proceedings in the juvenile division of the circuit court. A petition says what the state's attorney believes you did. When the state's attorney files a petition with the clerk of the court, the clerk issues a summons directed to your parents stating the date, time, and place to appear in court. The summons also contains additional information about the court hearing. The summons must be served by law enforcement five days prior to the

court hearing, unless the parties agree to have the case heard sooner.

What does the state's attorney consider in deciding upon further action?

It depends upon the nature of the offense and the nature of the offender. The decision is always specific to each case, but generally if it is your first offense and the offense is not a felony and not against a person, your case is more likely to be handled informally through a diversion program lasting up to 90 days rather than through a formal petition to court.

I've heard there are two types of petitions. What are they?

CHINS – One type of petition is called a CHINS petition which means a "child in need of supervision." This petition says that a child has violated a law such as running away, skipping school, possessing alcohol, violating a curfew, or regularly disobeying parents—actions which would not be against the law if committed by an adult.

DELINQUENT - A second type of petition is called a DELINQUENCY petition. This petition says that the child has committed an act that would be considered a crime if an adult had done it. This includes felonies such as auto theft, burglary, selling drugs, and lesser offenses known as misdemeanors, such as simple assault.

What is a "diversion program"?

A diversion program provides an option to resolving your case without going before a juvenile court judge. Normally, diversion is only made available to first-time offenders and the decision to refer you to a diversion program must be made by the state's attorney. Diversion programs are voluntary, involve admitting to the offense, and require that you agree to complete certain program steps and remain out of trouble for 90 days. If you and your parents agree to this voluntary program, you may be asked to sign an informal contract describing what you and your parents agree to do. Diversion programs vary from county to county but may include performing community service, attending special classes, reporting to court services staff, and keeping your record clean for 90 days. Generally, if you successfully comply with the agreement, you will not go to court.

What hearings will I go to in juvenile court?

There are several types of hearings. You will be scheduled for the ones that are appropriate for your case. You may request a separate date and time for each hearing that affects your case if you need further time to prepare. However, in the interest of shortening the court process, judges often combine all hearings into one court appearance.

May my parents be present at all hearings?

Yes, they must accompany you to all hearings.⁷

Who will speak at the hearings?

Your parents may speak if the judge asks them questions directly, or if they are called as a witness. They may ask permission to speak to the judge. You have a right to speak and should answer the judge's questions with respect and honesty. If you have a lawyer, your lawyer will speak for you. The state's attorney will speak for the state. The court services officer may be called as a witness to present recommendations. Others who may be present and speak are school officials, the victim, and the victim's parents.

Do I have the right to an interpreter?

You have a constitutional right to an interpreter if you do not understand the English language. Your parents also have a right to an interpreter and should ask for one if they need one.

What other specific rights do I have in court?

- The right to know what it is that you are supposed to have done. This will be stated in a petition which will be given to you – be sure to read it carefully for accuracy.
- The right to your own lawyer or to have a court appointed lawyer if your family cannot afford one or the right to proceed without an attorney if you choose.
- The right to deny the charges contained in the petition.
- The right to require the presence of witnesses and to question witnesses.
- The right to present evidence in your own defense.
- The right to testify if you so choose or to not testify and remain silent.
- The right to have the allegations proven by evidence beyond a reasonable doubt.
- The right to be told what the Court could do with you.
- The right to appeal the Court's decision – that is take your case to a higher court.

Is it important to have a lawyer?

Yes. While lawyers can be costly, they understand the legal system and are able to advocate for you. You have the right to a lawyer to represent you, even if your parents do not request one. Your parents may also hire a separate lawyer. In listening meetings with youth and interviews with parents who have faced the juvenile justice system, both youth and parents recommended retaining a lawyer. If your parents cannot pay for a lawyer, the judge will appoint a lawyer following their completion of financial disclosure forms and approval by the court. Repayment of fees for a court-appointed attorney may be a condition stipulated in the disposition of your case or a lien may be placed against your parents' real estate property up to a maximum of \$1,500 for unpaid legal fees.

If you need help finding a lawyer, ask people you know for references, look in the phone book yellow pages under "attorneys" or call the South Dakota Bar Association toll free lawyer referral number at **800-952-2333**.

"For my case, it was mostly family problems. Children need to realize that an attorney can really help get things straightened out."
– Teenage Girl

"I wish I had known I could have had an attorney and actively defended myself."
– Teenager

"Get the best help you can. Stand up for your rights, know your rights, and defend them."
– Teenage Boy

"I think some parents don't know that they can get their own attorney."
– Parent

"I felt well informed regarding my rights and those of my child only because we had a good advisor in our attorney."
– Parent

What are the various hearings held by the juvenile court?

