**A** **BILL**

TO AMEND SECTION 63‑7‑20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS USED IN THE CHILDREN’S CODE, SO AS TO ADD DEFINITIONS FOR “AGE‑APPROPRIATE ACTIVITY”, “CAREGIVER”, AND “STANDARD OF CARE OF A REASONABLE AND PRUDENT PARENT”; TO AMEND SECTION 63‑7‑1700, AS AMENDED, RELATING TO PERMANENCY PLANNING, SO AS TO PROVIDE FOR COURT CONSIDERATION OF LOCAL FOSTER CARE REVIEW BOARD RECOMMENDATIONS, TO REQUIRE THE COURT TO TAKE INTO CONSIDERATION RECOMMENDATIONS OF THE DEPARTMENT OF SOCIAL SERVICES, THE LOCAL FOSTER CARE REVIEW BOARD, AND THE GUARDIAN AD LITEM BEFORE APPROVING A PLACEMENT PLAN, AND TO REQUIRE THE COURT TO REVIEW THE DEPARTMENT’S EFFORTS TO ENSURE A FOSTER CHILD HAS THE OPPORTUNITY TO ENGAGE IN AGE‑APPROPRIATE ACTIVITIES; TO AMEND SECTION 63‑7‑2310, RELATING TO THE FOSTER CARE SYSTEM, SO AS TO REQUIRE THE DEPARTMENT TO MAKE EFFORTS TO NORMALIZE THE LIVES OF CHILDREN IN FOSTER CARE BY ENABLING PARTICIPATION IN AGE‑APPROPRIATE ACTIVITIES; TO AMEND SECTION 63‑11‑720, RELATING TO FUNCTIONS AND POWERS OF LOCAL FOSTER CARE REVIEW BOARDS, SO AS TO CHANGE THE FREQUENCY WITH WHICH THESE BOARDS MUST REVIEW CASES OF CHILDREN IN FOSTER CARE AND CERTAIN REPORTING REQUIREMENTS; TO AMEND SECTION 63‑11‑750, RELATING THE FOSTER CARE REVIEW BOARD’S RIGHT TO PARTICIPATE IN CHILD ABUSE AND NEGLECT JUDICIAL PROCEEDINGS, SO AS TO ALLOW THE BOARD TO INTRODUCE, EXAMINE, AND CROSS EXAMINE WITNESSES; AND FOR OTHER PURPOSES.

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

SECTION 1. Section 63‑7‑20 of the 1976 Code is amended to read:

“Section 63‑7‑20. When used in this chapter or Chapter 9 or 11 and unless the specific context indicates otherwise:

(1) ‘Abandonment of a child’ means a parent or guardian wilfully deserts a child or wilfully surrenders physical possession of a child without making adequate arrangements for the child’s needs or the continuing care of the child.

(2) ‘Affirmative determination’ means a finding by a preponderance of evidence that the child was abused or neglected by the person who is alleged or determined to have abused or neglected the child and who is mentioned by name in a report or finding. This finding may be made only by:

(a) the court;

(b) the Department of Social Services upon a final agency decision in its appeals process; or

(c) waiver by the subject of the report of his right to appeal. If an affirmative determination is made by the court after an affirmative determination is made by the Department of Social Services, the court’s finding must be the affirmative determination.

(3) ‘Age‑appropriate activity’ means an activity or experience:

(a) that is generally accepted as suitable for a child’s age or level of maturity or that is determined to be developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for the age or age group; and

(b) in which a child who is not in the custody of the department is generally allowed to participate, including extracurricular activities, in‑school and out‑of‑school social activities, cultural enrichment activities, and employment opportunities.

(4) ‘Caregiver’ means a foster parent, kinship caregiver, or employee of a group home who is designated to make decisions regarding age‑appropriate activities or experiences on behalf of a child in the custody of the department.

~~(3)~~(5) ‘Child’ means a person under the age of eighteen.

