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COMMITTEE REPORT

February 28, 2018

**H. 3701**

Introduced by Reps. Putnam, Whipper, Brown, Knight, Henegan and Henderson‑Myers

S. Printed 2/28/18--S.

Read the first time January 30, 2018.

**THE GENERAL COMMITTEE**

To whom was referred a Bill (H. 3701) to amend the Code of Laws of South Carolina, 1976, by adding Section 63‑7‑735 so as to require the Department of Social Services to inform a relative, 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, page 6, by striking lines 7 through 14 and inserting:

/ (C) At a minimum, the department shall require that all persons referenced in subsection (A) undergo a state fingerprint review to be conducted by the State Law Enforcement Division and a fingerprint review to be conducted by the Federal Bureau of Investigation. The department shall also check the State Central Registry of Child Abuse and Neglect, department records, the equivalent registry system for each state in which the person has resided for five years preceding an application for licensure as a foster parent, the national sex offender registry, and the state sex offender registry for applicants and all persons twelve years of age and older residing in the home of an applicant. /

Amend the bill further, as and if amended, page 8, by striking lines 30 through 38 and inserting:

/ (b) a child is a victim of trafficking in persons as defined in Section 16‑3‑2010, including sex trafficking, regardless of whether the perpetrator is a parent, guardian, or other person responsible for the child’s welfare. Identifying a child as a victim of trafficking in persons does not create a presumption that the parent, guardian, or other individual responsible for the child’s welfare abused, neglected, or harmed the child.” /

Renumber sections to conform.

Amend title to conform.

KATRINA F. SHEALY for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63‑7‑735 SO AS TO REQUIRE THE DEPARTMENT OF SOCIAL SERVICES TO INFORM A RELATIVE WITH WHOM A CHILD MAY BE PLACED OF THE OPPORTUNITY TO BE LICENSED AS A FOSTER PARENT, INCLUDING THE LICENSURE PROCESS AND BENEFITS OF BEING LICENSED AS A FOSTER PARENT, AND TO REQUIRE THE COURT TO MAKE CERTAIN FINDINGS BEFORE SIGNING AN ORDER APPROVING PLACEMENT OF A CHILD WITH A RELATIVE WHO IS NOT A LICENSED FOSTER PARENT; TO AMEND SECTION 63‑7‑650, RELATING IN PART TO THE DEPARTMENT MAKING AN INTERIM PLACEMENT OF A CHILD WITH A RELATIVE INSTEAD OF TAKING CUSTODY OF A CHILD, SO AS TO REQUIRE THE DEPARTMENT TO EXPLAIN TO THE RELATIVE ABOUT THE OPPORTUNITY TO BECOME LICENSED AS A KINSHIP FOSTER PARENT IF THE CHILD IS UNABLE TO RETURN HOME; TO AMEND SECTION 63‑7‑2320, RELATING TO THE KINSHIP FOSTER PROGRAM, SO AS TO ALLOW THE DEPARTMENT TO WAIVE CERTAIN NONSAFETY LICENSURE REQUIREMENTS WHEN LICENSING A RELATIVE AS A FOSTER PARENT AND TO INDICATE THE PREFERENCE FOR PLACING A CHILD WITH A RELATIVE; TO AMEND SECTION 63‑7‑2330, RELATING TO PLACEMENT OF A CHILD WITH A RELATIVE AS PART OF A REMOVAL ACTION, SO AS TO REQUIRE THE DEPARTMENT TO INFORM THE RELATIVE OF THE OPPORTUNITY TO BE LICENSED AS A FOSTER PARENT, INCLUDING THE LICENSURE PROCESS AND BENEFITS OF BEING SO LICENSED; TO AMEND SECTION 63‑7‑2350, AS AMENDED, RELATING TO RESTRICTIONS ON FOSTER CARE PLACEMENTS, SO AS TO CLARIFY THE PROCESS THE DEPARTMENT MUST FOLLOW TO DETERMINE WHETHER A PERSON HAS COMMITTED A CRIME THAT MAKES THE PERSON INELIGIBLE TO BE A FOSTER PARENT; AND TO AMEND SECTION 43‑1‑210, AS AMENDED, RELATING TO DEPARTMENT REPORTING REQUIREMENTS, SO AS TO REQUIRE REPORTING OF KINSHIP CARE DATA.