Temporary Custody Hearing

At this hearing, the judge will decide if you should be allowed to go home, go with another relative, or be held in shelter, a detention center, or jail pending your next court hearing. The state's attorney must notify your parents of the time, date, and place of this Temporary Custody Hearing. This hearing may be held by telephone. The court gives first priority in scheduling such hearings to children in detention or shelter.

Transfer Hearing-Waiver to Adult Court

A Transfer Hearing to move a juvenile case to adult court may be held if a state's attorney requests that a juvenile charged with a crime, considered a felony by an adult, be tried as an adult in circuit court. Under South Dakota law, some crimes automatically result in a child being placed in adult court. Any alleged delinquent child 16 years of age or older against whom a serious felony charge for certain crimes⁹ has been filed must be tried in circuit court as an adult. However, the child may request a Transfer Hearing to have the case moved back to juvenile court. The judge then determines if it is contrary to the best interest of the public and the child to try the child as an adult. At the Transfer Hearing, the court shall consider only this question.

The judge in determining whether a child should be transferred may consider the following factors:

- (1) the seriousness of the alleged felony offense to the community and whether protection of the community requires transfer;
- (2) whether the alleged felony offense was committed in an aggressive, violent, premeditated or willful manner;

- (3) whether the alleged felony offense was against persons or property, with greater weight being given to offenses against persons;
- (4) the merit of the complaint (is there evidence to prove the case?);
- (5) if adults were involved in the alleged offense, the desirability of one court proceeding;
- (6) the record and previous history of the juvenile;
- (7) the prospect for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile.

Advisory Hearing

An Advisory Hearing is held to inform you and your parents of the charges, your rights, and the process. The court will identify the parties involved, advise you of the allegations contained in the petition, explain the burden of proof required, review your constitutional and statutory rights; and receive your answer that includes your denial or admission of the charges. If you deny the charges, an Adjudicatory Hearing date will be set by the court.

If you admit to the charges at this hearing, the judge may accept your admission if the court is satisfied that there is a factual basis for your admission and that it is a voluntary and intelligent plea. If the judge accepts the admission, the judge may then decide as to your guilt or innocence. The judge will then proceed to the dispositional phase of the court proceedings without conducting a separate Adjudicatory Hearing on the charges (see explanation below), so long as all of the parties agree to proceed. If the parties do not agree to proceed at this time, the court must set a later time and date for the Dispositional Hearing.

In addition to you and the judge, a state's attorney, a court services officer, a clerk of the court, the victim(s), your parents, and your attorney may be involved in this hearing.

Adjudicatory Hearing

If you deny the charges at the Advisory Hearing, the court will conduct an Adjudicatory Hearing to determine whether the allegations of the petition are supported by evidence beyond a reasonable doubt. The state's attorney will present the evidence relating to the alleged offense described in the petition. Witnesses may be called and questioned in court by both the state's attorney and by you or your lawyer. Again, in addition to you and the judge, a state's attorney, a court services officer, a clerk of court, victim(s), your parents and your attorney may be present during this hearing.

If the judge finds that there is not evidence beyond a reasonable doubt, the court will enter a dismissal of the petition and the case will be dismissed.

If the judge finds you did commit the offense, the judge may proceed immediately to the Dispositional Hearing or may decide to place you temporarily in shelter or detention center away from your home, pending the Dispositional Hearing (explained below). The judge may also order your parents, guardian, custodian, or any other person or relative who might be considered as a potential caretaker to submit to various examinations by a qualified mental health professional or physician and then submit the report to the court. The court may also order the court services officer to do a social case study of your life circumstances, with the report submitted to the court before disposition.

Dispositional Hearing

A Dispositional Hearing is held when a child is found to have committed the charges stated in the petition (the court's language for this is "the child has been adjudicated" as a CHIN or delinquent). The purpose of this hearing is to decide what treatment, rehabilitation, or punishment the court will order for the child. In the case of adjudication, the victim(s) to the offense may be present and may make a statement.

The court will set the date, time, and place of the Dispositional Hearing and order notice of the hearing. However, sometimes the court proceeds immediately with the Dispositional Hearing as long as the state's attorney, the child, the child's parents, and the child's attorney agree. Occasionally, a judge may decide to order a social case study at the dispositional hearing and continue the hearing until the report can be completed.

What is the role of the court services officer at this stage of the court process?

