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Indicates New Matter

AS PASSED BY THE SENATE

May 28, 2014

**H. 3102**

Introduced by Reps. Forrester, V.S. Moss, Allison, Atwater and Bingham

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Read the first time April 30, 2013.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT “JAIDON’S LAW”; TO AMEND 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.

Amend Title To Conform

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

SECTION 1. Section 43‑5‑1285 of the 1976 Code, as added by Act 102 of 1995, is amended to read:

“Section 43‑5‑1285. ~~On or about August 31, 1996, and every two years thereafter the Legislative Audit Council shall evaluate and~~ The department shall report annually to the General Assembly on the ~~success and effectiveness of the policies and programs created in this act. In conducting this evaluation the council shall identify the~~ number of ~~AFDC~~ Family Independence families and individuals no longer receiving welfare, the number of individuals who have participated in educational, employment, or training programs under this act, the number of individuals who have completed educational, employment, or training programs under this act, and the number of individuals who have become employed and the duration of their employment~~, and other data and information the council considers appropriate in reporting to the General Assembly on the effectiveness of this act~~.”

SECTION 2. Chapter 15, Title 2 of the 1976 Code is amended by adding:

“Section 2‑15‑64. Beginning December 31, 2013, and every three years thereafter, the Legislative Audit Council shall conduct a management performance audit of a program of the South Carolina Department of Social Services. The program to be reviewed will be determined after consultation with the House of Representatives and the Senate. The Legislative Audit Council is authorized to charge the Department of Social Services for federal funds, if available, for the costs associated with this audit and shall provide certification to the Department of Social Services of certified public expenditures that are eligible for matching federal funds. The Department of Social Services shall remit the federal funds to the Legislative Audit Council as reimbursement for the costs of the audit.”

SECTION 3. This act may be cited as “Jaidon’s Law”.

SECTION 4. 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.”

SECTION 5. 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 addiction of the parent or abuse by the parent of controlled substances, the court may 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 6. 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; or

(6) 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 7. 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, 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 infant and the infant tested positive for the presence of any amount of controlled substance, prescription drugs not prescribed to the mother, metabolite of a controlled substance, or the infant has a medical diagnosis of neonatal abstinence syndrome, unless the presence of the substance or metabolite is the result of a medical treatment administered to the mother of the infant during birth or to the infant;

(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 8. 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.

(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 9. Section 63‑7‑1700(D) of the 1976 Code, as last amended by Act 160 of 2010, is further amended to read:

“(D) If the court determines at the permanency planning hearing that the child may be safely maintained in the home in that the parent has remedied the conditions that caused the removal and the return of the child to the child’s parent would not cause an unreasonable risk of harm to the child’s life, physical health, safety, or mental well‑being, the court shall order the child returned to the child’s parent. The court may order a specified period of supervision and services not to exceed twelve months. When determining whether the child should be returned, the court shall consider all evidence; if the removal of the child from the family was due to drug use by one or both parents, then a drug test must be administered to the parent or both parents, as appropriate, and the results must be considered with all other evidence in determining whether the child should be returned to the parents’ care; and the supplemental report including whether the parent has substantially complied with the terms and conditions of the plan approved pursuant to Section 63‑7‑1680.”

SECTION 10. Section 63-7-940(A)(7) and (8) of the 1976 Code are amended to read:

"(7) as authorized in Section 63-7-2000; ~~and~~

(8) the Department of Child Fatalities pursuant to Section 63-11-1960; and

(9) (a) the director or his designee who may disclose information for the following purposes:

(i) to confirm, clarify, or correct information concerning a case that has been made public by the alleged perpetrator, the alleged perpetrator's attorney, or the party in interest to the case;

(ii) if information or an allegation about the report has been placed in the public domain, as defined in Section 63-7-1990(G)(1), to respond in public testimony to an inquiry by a committee or subcommittee of the Senate or the House of Representatives, or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department.