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

SECTION 1. Subarticle 3, Article 3, Chapter 7, Title 63 of the 1976 Code is amended by adding:

“Section 63‑7‑735. (A) Before the department places a child with a relative who is not licensed as a foster parent, the department shall inform the relative of the procedures for licensure as a foster parent, the benefits of licensure as a foster parent, including eligibility for financial assistance and supportive services, and the risk that the relative may be ineligible for that assistance and services if the relative is not licensed as a foster parent.

(B) An order issued as a result of a hearing in which the court approves placement of a child with a relative who is not licensed as a foster parent must contain a finding by the court whether the department informed the relative of the right to become licensed as a foster parent, the procedures for obtaining licensure, and the benefits of being licensed as a foster parent, including eligibility for financial assistance and supportive services.

(C) If the court finds that the department complied with the requirements of this section and Sections 63‑7‑2320(C) and (E) and 63‑7‑2330, and the relative indicates to the court that the relative does not wish to pursue licensure as a foster parent, the court may approve the placement pursuant to this section.”

SECTION 2. Section 63‑7‑650 of the 1976 Code is amended to read:

“Section 63‑7‑650. (A) Before agreeing to or acquiescing in a corrective action that involves placement of the child with a relative or other person or making an interim placement with a relative while retaining custody of the child or as soon as possible after agreeing to or acquiescing in a corrective action, the department shall secure from the relative or other person and other adults in the home an affidavit attesting to information necessary to determine whether a criminal history or history of child abuse or neglect exists and whether this history indicates there is a significant risk that the child would be threatened with abuse or neglect in the home of the relative or other person. As soon as possible, the department shall confirm the information supplied in the affidavit by checking the Central Registry of Child Abuse and Neglect, other relevant department records, county sex offender registries, and records for the preceding five years of law enforcement agencies in the jurisdiction in which the relative or other person resides and, to the extent reasonably possible, jurisdictions in which the relative or other person has resided during that period. The department must not agree to or acquiesce in a placement if the affidavit or these records reveal information indicating there is a significant risk that the child would be threatened with abuse or neglect in the home of the relative or other person. The relative or other person must consent to a check of the above records by the department.

(B) Before making an interim placement of a child with a relative pursuant to this section, the department shall inform the relative about the opportunity to become licensed as a foster parent if the department later determines it is not safe for the child to be returned to the home and the department initiates a removal action pursuant to Section 63‑7‑1660. The department shall provide the relative general information about the kinship foster parent licensing process and the benefits of licensure, including eligibility for financial assistance and supportive services, and the risk that the relative may be ineligible for that assistance and services if the relative is not licensed as a foster parent.”

SECTION 3. Section 63‑7‑2320(C) and (D)(4) of the 1976 Code is amended to read:

“(C) When a child has been removed from his home and is in the care, custody, or guardianship of the department, the department shall attempt to identify a relative who would be appropriate for placement of the child in accordance with the preliminary investigation requirements of Subarticle 3, Article 3 and in accordance with Section 63‑7‑1680~~(B)(6)~~(E)(1). If the department determines that it is in the best interest of a child requiring out‑of‑home placement that the child be placed with a relative for foster care, or if a relative advises the department that the relative is interested in providing placement for a child requiring foster care, and the relative is not already licensed to provide foster care, the department shall inform the relative of the procedures for being licensed as a kinship foster parent, assist the foster parent with the licensing process, and inform the relative of availability of payments and other services to kinship foster parents. If the relative is licensed by the department to provide kinship foster care services, in accordance with rules and regulations adopted by the department regarding kinship foster care, and a placement with the relative is made, the relative may receive payment for the full foster care rate for the care of the child and any other benefits that might be available to foster parents, whether in money or in services.