If the judge orders it, the court services officer is responsible for conducting a social case study about you and submitting the report to the judge. The report gives the judge a recommendation as to what court services thinks would be best for you. The report also includes your prior legal record, a description of the current offense, statements from you, your family, and other people who know you well; a school report; and a statement by the victim. The court services officer may testify regarding the social case study at the disposition hearing.

What can the judge do?

At any time after filing of the petition and before the final disposition of your case, the judge can continue your case from time to time and issue orders regarding temporary custody of you. Any continuation of the case may extend no longer than three months between hearings.

On completion of the final disposition hearing, the judge will issue findings of fact, conclusions of law and a final decree declaring the outcome of the case and the actions that must be taken.

CHINS. The judge will enter a “decree of disposition” for a child in need of supervision. The judge will select the least restrictive alternative available in keeping with the best interests of the child. The alternatives include:

- (1) place on probation.
- (2) require participation in a supervised work program for no longer than 90 days.
- (3) place in a county detention facility if the court finds that the child has violated a valid court order.
- (4) pay restitution for damages.
- (5) commit the child to the Department of Corrections under certain conditions.
- (6) place the child in an alternative educational program.
- (7) order examination and treatment at the Human Services Center.
- (8) impose a fine not to exceed \$500.
- (9) suspend, revoke, or restrict driving privileges.

Delinquent. The judge enters a decree of disposition for a delinquent child according to the least restrictive alternative available in keeping with the best interests of the child. These alternatives are the same as those numbered one to nine above, with these exceptions:

- (1) if placed in a county detention facility, the delinquent child may be ordered to incarceration for not more than 90 days (in addition to any period of temporary custody).
- (2) if a fine is imposed, it may not exceed \$1,000.

What is the role of court services in probation?

If you are placed on probation, the court services officer will enforce the court’s orders. This means supervising you to make sure you obey the law and follow the terms of your probation. The court services officer may also require your positive involvement in school, in job training, counseling, and/or community programs. Depending on the situation, the court services officer could meet with you as often as several times a week or as little as once a month. In addition, the court services officer may order random drug tests and may order a waiver of search and seizure to monitor your activities.

What happens if I violate the terms and conditions of probation?

If you are alleged to have violated the terms and conditions of probation,

- (1) the court will set a hearing on the alleged violation and give you, your parents, and any other parties to the proceedings five days notice. In the meantime, the court may confine you in detention or shelter care pending the hearing.
- (2) you and your parents will be given a written

TABLE 1 SOUTH DAKOTA DEPARTMENT OF CORRECTIONS

JUVENILE CORRECTIONS PROGRAMS

MALES

Custer, SD

STAR Academy
Intake and Holding Center
Patrick Henry Brady Academy
Youth Challenge Center
Living Center

Sioux Falls, SD

West Farm

Statewide for males and females

Juvenile Community Corrections in east, west, and southern region

Once in a placement, the Department of Corrections may transfer you from any facility, program, or service at the discretion of the institution head, the Director of Classification, or the Secretary of Corrections. Placements may also include private facilities in-state or out-of-state and foster care.

FEMALES

QUEST Program

Excel Program



statement concerning the alleged violation.

- (3) you may be represented by a lawyer and have the same rights in court as in other hearings.
- (4) The court’s decision will be based upon the “preponderance of the evidence.” This is a lesser legal standard than “evidence beyond a reasonable doubt,” which prevails in the initial adjudicatory hearing.

If the court finds by a preponderance of the evidence that you violated the terms and conditions of probation, the court may modify your probation, revoke probation and take you into custody, or take other action authorized by statute which is in the best interests of you and the public. If the court finds that the allegations are not true, the court will dismiss the proceedings and continue the terms and conditions of your probation as previously ordered.

How can the records of my involvement with the juvenile justice system be sealed?

The court may order that your records be sealed (this means no one can look at them unless a judge orders it), or you or your parents may petition the court to seal the records. The sealing of your records can only be ordered after your unconditional release from the jurisdiction of the

court. If you were adjudicated as a delinquent, your records can be sealed only after one year has passed since your unconditional release and the judge is satisfied that you have been rehabilitated.¹⁰ However, the court can only seal its own records; it can not seal police or state's attorney's records, which could be discovered upon a future brush with the law.

THE DEPARTMENT OF CORRECTIONS

How long can I be in the custody of the Department of Corrections?

When a judge orders you to the Department of Corrections, you are committed until age 21 or until discharge. The actual length of stay in an institution or under supervision by a juvenile corrections agent (often referred to as a JCA) is not a set time but rather depends upon several factors including your...