~~(4)~~(6) ‘Child abuse or neglect’ or ‘harm’ occurs when the parent, guardian, or other person responsible for the child’s welfare:

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

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

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

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

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

(b) 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) 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) abandons the child;

(e) encourages, condones, or approves the commission of delinquent acts by the child and the commission of the acts are shown to be the result of the encouragement, condonation, or approval; or

(f) has committed abuse or neglect as described in subsections (a) through (e) 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.

~~(5)~~(7) ‘Child protective investigation’ means an inquiry conducted by the department in response to a report of child abuse or neglect made pursuant to this chapter.

~~(6)~~(8) ‘Child protective services’ means assistance provided by the department as a result of indicated reports or affirmative determinations of child abuse or neglect, including assistance ordered by the family court or consented to by the family. The objectives of child protective services are to:

(a) protect the child’s safety and welfare; and

(b) maintain the child within the family unless the safety of the child requires placement outside the home.

~~(7)~~(9) ‘Court’ means the family court.

~~(8)~~(10) ‘Department’ means the Department of Social Services.

~~(9)~~(11) ‘Emergency protective custody’ means the right to physical custody of a child for a temporary period of no more than twenty‑four hours to protect the child from imminent danger.

Emergency protective custody may be taken only by a law enforcement officer pursuant to this chapter.

~~(10)~~(12) ‘Guardianship of a child’ means the duty and authority vested in a person by the family court to make certain decisions regarding a child, including:

(a) consenting to a marriage, enlistment in the armed forces, and medical and surgical treatment;

(b) representing a child in legal actions and to make other decisions of substantial legal significance affecting a child; and

(c) rights and responsibilities of legal custody when legal custody has not been vested by the court in another person, agency, or institution.

~~(11)~~(13) ‘Indicated report’ means a report of child abuse or neglect supported by facts which warrant a finding by a preponderance of evidence that abuse or neglect is more likely than not to have occurred.

~~(12)~~(14) ‘Institutional child abuse and neglect’ means situations of known or suspected child abuse or neglect where the person responsible for the child’s welfare is the employee of a public or private residential home, institution, or agency.

~~(13)~~(15) ‘Legal custody’ means the right to the physical custody, care, and control of a child; the right to determine where the child shall live; the right and duty to provide protection, food, clothing, shelter, ordinary medical care, education, supervision, and discipline for a child and in an emergency to authorize surgery or other extraordinary care. The court may in its order place other rights and duties with the legal custodian. Unless otherwise provided by court order, the parent or guardian retains the right to make decisions of substantial legal significance affecting the child, including consent to a marriage, enlistment in the armed forces, and major nonemergency medical and surgical treatment, the obligation to provide financial support or other funds for the care of the child, and other residual rights or obligations as may be provided by order of the court.

~~(14)~~(16) ‘Mental injury’ means an injury to the intellectual, emotional, or psychological capacity or functioning of a child as evidenced by a discernible and substantial impairment of the child’s ability to function when the existence of that impairment is supported by the opinion of a mental health professional or medical professional.

~~(15)~~(17) ‘Party in interest’ includes the child, the child’s attorney and guardian ad litem, the natural parent, an individual with physical or legal custody of the child, the foster parent, and the local foster care review board.

~~(16)~~(18) ‘Person responsible for a child’s welfare’ includes the child’s parent, guardian, foster parent, an operator, employee, or caregiver, as defined by Section 63‑13‑20, of a public or private residential home, institution, agency, or childcare facility or an adult who has assumed the role or responsibility of a parent or guardian for the child, but who does not necessarily have legal custody of the child. A person whose only role is as a caregiver and whose contact is only incidental with a child, such as a babysitter or a person who has only incidental contact but may not be a caretaker, has not assumed the role or responsibility of a parent or guardian. An investigation pursuant to Section 63‑7‑920 must be initiated when the information contained in a report otherwise sufficient under this section does not establish whether the person has assumed the role or responsibility of a parent or guardian for the child.