(iii) if information or an allegation about the report has not been placed in the public domain, to respond to an inquiry by a committee or subcommittee of the Senate or the House of Representatives or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department, provided that such information is reviewed in closed session and kept confidential. Notwithstanding the provisions of Chapter 4, Title 30, meetings to review information disclosed pursuant to this subitem may be held in closed session and any documents or other materials provided or reviewed during the closed session are not subject to public disclosure.

(b) The department must state that the case was unfounded when disclosing information pursuant to this item.

(c) For the purposes of this item, ‘party in interest’ shall have the same meaning as in Section 63-7-20, and shall also include a child’s grandparents and siblings."

SECTION 11. Section 63-7-1990(G) of the 1976 Code is amended to read:

"(G)(1) The state director of the department or the director’s designee may disclose to the media information contained in child protective services records if the disclosure is limited to discussion of the department’s activities in handling the case including information placed in the public domain by other public officials, a criminal prosecution, the alleged perpetrator or the attorney for the alleged perpetrator, the party in interest, or other public judicial proceedings, or through testimony to a committee or subcommittee of the Senate or the House of Representatives or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department. For purposes of this subsection, information is considered ‘placed in the public domain’ when it has been reported in the news media, is contained in public records of a criminal justice agency, is contained in public records of a court of law, or has been the subject of testimony in a public judicial or legislative proceeding.

(2) The director or his designee shall disclose information in records required to be kept confidential pursuant to subsection (A) to respond to an allegation made in public testimony before a committee or subcommittee of the Senate or the House of Representatives, or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department.

(3) The director or his designee shall disclose information in records required to be kept confidential pursuant to subsection (A) to respond to an inquiry, concerning information not placed in the public domain, from a committee or subcommittee of the Senate or the House of Representatives or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department. The information shall be reviewed in a closed session and kept confidential, unless the information has been made public by the party in interest and is required for a response to a question asked by a Senator or a member of the House of Representatives in a public meeting, a committee or subcommittee of the Senate or the House of Representatives, or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department. Notwithstanding the provisions of Chapter 4, Title 30, meetings to review information disclosed pursuant to this item may be held in closed session and any documents or other materials provided or reviewed during the closed session are not subject to public disclosure.

(4) For the purposes of this subsection, ‘party in interest’ shall have the same meaning as in Section 63-7-20, and shall also include a child’s grandparents and siblings.”

SECTION 12. Section 63-7-1990(H) of the 1976 Code is amended to read:

"(H)~~The state director or the director's designee is authorized to prepare and release reports of the results of the department's investigations into the deaths of children in its custody or receiving child welfare services at the time of death.~~(1) In cases of child abuse or neglect resulting in a child fatality or near fatality of a child, the department, upon request, shall make public a report containing the following information:

(a) the age of the child;

(b) the gender of the child;

(c) information describing all previous reports ~~of~~ or child abuse or neglect investigations by the department or any third party contracted with the department relating to the child;

(d) all services provided by the department or any third party contracted with the department to the child regarding child abuse or neglect; and

(e) all actions taken by the department or any third party contracted with the department relating to the child regarding child abuse or neglect.

(2) For purposes of subsection (H), ‘near fatality’ is defined as an act that, as certified by a physician, places the child in serious or critical condition.

(3) The director or his designee may choose not to make a public report pursuant to subsection (H) in the following circumstances:

(a) the report would endanger the child, the child's parent or guardian, or member of the child's family;

(b) the report would interfere in a criminal investigation; or

(c) the report would disclose the identity of a person who made a report of child abuse or neglect regarding the child.”

SECTION 13. Section 17-5-540 of the 1976 Code is amended to read:

"Section 17-5-540. The coroner or medical examiner, within twenty-four hours or one working day, whichever occurs first, must notify the Department of Child Fatalities when a child dies in the county he serves:

(1) as a result of violence~~, when unattended by a physician, and~~;

(2) in any suspicious or unusual manner; or

(3) when the death is unexpected and unexplained including, but not limited to, possible sudden infant death syndrome.

~~For the purposes of this section, a child is not considered to be "unattended by a physician" when a physician has, before death, provided diagnosis and treatment following a fatal injury.~~"

SECTION 14. This act takes effect upon approval by the Governor.

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