- history of offenses
- behavior while in placement, and
- successful completion of an aftercare program.

During this time, the Secretary of the Department of Corrections is your legal guardian. The Secretary may appoint the person in charge of the institution where you are placed as your custodian.

What happens upon being committed to the Department of Corrections?

You will be assigned a juvenile corrections agent (a JCA) who will be your "case manager" throughout your period of commitment. The JCA will maintain contact with you, your family, the institution where you are placed, and with service providers in the community during the period of your commitment.

Once committed, you will go through an intake process that will include collecting information about you, informing you and your family about the system, and completing assessments.

CHINS. If you are a Child In Need Of Supervision placed in the Department of Corrections, an interagency team reviews your case and makes a written finding regarding appropriate placement for you. The placement must be the least restrictive placement suited for you. Options include a foster home, group home, group care center, residential treatment center, or one of the programs of the Department of Corrections as noted in Table 1.

DELINQUENT. If you are adjudicated a delinquent and placed in the Department of Corrections, you will be classified according to custody level – the higher your classification, the higher the level of supervision you will receive. At the completion of the intake process, you will be placed in a facility or program of the Department of Corrections and program staff will assist you in setting goals. This

initial placement will typically be in one of the programs operated by the Department and summarized in Table 1. You may also be placed in a facility operated by a private organization.

How much contact can I have with my family?

You will be allowed one ten-minute phone call per week (incoming or outgoing) during a specified period of the day. Parents are to be notified of the times established for phone calls. Phone privileges can be taken away as a disciplinary action. Immediate family members may visit you during specified times only—each facility has rules governing the frequency and timing of such visits. Mail (both incoming and outgoing) is subject to inspection.

If a member of your immediate family dies or becomes seriously ill, you may be allowed to leave the institution for the funeral or a bedside visit. The institutional head where you are placed must approve such a trip.

What are my rights during confinement?

You have the right to

- safety
- freedom from abuse
- adequate food, clothing, and shelter
- health care
- education – Note: A youth with a disability has the same right to a free, appropriate education as any other youth with a disability.¹¹
- practice of religion.

If you believe your rights have been violated, you may contact the Juvenile Corrections Monitor or write down your complaint and put it in the designated locked box at the facility where you reside. You may also inform your parents and request that they contact the Juvenile Corrections Monitor and/or your attorney.

Juvenile Corrections Monitor
Department of Human Services
Hillsview Plaza, East Hwy 34
c/o 500 E. Capitol
Pierre, SD 57501
Phone 1-800-265-9684
email: infodhs@state.sd.us

Where will I go after my "primary placement"?

When the Department of Corrections deems that you have completed your program, you may be released to your family or foster care or, for boys, to a secondary placement at either the West Farm near Sioux Falls or Living Center B at Custer.

You will have an aftercare contract developed by your juvenile corrections agent to meet your individual needs. Your aftercare contract may include individual and family counseling, chemical dependency group care, mental health treatment, self-help programs, mentors, and continuing supervision by your juvenile

corrections agent. Your aftercare contract will also set rules and expectations for your behavior and be signed by you and your parents or guardian.

If I am accused of violating the conditions of my aftercare contract, what will happen?

Your juvenile corrections agent may seek to revoke your aftercare status and return you to confinement in a Department of Corrections facility. Within 24 hours of being placed in detention or shelter, not counting weekends or holidays, a Probable Cause Hearing must be held (referred to in the statutes as a temporary detention or shelter hearing¹²). An independent hearing officer will conduct the hearing, which may be by telephone, to determine if probable cause exists that you failed to comply with the terms of your aftercare contract. If you deny the accusation, you have the right to an Aftercare Supervision Revocation Hearing at which you may be represented by a lawyer, may present witnesses or documentary evidence, and may cross examine witnesses. This hearing must be held within 30 days before a member of the Board of Pardons and Paroles. You and your parents are entitled to five days written notice of this hearing. This hearing may also be held by telephone conference call.¹³

What is the role of the committing judge during this period of my commitment to the Department of Corrections?

The Department of Corrections must provide a written report to the committing judge (this is the judge that sentenced you) 30 days following your placement with the Department of Corrections and every 90 days thereafter, indicating the results of any assessments of you, your placement within a particular program, and your progress. If you are having severe problems that you think the judge should know about, you can write the committing judge or your attorney. The committing judge may order a hearing to reconsider if it is in your best interest to remain in the Department of Corrections. The judge may return you to your parents, guardian, custodian, or place you in a suitable family home, if the judge determines it is in your best interest.¹⁴



ADVICE TO YOUTH

Youth who have been in the juvenile justice system and professionals who work in it were asked at listening meetings and in interviews, “What advice would you give to youth?” Here is a selection of the themes they raised.