(4) Notwithstanding the requirement that a relative licensed as a kinship foster parent must be licensed in accordance with the same requirements as nonrelative applicants, the department may waive, on a case‑by‑case basis, for relative applicants nonsafety elements as the department deems appropriate. Safety elements, such as criminal and child abuse and neglect background checks required by Title IV‑E of the Social Security Act, 42 U.S.C. Section 671(a)(20)(A), may not be waived. The department may not license a relative as a kinship foster parent or place the child with the relative if the placement would violate any provision of Section 63‑7‑2350. The department shall note on the standard license if there was a waiver of a nonsafety element and identify the element being waived.

(5) The department shall determine, after a thorough review of information obtained in the kinship foster care licensing process, whether the person is able to care effectively for the foster child. The review must take into consideration the parental preference and the preference for placement with a relative who is known to the child and who has a constructive and caring relationship with the child, as provided in Section 63‑7‑1680(E)(1). The review also must take into consideration the preference for the placement with a relative who, but for the removal of the child at birth, would have had a constructive and caring relationship with the child, based on the relative’s fitness and ability to care for the child.”

SECTION 4. Section 63‑7‑2330(B) of the 1976 Code is amended to read:

“(B) If the department has determined that it is in the best interest of a child requiring foster care that the child be placed with a relative, and the relative is not licensed to provide foster care, or if a relative advises the department that the relative is interested in providing placement for a child requiring foster care, and the relative is not licensed to provide foster care, the department shall inform the relative of the procedures for obtaining licensure and the benefits of licensure, including eligibility for financial assistance and supportive services, and the risk that the relative may be ineligible for that assistance and services if the relative is not licensed as a foster parent. The department also shall provide information and reasonable assistance to a relative seeking a foster care license to the same extent that it provides this information and assistance to other persons contacting the department about foster care licensing.”

SECTION 5. Section 63‑7‑2350 of the 1976 Code, as last amended by Act 238 of 2012, is further amended to read:

“Section 63‑7‑2350. (A) No child in the custody of the Department of Social Services may be placed in foster care or for adoption with a person if the person or anyone eighteen years of age or older residing in the home:

(1) has a substantiated history of child abuse or neglect; or

(2) has pled guilty or nolo contendere to or has been convicted of:

(a) an ‘Offense Against the Person’ as provided for in Chapter 3, Title 16;

(b) an ‘Offense Against Morality or Decency’ as provided for in Chapter 15, Title 16;

(c) contributing to the delinquency of a minor as provided for in Section 16‑17‑490;

(d) the common law offense of assault and battery of a high and aggravated nature when the victim was a person seventeen years of age or younger;

(e) criminal domestic violence as defined in Section 16‑25‑20;

(f) criminal domestic violence of a high and aggravated nature as defined in Section 16‑25‑65;

(g) a felony drug‑related offense under the laws of this State;

(h) unlawful conduct toward a child as provided for in Section 63‑5‑70;

(i) cruelty to children as provided for in Section 63‑5‑80;

(j) child endangerment as provided for in Section 56‑5‑2947; or

(k) criminal sexual conduct with a minor in the first degree as provided for in Section 16‑3‑655(A).

(B) A person who has been convicted of a criminal offense similar in nature to a crime enumerated in subsection (A) when the crime was committed in another jurisdiction or under federal law is subject to the restrictions set out in this section.

(C) At a minimum, the department shall check the Central Registry of Child Abuse and Neglect, other relevant department records, county sex offender registries, and records for the preceding five years of law enforcement agencies in the jurisdiction in which a person undergoing background checks pursuant to subsection (B) resides and, to the extent reasonably possible, jurisdictions in which the person has resided during that period to make the determinations required pursuant to subsection (B).

(D) This section does not prevent foster care placement or adoption placement when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in subsection (A) has been pardoned. However, notwithstanding the entry of a pardon, the department or other entity making placement or licensing decisions may consider all information available, including the person’s pardoned convictions or pleas and the circumstances surrounding them, to determine whether the applicant is unfit or otherwise unsuited to provide foster care services.”

