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Indicates New Matter

COMMITTEE REPORT

May 18, 2011

**H. 3308**

Introduced by Reps. Forrester, Allison, Parker and Brady

S. Printed 5/18/11--H. [SEC 5/19/11 3:09 PM]

Read the first time January 12, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3308) to amend the Code of Laws of South Carolina, 1976, so as to enact “Jaidon’s Law” by amending Section 63‑7‑1680, as amended, relating contents, approval, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting SECTION 2 of the bill and inserting:

/SECTION 2. Section 63‑7‑1680(D) of the 1976 Code, as last amended by Act 160 of 2010, is further amended to read:

“(D) The third section of the plan shall set forth rights and obligations of the parents or guardian while the child is in custody including, but not limited to:

(1) the responsibility of the parents or guardian for financial support of the child during the placement; and

(2) the visitation rights and obligations of the parents or guardian during the placement.

The department may move before the family court for termination or suspension of visits between the parent or guardian and the child. The family court may order termination or suspension of the visits if ongoing contact between the parent or guardian and the child would be contrary to the best interests of the child. This section of the plan must include a notice to the parents or guardian that failure to support or visit the child as provided in the plan may result in termination of parental rights.”/

Amend the bill further, by deleting Section 63-7-1940(A)(1) and inserting:

/ (1) ~~must~~ shall order, without possibility of waiver by the department, that a person’s name be entered in the Central Registry of Child Abuse and Neglect if the court finds that there is a preponderance of evidence that the person:

(a) physically ~~or sexually abused or wilfully or recklessly neglected the child. Placement on the Central Registry cannot be waived by any party or by the court.~~ abused the child; however, if the only form of physical abuse that is found by the court is excessive corporal punishment, the court only may order that the person’s name be entered in the Central Registry if item (2) applies;

(b) sexually abused the child;

(c) wilfully or recklessly neglected the child; or

(d) gave birth to the child and the child tested positive for the presence of any amount of controlled substance, prescription drugs, metabolite of a controlled substance, or alcohol or the child has a medical diagnosis of fetal alcohol syndrome, unless the presence of the substance or metabolite is the result of medical treatment administered to the mother of the child or the child;/

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT “JAIDON’S LAW” BY AMENDING SECTION 63‑7‑1680, AS AMENDED, RELATING TO THE CONTENTS, APPROVAL, AND AMENDMENT OF A PLACEMENT PLAN DEVELOPED BY THE DEPARTMENT OF SOCIAL SERVICES FOR A CHILD REMOVED FROM THE CUSTODY OF HIS OR HER PARENTS, SO AS TO FURTHER PROVIDE FOR THE VISITATION RIGHTS AND OBLIGATIONS OF THE PARENTS UNDER THE PLACEMENT PLAN; TO AMEND SECTION 63‑7‑1690, RELATING TO CONTENTS OF A PLACEMENT PLAN WHEN THE CONDITIONS FOR REMOVAL OF A CHILD FROM THE CUSTODY OF HIS OR HER PARENTS INCLUDE CONTROLLED SUBSTANCE ABUSE BY THE PARENTS, SO AS TO MAKE THE CONTENTS OF THE PLAN MANDATORY, RATHER THAN IN THE DISCRETION OF THE COURT; TO AMEND SECTION 63‑7‑1710, RELATING TO CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF SOCIAL SERVICES SHALL FILE A PETITION TO TERMINATE PARENTAL RIGHTS, SO AS TO PROVIDE THAT THE DEPARTMENT SHALL FILE THIS PETITION IF THE PARENT IS CONVICTED OF HOMICIDE BY CHILD ABUSE, OR AIDING OR ABETTING TO COMMIT HOMICIDE BY CHILD ABUSE, OF ANOTHER CHILD OF THE PARENT; TO PROVIDE THAT THE DEPARTMENT SHALL FILE THIS PETITION IF A PARENT FAILED THREE HAIR‑STRAND DRUG TESTS OVER A NINE‑MONTH PERIOD; AND TO PROVIDE THAT THE DEPARTMENT SHALL FILE SUCH A PETITION IF A PARENT FAILED TWICE IN A TWELVE‑MONTH PERIOD TO COMPLY WITH THE TERMS OF A TREATMENT PLAN OR PLACEMENT PLAN; TO AMEND SECTION 63‑7‑1940, RELATING TO COURT‑ORDERED PLACEMENT OF A PERSON IN THE CENTRAL REGISTRY FOR CHILD ABUSE AND NEGLECT, SO AS TO PROVIDE THAT THE COURT SHALL ORDER THAT A PERSON BE PLACED IN THE REGISTRY IF THE PERSON GAVE BIRTH TO THE CHILD AND THE CHILD TESTED POSITIVE FOR DRUGS; AND TO AMEND SECTION 63‑7‑2570, AS AMENDED, RELATING TO GROUNDS FOR TERMINATING PARENTAL RIGHTS, SO AS TO PROVIDE THAT TERMINATING THESE RIGHTS ON THE GROUNDS OF SEVERE AND REPETITIVE ABUSE OR NEGLECT INCLUDES HOSPITALIZATION OF A CHILD FOR MORE THAN FOURTEEN DAYS DUE TO ABUSE OR NEGLECT; TO INCLUDE IN THE GROUNDS FOR TERMINATING THESE RIGHTS A PARENT’S ADDICTION TO ALCOHOL OR ILLEGAL DRUGS OR PRESCRIPTION MEDICATION ABUSE WHEN THE PARENT’S ADDICTION IS UNLIKELY TO CHANGE WITHIN A REASONABLE TIME; AND TO PROVIDE AS A GROUND FOR TERMINATING THESE RIGHTS A PARENT BEING CONVICTED OF MURDER, VOLUNTARY MANSLAUGHTER, OR HOMICIDE BY CHILD ABUSE OF ANOTHER CHILD OF THE PARENT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as “Jaidon’s Law”.