“A juvenile can be rehabilitated and be helped if they choose to let themselves be helped.”

– Youth

“Do what you are supposed to do, get through it and get off. Stay clean! It helps. Keep yourself busy in a productive way.”

– Youth

“Probation ain’t fun. Things that happen to normal kids like tickets, or traffic violations screw you if you are on intensive probation.”

– Youth

“Accept responsibility for your behavior. If you violate probation, it is better to self-report to your court services officer because trust is less impaired. The more there is trust with the child, the less punitive will be the intervention.”

– Judge

“How you are dressed in court conveys an attitude. Dress to show respect for the court... that means dress conservatively, in perhaps a suit, take out the piercings, and present a clean, neat appearance if you want to put your best foot forward with the judge.”

– Judge

“In court, be respectful to the judge and to your parents. Such behavior can help your case.”

– Judge

“A child has a free will and they are responsible for their actions... don’t blame someone else.”

– Judge

FREQUENTLY ASKED QUESTIONS FROM PARENTS

What costs may I have to pay for my child?

If your child is taken into custody, you may be ordered to pay a monthly amount to the state for the support and maintenance of your child. In addition, you are responsible for medical and dental costs while your child is in the custody of the state. You may also be ordered to pay statutory fees and costs for your child. These costs can include court costs and legal fees. If full

reimbursement of statutory fees and costs is not ordered, the court is required to make specific findings why full reimbursement is not ordered.

The committing judge must determine a reasonable support amount that the parent can afford to pay, using the laws regarding child support obligations as a guide. A wage assignment may be made so that the support payment is taken by the employer directly out of the parent's wages. Upon request, the periodic payment amount may be modified from time to time. Furthermore, a lien may be placed against the parent's real estate property up to a maximum of \$1,500 for unpaid legal fees provided by a court-appointed lawyer for a child found to be a CHIN or a delinquent.¹⁵

In interviews with parents, the most frequently mentioned item parents said they wished they had known was the extent of costs they would incur for their child's involvement in the juvenile justice system.

My child's behavior is out of control and my child won't listen to me. Should I seek a CHINS-child in need of supervision-petition?

This is always a difficult decision for a parent to make. Because of the grave nature of this decision and its far-reaching consequences, the decision merits careful consideration.

Parents who have had children in the system and professionals who work in the juvenile justice system agree that a family should first exhaust as many services as are available to them before turning to the juvenile justice system for intervention. Among the services to explore first are these...

- Professional counseling for the youth and for the parents – often a combination of one-on-one sessions between the counselor and child and counselor and parent(s) as well as joint parent-child sessions help the most.
- After school supervision in a quality After-school Program or with adults whom your child respects.
- Involvement in school or community activities which tap your child's interests and abilities.
- Engagement in family activities.
- Consultation with your family pastor, school counselor, or other trusted adult.
- An examination by your family physician to identify possible medical causes of your child's behavior problems.
- A psychological evaluation by a certified psychologist or psychiatrist to screen for possible mental illness.

While some of these services can be expensive to provide, the costs charged to parents when a child is in the juvenile justice system are also significant. And once in the system, parents are no longer in control of what happens to their child.

There will be situations in which the services noted above are inadequate to address a child's unruly behavior and the only way some parents may be able to get assistance for their child is through signing a CHINS (Child In Need of Supervision) petition. The CHINS petition allows the court to become involved, to set rules and guidelines for behavior with loss of freedom as a consequence for noncompliance. For some children, the CHINS petition is an attention-grabber; for others it causes an even more rebellious response. With a deeply troubled child whose behavior is unmanageable and perhaps dangerous, the CHINS petition may be the only course of action available. Because these are difficult decisions with far-reaching consequences, parents are urged to consult with a respected individual who is not emotionally involved in your situation and who will respect your confidences, such as a counselor, pastor, tribal elder, or mental health professional.

If my child is placed in the Department of Corrections and I have a concern about abuse or neglect of my child, whom should I contact?

Contact the

**Juvenile Corrections Monitor
Department of Human Services
Hillsview Plaza, East Hwy. 34,
c/o 500 E. Capitol
Pierre, SD 57501
phone 1-800-265-9684
email infodhs@state.sd.us**

You may also contact the South Dakota Department of Social Services - Child Protection Office in your area.



ADVICE TO PARENTS

Parents with kids in the system and judges and lawyers were asked in interviews what advice they would give to parents. Here is a sampling of their suggestions.

