

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

645Y0431

HOUSE ENGROSSED NO. **SB 103** - 3/1/2017

Introduced by: Senators Rusch, Bolin, Haverly, Heinert, Kennedy, Maher, Otten (Ernie), Partridge, Soholt, and Solano and Representatives Johns, Haggar, Holmes, Kaiser, Lust, McPherson, Peterson (Kent), Rasmussen, Rozum, Schoenfish, Smith, Soli, Steinhauer, Tieszen, and Willadsen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the process for
2 truancy citations and formal petitions and to declare an emergency.

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

4 Section 1. That § 26-7A-10 be amended to read:

5 26-7A-10. ~~When~~ If a state's attorney is informed by a law enforcement officer or any other
6 person that a child is, or appears to be, within the purview of this chapter and chapter 26-8A,
7 26-8B, or 26-8C, the state's attorney shall make a preliminary investigation to determine
8 whether further action shall be taken. On the basis of the preliminary investigation, the state's
9 attorney may:

10 (1) Decide that no further action is required;

11 (2) If the report relates to an apparent abused or neglected child and if additional
12 information is required, refer the matter to the Department of Social Services for
13 further investigation and recommendations;

14 (3) If the report relates to a juvenile cited violation, proceed on the ~~complaint~~ citation;



(4) If the report relates to an apparent child in need of supervision, an apparent delinquent child, or a juvenile cited violation, refer the matter to a court services officer for any informal adjustment to the supervision of the court that is practicable without a petition or refer the matter to a court-approved juvenile diversion program for any informal action outside the court system that is practicable without the filing of a petition; or

(5) File a petition to commence appropriate proceedings in any case that the youth does not meet the criteria provided in § 26-7A-11.1.

Section 2. That § 26-7A-11 be amended to read:

26-7A-11. A report of a preliminary investigation involving any apparent child in need of supervision ~~or, any apparent delinquent child, or any juvenile cited violation,~~ may be referred to a court services officer for informal adjustment or to a court-approved juvenile diversion program for informal action pursuant to subdivision 26-7A-10(4) only if:

(1) The child and the child's parents, guardian, or other custodian were informed of their constitutional and legal rights, including being represented by an attorney at every stage of the proceedings if a petition is filed;

(2) The facts are admitted and establish prima facie jurisdiction; and

(3) Written consent is obtained from the child's parents, guardian, or custodian and from the child if the child is of sufficient age and understanding. Efforts to effect informal adjustment or informal action may extend no longer than four months from the date of the consent.

The state's attorney may include in the referral to a court-approved juvenile diversion program a requirement that restitution as defined in subdivision 23A-28-2(4) be imposed as a condition of the diversion program.

Section 3. That § 26-7A-126 be amended to read:

26-7A-126. The following allegations of delinquency and children in need of supervision shall be treated as juvenile cited violations by law enforcement:

- (1) Petty theft in the second degree pursuant to § 22-30A-17.3;
- (2) Intentional damage to property, four hundred dollars or less, pursuant to § 22-34-1;
- (3) Purchase, possession, or consumption of alcoholic beverage by person under twenty-one years pursuant to § 35-9-2 in accordance with subdivision 26-8B-2(5); and
- (4) Truancy pursuant to subdivision 26-8B-2(1).

The issuing officer shall notify the child and the child's parent, guardian, or custodian that a hearing on the ~~complaint~~ citation for a cited violation shall be held before a judicial circuit court judge within ten days of issuance of the ~~summons~~ citation or on the next available court date and be treated as a confidential juvenile matter. The hearing shall be held pursuant to § 26-7A-36 and the case records shall be treated as confidential consistent with the provisions of §§ 26-7A-114, 26-7A-115, 26-7A-116, 26-7A-120, and 26-7A-27. A cited violation is not an adjudication or a child in need of supervision or delinquency proceeding. In lieu of a citation, pursuant to subdivision 26-7A-126(4), a school official may file a report with the state's attorney. A report may also be filed with the state's attorney in lieu of a citation if the conduct occurs in conjunction with another offense that is not subject to the juvenile cited violation process.

Section 4. That § 26-7A-127 be amended to read:

26-7A-127. ~~When~~ If a state's attorney is informed that a ~~complaint~~ citation or report has been issued for a juvenile cited violation, the state's attorney may take any action permitted pursuant to § 26-7A-10, except that a state's attorney may only file a petition pursuant to subdivision 26-7A-10(5) if:

(1) The child is cited or a report is filed pursuant to ~~subdivisions~~ subdivision 26-7A-126(1)~~and, (2), or (4);~~ or

(2) The child is cited pursuant to ~~subdivisions~~ subdivision 26-7A-126(3)~~and (4),~~ and has two or more prior judgments for the same violation.

If the state's attorney intends to proceed on a petition for a violation of the provisions in § 26-7A-126 pursuant to subdivision (1) or (2) in this section, the provisions of § 26-7A-11.1 apply.

Section 5. That § 26-7A-128 be amended to read:

26-7A-128. If the state's attorney elects to proceed on the ~~complaint~~ citation pursuant to subdivision 26-7A-10(3), the child shall be asked for an admission or denial of the alleged violation. If the child admits to the violation, the court shall accept the admission and enter a judgment pursuant to § 26-7A-129. If the child denies committing the violation, the case may be tried according to procedure adopted by the presiding judge of each judicial circuit and approved by the Supreme Court, but a jury trial may not be granted.

If the child fails to appear in court at the time set in the ~~summons~~ citation or set by subsequent postponement, the court may either issue a ~~new~~ summons to appear and set a new date for hearing to show cause, ~~or~~ the court may consider that failure to appear constitutes an admission to the allegations contained in the complaint and may accordingly enter a judgment for payment, or may grant permission to the state's attorney to file a petition pursuant to subdivision 26-7A-10(5).

If the child fails to comply with the terms of the judgment, the court may ~~either~~ issue a summons to appear and show cause, or assess against the child's parents or guardians the amount of the citation and any restitution owed pursuant to § 26-7A-129 or may grant permission to the state's attorney to file a petition pursuant to subdivision 26-7A-10(5).

Section 6. That § 26-7A-129 be amended to read:

26-7A-129. If a child is found to be in violation of the ~~complaint~~ citation, the court shall enter a judgment against the child for one or more of the following:

(1) Require the child to complete a court-approved juvenile diversion program or informal adjustment administered by a court services officer;

(2) A fine and court costs not to exceed one hundred dollars;

(3) Community service;

~~(2)~~(4) Restitution as defined in subdivision 23A-28-2(4) and as determined appropriate by the court; or

~~(3)~~(5) Suspension or revocation of the child's driving privilege if the judgment is entered on a violation pursuant to subdivision 26-7A-126(3).

The court may set a hearing to review compliance with the judgment. If a child is unable to pay a fine, court costs, or restitution as ordered by the court, any party may request that the court order community service in lieu of the monetary judgment. At no time ~~shall~~ may a court order a child to probation or detention upon entry of a judgment on a cited violation. A judgment on a cited violation shall be a confidential matter pursuant to subsection 15-15A-7(p) but the state's attorney may maintain a nonpublic record of the judgment for purposes of determining eligibility under § 26-7A-127.

Section 7. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.