~~(17)~~(19) ‘Physical custody’ means the lawful, actual possession and control of a child.

~~(18)~~(20) ‘Physical injury’ means death or a substantial risk of death or the permanent or temporary disfigurement or impairment of any bodily organ, member, or function including, but not limited to, the skin, muscles, connective tissues, and bones.

~~(19)~~(21) ‘Preponderance of evidence’ means evidence which, when fairly considered, is more convincing as to its truth than the evidence in opposition.

~~(20)~~(22) ‘Probable cause’ means facts and circumstances based upon accurate and reliable information, including hearsay, that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected.

~~(21)~~(23) ‘Protective services unit’ means the unit established within the Department of Social Services which has prime responsibility for state efforts to strengthen and improve the prevention, identification, and treatment of child abuse and neglect.

(24) ‘Standard of care of a reasonable and prudent parent’ means the standard of care that a parent of reasonable judgment, skill, and caution would exercise in addressing the health, safety, and welfare of a child while encouraging the emotional and developmental growth of the child, taking into consideration:

(a) the overall health and safety of the child;

(b) the child’s age, maturity, and developmental level;

(c) the best interest of the child based on the caregiver’s knowledge of the child;

(d) the behavioral history of the child and the child’s ability to safely participate in a proposed activity;

(e) the importance of encouraging the child’s social, emotional, and developmental growth; and

(f) the importance of providing the child with the most family‑like experience possible.

A caregiver is not liable for harm caused to or by a child who participates in an activity as long as the caregiver acted in accordance with the reasonably prudent parent standard.

~~(22)~~(25) ‘Subject of the report’ means a person who is alleged or determined to have abused or neglected the child, who is mentioned by name in a report or finding.

~~(23)~~(26) ‘Suspected report’ means all initial reports of child abuse or neglect received pursuant to this chapter.

~~(24)~~(27) ‘Unfounded report’ means a report made pursuant to this chapter for which there is not a preponderance of evidence to believe that the child is abused or neglected. For the purposes of this chapter, it is presumed that all reports are unfounded unless the department determines otherwise.”

SECTION 2. Section 63‑7‑1700(B) and (C) of the 1976 Code, as last amended by Act 160 of 2010, is further amended to read:

“(B) The department shall attach a supplemental report to the motion or summons and petition which must contain at least:

(1) that information necessary to support findings required in subsections (C) through (H), as applicable;

(2) the recommended permanent plan and suggested timetable for attaining permanence;

(3) a statement of whether or not the court has authorized the department to forego or terminate reasonable efforts pursuant to Section 63‑7‑1640; and

(4) ~~any reports of the local foster care review board which pertain to the child~~ the most recent recommendation of the local foster care review board, which must be read into the record by legal counsel for the department or the Foster Care Review Board at the hearing.

The department may use the same form for the supplemental report, reports from the department to the local foster care review board, and reports compiled for internal department reviews.

(C)(1) At the permanency planning hearing, the court shall ~~review the department’s~~ approve a plan for achieving permanence for the child. Before approving a plan, the court shall review the proposed plans of the department, the guardian ad litem, and the local foster care review board and shall address the recommendations of each proposed plan on the record. An evidentiary hearing must be held if requested by a named party or party in interest.

(2) If the department’s plan is not reunification with the parents, custody or guardianship with a fit and willing relative, or termination of parental rights, the department must show compelling reasons for the selection of another permanent plan. If the court approves a plan that is not reunification with the parents, custody or guardianship with a fit and willing relative, or termination of parental rights, the court must find compelling reasons for approval of the plan and that the plan is in the child’s best interests.

(3) In addition to the requirements in items (1) and (2), at each permanency planning hearing, the court shall review the caregiver’s and the department’s efforts to ensure that the child has regular, ongoing opportunities to engage in age‑appropriate activities, including activities not listed in the child’s service plan.”