“There’s hope. Think of it as one hour at a time... Hang in there, because just when you think things are going well, you get whammed again.”

– Parent

“Maintain a written journal about your child in the same way parents of kids with disabilities are advised to do – note behaviors and their circumstances, health records, medications, professionals consulted, diagnosis given, management approaches that are successful, etc. This information can help in finding solutions for your child.”

– Parent

“Find someone you can talk to. Get emotional support.”

– Parent

“When you receive a petition from the state’s attorney charging your child with some offense, read it with your child and talk about it.”

– Judge

“Before going to court, you may contact the state’s attorney and inquire as to what they intend to do with your child’s case.”

– Judge

“Be in court with your child! Failure to appear with your child sends the court a message that you are not interested or involved in your child’s life and may force the court into greater control.”

– Judge

“How you are dressed in court conveys attitudes to the judge. While there is not a dress code, wearing a suit or other conservative clothing conveys an attitude of respect for the court and will be received favorably.”

– Judge

“If there is anything you don’t understand, it is ok to raise your hand and say ‘I did not understand that’.”

– Judge

“Once your child is involved in the juvenile justice system, the parent is no longer in control.”

– Judge

“The judge has the authority to order the parents to do certain things. It is a class II misdemeanor if they don’t follow it.”

– Judge

“The juvenile justice system is not a substitute for raising your child.”

– Judge

“Parents need to remain involved to strive to redirect the child.”

– Judge

“Parents can’t expect the legal system to raise their children and teach values. Parents have to do that.”

– State’s Attorney

“The juvenile justice system enters kids’ lives when they are in a crisis and their behavior isn’t in accord with the values of society. Fear is a natural emotion. This is not a cuddly system.”

– State’s Attorney

“Remember that a public defender representing your child is the child’s attorney, not the parent’s attorney.”

– Public Defender

“Parents should communicate with the court services officer and seek support, build trust.”

– Judge



DEFINITION OF TERMS

ADJUDICATION – A decision by the judge declaring the guilt or innocence of a child in juvenile court.

ADJUDICATED – A child who has been declared a child in need of supervision (CHINS) or a delinquent by the judge.

CHILD – A person less than 18. In addition, anyone under 21 who is under continuing jurisdiction of the court or who is before the court for an alleged delinquent act committed before the person's eighteenth birthday is considered a child under the law.

CHILD IN NEED OF SUPERVISION (CHINS) – A child who has been charged with an act that requires court intervention but has not committed an act for which an adult could be charged. These can include offenses such as running away from home, truancy, not obeying parents' rules, and using alcohol or tobacco. If a child is an enrolled member of a tribe, the INDIAN CHILD WELFARE ACT applies. This law requires that an Indian child's tribe be notified. A tribe may intervene in the proceedings and transfer the Indian child to its jurisdiction.

CHILD SUPPORT – A monthly amount ordered to be paid by the parents or legally responsible person for the day to day support of the child in state custody.

COMMUNITY SERVICE – Court ordered or diversion-based public service that benefits the victim or helps the public at a non-profit organization or government agency. The juvenile will not be entitled to any wages for the work completed.

COSTS – The costs of health care, dental care, and treatment for the child while in state custody which can be charged to the child's parents. In addition, court costs and legal fees for the child can be charged to the parents.

COURT SERVICES OFFICER – An employee appointed by the court who investigates and reports to the court regarding the child and the incident bringing the child to the attention of the court. Court services officers make recommendations to the judge regarding disposition and can be appointed to supervise the child placed on probation.

CUSTODY – Physical and/or legal control of a child.

DELINQUENT CHILD – A child aged 10 to 17 who has been charged with violating a law or city ordinance which would be a crime if committed by an adult.

DISPOSITION – The determination by the court of what treatment, rehabilitation or punishment the child will receive, after a finding by the court that the child is a CHINS or delinquent child.

DISPOSITIONAL CONFERENCE – A meeting of all parties out of the presence of the judge to determine if an agreement can be reached on the appropriate way to handle the case.

GUARDIAN – Person appointed by the court to have custody of the child.

INTAKE OFFICER – The judge of a circuit or someone appointed by the judge who must decide,

based upon established criteria, whether to temporarily hold a child in custody until a temporary custody hearing can be held.

JUVENILE CORRECTIONS AGENT – An employee of the SD Department of Corrections who serves as case manager for a child who is in the custody of the Department of Corrections.

JUVENILE DIVERSION – An informal plan of treatment and rehabilitation for a child for up to 90 days that is designed to divert the child from being petitioned to juvenile court.