SECTION 2. Section 63‑7‑1680(D) of the 1976 Code, as last amended by Act 160 of 2010, is further amended to read:

“(D) The third section of the plan shall set forth rights and obligations of the parents or guardian while the child is in custody including, but not limited to:

(1) the responsibility of the parents or guardian for financial support of the child during the placement; and

(2) the visitation rights and obligations of the parents or guardian during the placement.

The plan must provide for the minimum number of visits that the parents must attend and must provide for a procedure by which the department may stop further visitation for failure to attend scheduled visits. In addition, this section of the plan must include a notice to the parents or guardian that failure to support or visit the child as provided in the plan may result in termination of parental rights.”

SECTION 3. Section 63‑7‑1690 of the 1976 Code is amended to read:

“Section 63‑7‑1690. (A) When the conditions justifying removal pursuant to Section 63‑7‑1660 include the addition of the parent or abuse by the parent of controlled substances, the court ~~may~~ shall require as part of the placement plan ordered pursuant to Section 63‑7‑1680:

(1) the parent to successfully ~~must~~ complete a treatment program operated by the Department of Alcohol and Other Drug Abuse Services or another treatment program approved by the department before return of the child to the home;

(2) any other adult person living in the home who has been determined by the court to be addicted to or abusing controlled substances or alcohol and whose conduct has contributed to the parent’s addiction or abuse of controlled substances or alcohol to successfully ~~must~~ complete a treatment program approved by the department before return of the child to the home; and

(3) the parent or other adult, or both, identified in item (2) ~~must~~ to submit to random testing for substance abuse and ~~must~~ to be alcohol or drug free for a period of time to be determined by the court before return of the child. The parent or other adult identified in item (2) must continue random testing for substance abuse and must be alcohol or drug free for a period of time to be determined by the court after return of the child before the case will be authorized to be closed.

(B) Results of tests ordered pursuant to this section must be submitted to the department and are admissible only in family court proceedings brought by the department.”

SECTION 4. Section 63‑7‑1710(A) of the 1976 Code is amended to read:

“(A) When a child is in the custody of the department, the department shall file a petition to terminate parental rights or shall join as party in a termination petition filed by another party if:

(1) a child has been in foster care under the responsibility of the State for fifteen of the most recent twenty‑two months;

(2) a court of competent jurisdiction has determined the child to be an abandoned infant;

(3) a court of competent jurisdiction has determined that the parent has committed murder ~~of another child of the parent or has committed~~, voluntary manslaughter ~~or~~, or homicide by child abuse of another child of the parent;

(4) a court of competent jurisdiction has determined that the parent has aided, abetted, conspired, or solicited to commit murder ~~or~~, voluntary manslaughter ~~of~~, or homicide by child abuse of another child of the parent; ~~or~~

(5) a court of competent jurisdiction has determined that the parent has committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent;

(6) a parent has failed three hair‑strand drug tests over a period of nine months, with a minimum of three months between the tests; or

(7) a court of competent jurisdiction has found the parent to be in wilful contempt on two occasions over a twelve‑month period for failure to comply with the terms of the treatment plan or placement plan established pursuant to subarticle 11.”

