CHAPTER 21

Persons with Disabilities Right to Parent Act

Editor’s Note

2017 Act No. 36, Section 1, provides as follows:

“SECTION 1. This act may be cited as the ‘Persons with Disabilities Right to Parent Act’.”

**SECTION 63‑21‑10.** Definitions.

As used in this chapter:

(1) “Adaptive parenting equipment” means equipment or any other item that is used to increase, maintain, or improve the parenting capabilities of a person with a disability.

(2) “Adaptive parenting techniques” means strategies for accomplishing childcare and other parenting tasks that enable a person with a disability to execute a task safely for themselves and their children alone or in conjunction with adaptive parenting equipment.

(3) “Adoption” has the same meaning as provided for in Chapter 9, Title 63.

(4) “Child custody proceeding” means a proceeding in family or probate court in which a third party is seeking to be awarded temporary or permanent legal or physical custody of a child to obtain legal guardianship of a child, or to limit or deny visitation of a parent or legal guardian with a child, including an action filed by the other parent.

(5) “Child protection proceeding” means a proceeding in family court provided for in Chapter 7, Title 63 relating to protection of children from abuse or neglect, access to services and other support for parents to preserve or reunify the family, and permanency planning for children whose parents are unable or unwilling to parent adequately.

(6) “Child placing agency” has the same meaning as provided for in Section 63‑9‑30.

(7) “Covered entity” has the same meaning as provided for in the Americans with Disabilities Act, as amended.

(8) “Department” means the South Carolina Department of Social Services.

(9) “Disability” means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of an impairment, or being regarded as having an impairment, consistent with the Americans with Disabilities Act, as amended, and as interpreted broadly under that act. An individual who is currently engaging in the illegal use of drugs or the abuse of alcohol, drugs or other substances is not an individual with a “disability” for purposes of this chapter.

(10) “Supportive services” means services that help a person with a disability compensate for those aspects of the disability that affect the ability to care for a child and that enables the person to fulfill parental responsibilities including, but not limited to, specialized or adapted training, evaluations, and assistance with effective use of adaptive equipment, and accommodations that enable a person with a disability to benefit from other services, such as braille text or sign language interpretation.

HISTORY: 2017 Act No. 36 (H.3538), Section 2, eff May 10, 2017.

Federal Aspects

Americans with Disabilities Act of 1990 (ADA) (Americans with Disabilities Act); Pub.L. 101‑336, July 26, 1990, 104 Stat. 327, Short title, see 42 U.S.C.A. Section 12101 note.

**SECTION 63‑21‑20.** Compliance with federal law; disability affecting parent’s right to fulfill responsibilities; probable cause order.

(A) The department, family court, probate court, and any other covered entity shall comply with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the Fourteenth Amendment, before taking any action pursuant to Chapters 7, 9, or 15, Title 63, or Title 62 that could impact the parental rights of a person with a disability.

(B)(1) The department shall, consistent with its purposes as mandated in Section 63‑7‑10:

(a) make reasonable efforts, that are individualized and based upon a parent’s or legal guardian’s specific disability, to avoid removal of a child from the home of a parent or legal guardian with a disability, including referrals for access to adaptive parenting equipment, referrals for instruction on adaptive parenting techniques, and reasonable accommodations with regard to accessing services that are otherwise made available to a parent or legal guardian who does not have a disability;

(b) make reasonable accommodations to a parent or legal guardian with a disability as part of placement and visitation decisions; preventive, maintenance, and reunification services; and evaluations or assessments of parenting capacity.

(2) The department, and any other covered entity, must not deny reunification services to a parent or legal guardian with a disability solely on the basis of the disability.

(C) If any party to the proceedings alleges that the parent or legal guardian has a disability that affects the parent’s ability to fulfill parent responsibilities, the family court shall determine and include as findings in the probable cause order:

(1) the nature of the parent’s or legal guardian’s disability, if any, that affects the parent’s ability to fulfill parent responsibilities;

(2) the reasonable efforts made by the department to avoid removal of the child from the parent or legal guardian, including reasonable efforts made to address the parenting limitations caused by the disability; and

(3) reasonable accommodations the department, and any other covered entity, shall make to provide the parent or legal guardian with the opportunity to participate fully in the child protection proceedings throughout the duration of the case.

HISTORY: 2017 Act No. 36 (H.3538), Section 2, eff May 10, 2017.

Federal Aspects

Americans with Disabilities Act of 1990 (ADA) (Americans with Disabilities Act); Pub.L. 101‑336, July 26, 1990, 104 Stat. 327. Short title, see 42 U.S.C.A. Section 12101 note.

Nondiscrimination under Federal grants and programs, Section 504 of the Rehabilitation Act of 1973, see 29 U.S.C.A. Section 794.

Rehabilitation Act of 1973; Pub.L. 93‑112, Sept. 26, 1973, 87 Stat. 355. Short title, see 29 U.S.C.A. Section 701 note.

**SECTION 63‑21‑30.** Prohibition against denying a person with a disability the right to pursue adoption solely on the basis of the disability.

(A) A child placing agency must not deny a person with a disability the right to pursue adoption of a child solely on the basis of the disability, without considering whether adaptive parenting equipment, instruction in adaptive parenting techniques, and other supportive services could enable the person to parent adequately.

(B) The department or other covered entity that provides pre‑ or postadoption services must not deny a person with a disability the right to access services solely on the basis of the disability, without considering whether adaptive parenting equipment, instruction in adaptive parenting techniques, and other supportive services could enable the person to parent adequately.

HISTORY: 2017 Act No. 36 (H.3538), Section 2, eff May 10, 2017.