SECTION 3. Section 63‑7‑2310 of the 1976 Code is amended to read:

“Section 63‑7‑2310. (A) To protect and nurture children in foster care, the Department of Social Services and its employees shall:

(1) use its best efforts to normalize the lives of children in the custody of the department by allowing a caregiver, without the department’s prior approval, to make decisions similar to those a parent would be entitled to make regarding a child’s participation in age‑appropriate activities. In determining whether to allow a child in the custody of the department to participate in an activity, a caregiver must exercise the standard of care of a reasonable and prudent parent;

(2) adhere strictly to the prescribed number of personal contacts, pursuant to Section ~~63‑7‑1680(B)(3)~~ 63‑7‑1680(E)(4). These contacts must be personal, face‑to‑face visits between the caseworker or member of the casework team and the foster child. These visits may be conducted in the foster home and in the presence of other persons who reside in the foster home; however, if the caseworker suspects that the child has been abused or neglected during the placement with the foster parent, the caseworker must observe and interview the child outside the presence of other persons who reside in the foster home;

~~(2)~~(3) ensure that a caseworker interviews the foster parent, either in person or by telephone, at least once each month. No less frequently than once every two months, ensure that a caseworker or member of the casework team interviews the foster parent face‑to‑face during a visit in the foster home;

~~(3)~~(4) ensure that a caseworker interviews other adults residing in the foster home, as defined in Section 63‑1‑40, face‑to‑face at least once each quarter. A foster parent must notify the department if another adult moves into the home, and the caseworker must interview the adult face‑to‑face within one month after receiving notice. Interviews of foster parents pursuant to item ~~(2)~~ (3) and of other adults residing in the home pursuant to this item may be conducted together or separately at the discretion of the department;

~~(4)~~(5) ensure that its staff visit in the foster home and interview the foster parent or other adults in the home more frequently when conditions in the home, circumstances of the foster children, or other reasons defined in policy and procedure suggest that increased oversight or casework support is appropriate. When more than one caseworker is responsible for a child in the foster home, the department may assign one caseworker to conduct the required face‑to‑face interview with the other adults residing in the foster home;

~~(5)~~(6) provide to the foster child, if age appropriate, a printed card containing a telephone number the child may use to contact a designated unit or individual within the Department of Social Services and further provide an explanation to the child that the number is to be used if problems occur which the child believes his or her caseworker cannot or will not resolve;

~~(6)~~(7) strongly encourage by letter of invitation, provided at least three weeks in advance, the attendance of foster parents to all Foster Care Review Board proceedings held for children in their care. If the foster parents are unable to attend the proceedings, they must submit a progress report to the ~~Office of the Governor, Division of~~ Foster Care Review Board, at least three days prior to the proceeding. Failure of a foster parent to attend the Foster Care Review Board proceeding or failure to submit a progress report to the ~~Division of~~ Foster Care Review Board does not require the board to delay the proceeding. The letter of invitation and the progress report form must be supplied by the agency;

~~(7)~~(8) be placed under the full authority of sanctions and enforcement by the family court pursuant to Section 63‑3‑530(30) and Section 63‑3‑530(36) for failure to adhere to the requirements of this subsection.

(B) If the department places a child in foster care in a county which does not have jurisdiction of the case, the department may designate a caseworker in the county of placement to make the visits required by subsection (A).

(C) In fulfilling the requirements of subsection (A), the Department of Social Services shall reasonably perform its tasks in a manner which is least intrusive and disruptive to the lives of the foster children and their foster families.

(D) The Department of Social Services, in executing its duties under subsection ~~(A)(4)~~ (A)(5), must provide a toll free telephone number which must operate twenty‑four hours a day.