ORDER OF PROTECTION – An order, at the time of or after disposition, which directs the child's parents, guardian, custodian or other party to the court proceeding to stop certain harmful behavior or to provide certain services or care for the child. Violation of the Order Of Protection can be punishable by contempt or apprehended as a Class II Misdemeanor.

PETITION (Sometimes referred to as a Juvenile Petition) – A written statement that tells the youth, parents, and the court what he or she is charged with doing and which brings the child within the court's jurisdiction.

PRELIMINARY INVESTIGATION – An investigation performed by the State's Attorney, after a police report or complaint is received, to determine whether further action should be taken.

PROBATION REVOCATION OR MODIFICATION – A decision by the Court to withdraw or modify probation due to violations committed by the juvenile. The Court has the authority to continue probation, modify probation, or place the child with the Department of Corrections.

RIGHT TO COUNSEL – The constitutional right of the juvenile accused of a crime, or of his/her parent, to have the assistance of a lawyer in preparing the child's defense.

SELF-INCRIMINATION – To say something that becomes evidence against you.

SOCAIL CASE STUDY – Report describing the child's life circumstances prepared for the court by the court services officer prior to disposition.

STATUTORY FEES – Fees set from time to time by the State Legislature for specified state services.

SUMMONS – A written statement indicating the time and place of a court hearing, the time in which a response must be made and who is required to appear at the hearing. The statement must inform the parties that they have a right to an attorney and that if they do not appear, the allegations will be presumed to be admitted.

TEMPORARY CUSTODY – The court may order the temporary holding of the child pending a final adjudication and disposition of a delinquency petition or a Child In Need of Supervision (CHINS) petition.

TRANSFER – Taking a case out of juvenile court and placing it in adult court or taking it out of adult court and referring it to juvenile court.

WAIVED – Choosing to give up a right, such as to confront and cross-examine witnesses or the right to remain silent.

RESOURCES FOR YOUTH AND PARENTS

SOUTH DAKOTA'S MENTAL HEALTH CENTERS

South Dakota Mental Health Centers

Northeastern Mental Center, 703 Third Ave. SE, Aberdeen, SD (605) 225-1010

East Central Mental Health and Chemical Dependency, 211 Fourth St. Brookings, SD (605) 697-2860

Community Counseling Services, 357 Kansas Ave. SE, Huron, SD (605) 352-8596

Three Rivers Mental Health and CD Center, 11 E. Fourth St., P.O. Box 447, Lemmon, SD (605) 374-3862

Dakota Counseling Institute, 910 W. Havens, Mitchell, SD (605) 996-9686

Capitol Area Counseling Service, 803 E. Dakota Ave., P.O. Box 148, Pierre, SD (605) 224-5811

Behavior Management Systems, 350 Elk St., Rapid City, SD (605) 343-7262

Southeastern Behavioral Health Care, 2000 S. Summit Ave., Sioux Falls, SD (605) 336-0510

Human Service Agency, 123 19th Street NE, P.O. Box 1030, Watertown, SD (605) 886-5841

Southern Plains Behavioral Health Services, 500 E. 9th St., P.O. Box 662, Winner, SD (605) 842-1465

Lewis and Clark Behavioral Health Services, 1028 Walnut St., Yankton, SD (605) 665-4606

CRISIS HOT LINES

- **Black Hills Area Crisis Hot Line**, (605) 342-4303
- **The HELpline Crisis Counseling**, Sioux Falls, SD, (605) 339-4357 HELpline or 211 in Sioux Falls area
- **SD Suicide Crisis Line**, Statewide, (800) 273-8255 (TALK)

STATE TOLL FREE NUMBERS

- **SD Alcohol Abuse Helpline & Treatment**, Referrals and information on alcohol abuse treatment, (800) 234-0420
- **SD Bar Association Lawyer Referral**, (800) 952-2333
- **SD Native American Advocacy Project**, Referrals for persons with severe persistent mental illness & their Family, (800) 303-3975
- **South Dakota Advocacy Services**, Represent eligible persons with issues/concerns related to disability, (800) 658-4782 (V/TDD)
- **South Dakota Parent Connection**, Information and assistance for families of children with disabilities, (800) 640-4553
- **STD**, Sexually Transmitted Diseases/AIDS (800) 592-1861