SECTION 5. Section 63‑7‑1940 of the 1976 Code is amended to read:

“Section 63‑7‑1940. (A) At a hearing pursuant to Section 63‑7‑1650 or 63‑7‑1660, at which the court orders that a child be taken or retained in custody or finds that the child was abused or neglected, the court:

(1) ~~must~~ shall order, without possibility of waiver by the department or any court, that a person’s name be entered in the Central Registry of Child Abuse and Neglect if the court finds that there is a preponderance of evidence that the person:

(a) physically ~~or sexually abused or wilfully or recklessly neglected the child. Placement on the central registry cannot be waived by any party or by the court.~~ abused the child; however, if the only form of physical abuse that is found by the court is excessive corporal punishment, the court only may order that the person’s name be entered in the central registry if item (2) applies;

(b) sexually abused the child;

(c) wilfully or recklessly neglected the child; or

(d) gave birth to the child and the child tested positive for drugs at birth;

(2) may, except as provided for in item (1), order that the person’s name be entered in the central registry if the court finds by a preponderance of evidence that:

(a) ~~that~~ the person abused or neglected the child in any manner, including the use of excessive corporal punishment; and

(b) ~~that~~ the nature and circumstances of the abuse indicate that the person would present a significant risk of committing physical or sexual abuse or wilful or reckless neglect if the person were in a position or setting outside of the person’s home that involves care of or substantial contact with children.

(B) At the probable cause hearing, the court may order that the person be entered in the central registry if there is sufficient evidence to support the findings required by subsection (A).”

SECTION 6. Section 63‑7‑2570 of the 1976 Code, as last amended by Act 160 of 2010, is further amended to read:

“Section 63‑7‑2570. The family court may order the termination of parental rights upon a finding of one or more of the following grounds and a finding that termination is in the best interest of the child:

(1) The child or another child while residing in the parent’s domicile has been harmed as defined in Section 63‑7‑20, and because of the severity or repetition of the abuse or neglect, it is not reasonably likely that the home can be made safe within twelve months. In determining the likelihood that the home can be made safe, the parent’s previous abuse or neglect of the child or another child may be considered. If the abuse or neglect led to a child being hospitalized for a period greater than fourteen days, there is a rebuttable presumption that the abuse or neglect was severe and repetitive.

(2) The child has been removed from the parent pursuant to subarticle 3 or Section 63‑7‑1660~~,~~ and has been out of the home for a period of six months following the adoption of a placement plan by court order or by agreement between the department and the parent~~,~~ and the parent has not remedied the conditions which caused the removal.

(3) The child has lived outside the home of either parent for a period of six months, and during that time the parent has wilfully failed to visit the child. The court may attach little or no weight to incidental visitations, but it must be shown that the parent was not prevented from visiting by the party having custody or by court order. The distance of the child’s placement from the parent’s home must be taken into consideration when determining the ability to visit.

(4) The child has lived outside the home of either parent for a period of six months, and during that time the parent has wilfully failed to support the child. Failure to support means that the parent has failed to make a material contribution to the child’s care. A material contribution consists of either financial contributions according to the parent’s means or contributions of food, clothing, shelter, or other necessities for the care of the child according to the parent’s means. The court may consider all relevant circumstances in determining whether or not the parent has wilfully failed to support the child, including requests for support by the custodian and the ability of the parent to provide support.

(5) The presumptive legal father is not the biological father of the child, and the welfare of the child can best be served by termination of the parental rights of the presumptive legal father.

(6) The parent has a diagnosable condition unlikely to change within a reasonable time including, but not limited to, ~~alcohol or drug~~ addiction to alcohol or illegal drugs, prescription medication abuse, mental deficiency, mental illness, or extreme physical incapacity, and the condition makes the parent unlikely to provide minimally acceptable care of the child. It is presumed that the parent’s condition is unlikely to change within a reasonable time upon proof that the parent has been required by the department or the family court to participate in a treatment program for alcohol or drug addiction, and the parent has failed two or more times to complete the program successfully or has refused at two or more separate meetings with the department to participate in a treatment program.

(7) The child has been abandoned as defined in Section 63‑7‑20.

(8) The child has been in foster care under the responsibility of the State for fifteen of the most recent twenty‑two months.

(9) The physical abuse of a child of the parent resulted in the death or admission to the hospital for in‑patient care of that child and the abuse is the act for which the parent has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting an offense against the person as provided for in Title 16, Chapter 3, criminal domestic violence as defined in Section 16‑25‑20, criminal domestic violence of a high and aggravated nature as defined in Section 16‑25‑65, or ~~the common law offense of~~ an assault and battery ~~of a high and aggravated nature~~ offense as provided in Article 7, Chapter 3, Title 16.

(10) A parent of the child pleads guilty or nolo contendere to or is convicted of the murder of the child’s other parent.

(11) Conception of a child as a result of the criminal sexual conduct of a biological parent, as found by a court of competent jurisdiction, is grounds for terminating the rights of that biological parent, unless the sentencing court makes specific findings on the record that the conviction resulted from consensual sexual conduct ~~where~~ when neither the victim nor the actor were younger than fourteen years of age nor older than eighteen years of age at the time of the offense.

(12) The parent of the child pleads guilty or nolo contendere to or is convicted of murder, voluntary manslaughter, or homicide by child abuse, of another child of the parent.”

SECTION 7. This act takes effect upon approval by the Governor.

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