SECTION 6. Section 43‑1‑210 of the 1976 Code, as last amended by Act 281 of 2014, is further amended to read:

“Section 43‑1‑210. (A) The director shall prepare and submit to the Governor and the General Assembly a full and detailed report of its activities and expenditures annually, including a statement of its personnel and the salaries paid, and shall likewise make such recommendations and suggestions as it shall deem advisable in the execution of its duties to the General Assembly. In addition, this report must include, but is not limited to, the following information:

(1) the monthly total number of cases assigned, as of the last business day of every month, to each case worker in the Department of Social Services Child Protective Services Division;

(2) the monthly total number of children assigned, as of the last business day of every month, to each case worker in the Department of Social Services Child Protective Services Division;

(3) the monthly total number of children seen by the Department of Social Services within twenty‑four hours of a report of abuse or neglect that were accepted for intake;

(4) the monthly total number of children that were not seen by the Department of Social Services within twenty‑four hours of a report of abuse or neglect;

(5) the total number of children in foster care that were seen by the Department of Social Services each month; ~~and~~

(6) the total number of children in foster care that were not seen by the Department of Social Services each month;

(7) the number of children placed with a relative or other person pursuant to a safety plan;

(8) the number of children placed with a relative licensed as a kinship foster parent;

(9) the number of children placed with a relative not licensed as a kinship foster parent;

(10) for each case in which a relative requests to be licensed as a kinship foster parent, the number of days before a license is granted; and

(11) the number of relatives who apply to be licensed as a kinship foster parent and request a waiver of nonsafety licensing requirements who are subsequently granted a license with the waiver.

(B) The Department of Social Services shall prepare and submit this report no later than March first of each year.”

SECTION 7. Section 63-7-20(6) of the 1976 Code, as last amended by Act 238 of 2016, is further amended to read:

“(6) ‘Child abuse or neglect’ or ‘harm’ occurs when:

(a) the parent, guardian, or other person responsible for the child’s welfare:

~~(a)~~(i) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:

~~(i)~~(A) is administered by a parent or person in loco parentis;

~~(ii)~~(B) is perpetrated for the sole purpose of restraining or correcting the child;

~~(iii)~~(C) is reasonable in manner and moderate in degree;

~~(iv)~~(D) has not brought about permanent or lasting damage to the child; and

~~(v)~~(E) is not reckless or grossly negligent behavior by the parents~~.~~;

~~(b)~~(ii) commits or allows to be committed against the child a sexual offense as defined by the laws of this State or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child;

~~(c)~~(iii) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision appropriate to the child’s age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or presents a substantial risk of causing physical or mental injury. However, a child’s absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child’s attendance, and those efforts were unsuccessful because of the parents’ refusal to cooperate. For the purpose of this chapter ‘adequate health care’ includes any medical or nonmedical remedial health care permitted or authorized under state law;

~~(d)~~(iv) abandons the child;

~~(e)~~(v) encourages, condones, or approves the commission of delinquent acts by the child including, but not limited to, sexual trafficking or exploitation, and the commission of the acts are shown to be the result of the encouragement, condonation, or approval; or

~~(f)~~(vi) has committed abuse or neglect as described in ~~subsections~~subsubitems ~~(a)~~(i) through ~~(e)~~(v) such that a child who subsequently becomes part of the person’s household is at substantial risk of one of those forms of abuse or neglect~~.~~; or

(b) a child is a victim of trafficking in persons as defined in Section 16‑3‑2010, including sex trafficking, regardless of whether the perpetrator is a parent, guardian, or other person responsible for the child’s welfare. If acts or omissions by a parent, guardian, or other person responsible for the child’s welfare was not the proximate cause of the child being a victim of trafficking in persons, then the Department of Social Services may not find or indicate against the parent, guardian, or other person responsible for the child’s welfare pursuant to this subitem.”

SECTION 8. This act takes effect upon approval by the Governor.

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