NATIONAL TOLL FREE NUMBERS

- **Childhelp USA**, National Child Abuse and Neglect Prevention Information, (800) 422-4453
- **National Helpline Network**, Resources on Child Abuse and Neglect Prevention (800) 442-HOPE
- **National Dissemination Center for Children with Disabilities**, Referrals and information on disabilities for children ages birth to 22 years, (800) 695-0285
- **National Runaway Switchboard**, Runaway crisis hotline providing information and referrals, (800) 621-4000
- **The Girls and Boystown National Hotline**, Services for kids and families (800) 448-3000
- **National Clearing House for Drug and Alcohol Information**, Information on signs and symptoms of abuse and treatment referrals, (800) 662-4357

WEBSITES FOR KIDS/STUDENTS

- **Bureau for At-Risk Youth**, Resources to help youth cope with the problems they face, <http://www.at-risk.com>
- **CTW Family Workshop**, A site with a wealth of information for parents and activities for children, <http://www.sesameworkshop.org>
- **Kids Health**, Provides doctor-approved health information for kids, teens and parents, <http://www.kidshealth.org/kid/>
- **U.S. Department of Justice**, Children and youth can learn about crime prevention, staying safe, volunteer and community service opportunities and the criminal justice system <http://www.usdoj.gov/kidspage>

WEBSITES FOR PARENTS

- **AdCare Health System**, Provides information on alcohol and drug care, <http://www.adcare.com>
- **Adolescent Violence Prevention**, A page for parents and professionals who deal with adolescents, <http://people.bu.edu/pstring/1.html>
- **American Academy of Child and Adolescent Psychiatry**, Helps parents with developmental, emotional, behavioral and mental problems, <http://www.aacap.org>
- **Connect for Kids**, Guidance for grown-ups, <http://www.connectforkids.org>
- **Office of Juvenile Justice and Delinquency Prevention**, Information about juvenile justice and delinquency, <http://ojjdp.ncjrs.org>
- **Parent Resource Network**, State-wide services for parent's involvement in their children's development and education, <http://www.bhssc.org/sdprn>
- **Parenthood Web**, Advice on parenting from pediatricians and psychiatrists and e-mail responses to questions, <http://www.parenthoodweb.com>
- **Research and Training Center**, Information for families that have children with mental, behavioral or emotional disorders, <http://www.Rtc.pdx.edu>
- **South Dakota Parent Connection**, Empowers families caring for children with disabilities with knowledge and supports participation in the planning and delivery of quality educational services, <http://www.sdparent.org>
- **Talking With Kids About Tough Issues**, Encourages parents to talk with their children earlier and more often about tough issues like sex, HIV/AIDS, violence, alcohol and drug abuse, <http://www.talkingwithkids.org/>

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ENDNOTES

- 1 Coalition for Juvenile Justice, A Celebration or a Wake? The Juvenile Court After 100 Years, 1998, p. 1.
- 2 Ibid., P. 5.
- 3 South Dakota Codified Law 26-7A-6.1
- 4 This section uses the term “police” as a general reference to law enforcement. In some jurisdictions, law enforcement may be provided by sheriffs, highway patrol, or other law enforcement entities. Information in this section is partially excerpted from Law Related Education and Drug-Free Schools Offices, Meade School District 46-1, Sturgis, SD, Teen Resource Guide, January, 2001, pp. 35 - 41.
- 5 Under South Dakota law, children may not be “arrested” but rather may be “apprehended and taken into temporary custody.”
- 6 If you are given an unsigned copy, request that a judge sign the original warrant. If you think the warrant is improper, your remedy is to challenge the search in court, not to resist or argue with the officer.
- 7 South Dakota Codified Law 26-7A-118 specifies that a parent or guardian is required to appear at all hearings excepting the Temporary Custody Hearing for which the parent may not be available.
- 8 South Dakota Codified Law 26-7A-32.
- 9 Felony crimes classified an A, B, or Class 1, 2. See South Dakota Codified Law 26-11-2.1.
- 10 South Dakota Codified Laws 26-7A-114,115.
- 11 Public Law 94-142.
- 12 South Dakota Codified Laws 26-11A-14.
- 13 South Dakota Codified Laws 26-11A-14, 15, and 18.
- 14 South Dakota Codified Laws 26-7A-122, 123,124.
- 15 South Dakota Codified Law 26-7A-32.27





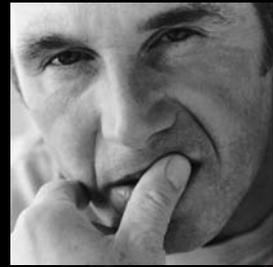
South Dakota Voices for Children's Mission

South Dakota Voices for Children's mission is to improve the lives of children through policy and program advocacy.



Advocating for our children ... healthy, educated safe.

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answers to difficult questions