(E) Any public employee in this State who has actual knowledge that a person has violated any of the provisions of subsection (A) must report those violations to the state office of the Department of Social Services; however, the Governor’s Division of Foster Care Review must report violations of subsection ~~(A)(4)~~ (A)(5) in their regular submissions of advisory decisions and recommendations which are submitted to the family court and the department. Any employee who knowingly fails to report a violation of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(F) Foster parents have a duty to make themselves reasonably available for the interviews required by subsection ~~(A)(2)~~ (A)(3) and to take reasonable steps to facilitate caseworkers’ interviews with other adults who reside in the home as required by subsection ~~(A)(3)~~ (A)(4). Failure to comply with either the duties in this subsection or those in subsection ~~(A)(3)~~ (A)(4) constitutes grounds for revocation of a foster parent’s license or other form of approval to provide care to children in the custody of the department. Revocation would depend on the number of instances of noncompliance, the foster parents’ wilfulness in noncompliance, or other circumstances indicating that noncompliance by the foster parents significantly and unreasonably interferes with the department’s ability to carry out its protective functions under this section.

(G) ~~To further this state’s long‑term goals and objectives on behalf of children in foster care, the Department of Social Services shall give to the General Assembly by January 15, 2000, a report of the status of the foster care system which includes improvements the department has made to ensure the safety and quality of life of South Carolina’s foster children. This report must include:~~

~~(1)~~ ~~specific standards for the training of foster parents, including the type of training which is provided;~~

~~(2)~~ ~~standards which address emergency situations affecting the maximum number of children placed in each foster home;~~

~~(3)~~ ~~standards which provide for the periodic determination of the medical condition of a child during his stay in foster care; and~~

~~(4)~~ ~~methods the department has developed to encourage the receipt of information on the needs of children in foster care from persons who have been recently emancipated from the foster care system.~~

The department shall adopt and implement policies consistent with this section promoting a caregiver’s ability to make decisions described by subsection (A)(1). The department shall identify and review any department policy or procedure that may impede a caregiver’s ability to make such decisions and shall ensure all out‑of‑home providers have policies consistent with this section.

The department shall incorporate into its training for foster parents, kinship caregivers, and agency personnel the importance of a child’s participation in age‑appropriate activities, the benefits of such activities to a child’s physical and mental well‑being, and decision‑making under the standard of care of a reasonable and prudent parent.”

SECTION 4. Section 63‑11‑720 of the 1976 Code is amended to read:

“Section 63‑11‑720. (A) The functions and powers of local foster care review boards are:

(1) to review ~~every six months but~~ no less frequently than once every six months the cases of children who have resided in public foster care for a period of more than four consecutive months ~~and to review every six months the cases of children who have resided in private foster care for a period of more than six consecutive months~~ to determine what efforts have been made by the supervising agency or child caring facility to acquire a permanent home for the child. However, the local review board shall have the discretion to review the case of any child once probable cause has been established to retain the child in foster care. The local foster care review board also has the discretion to review a case more frequently than once every six months as it deems necessary.

(2) Following review of a case pursuant to this section, the local foster care review board shall submit a written report and recommendations to the court concerning the case which must be addressed on the record by the court at the next permanency planning hearing pursuant to Section 63‑7‑1700(C)(1). In order for the report and recommendations of the foster care review board to be easily identifiable and accessible by the judge, the report and recommendations must be visually distinct from other documents in the case file in their coloring or other prominent aspect. The local foster care review board also shall submit a quarterly status report to the chief administrative family court judge in that board’s judicial circuit. The quarterly status report must include, but is not limited to, a list of cases where legal delays exist and other cases of special concern. A child’s return home for temporary placements, trial placements, visits, holidays, weekend visits, or changes from one foster care placement to another must not be construed to mean a break or lapse in determination of a consecutive four‑month period for children in public foster care ~~or six‑month period for children in private foster care~~;

~~(2)~~ ~~to recommend continued placement of a child in the child caring facility, unless the parent is able to resume care, in at least those instances when:~~

~~(a)~~ ~~children are privately placed in privately‑owned facilities or group homes;~~

~~(b)~~ ~~a notarized affidavit of summary review is executed by the child caring facility and is valid on its face. The affidavit of summary review must be submitted to the board every six months and accepted by the board if it is valid on its face. The affidavit must attest to the following conditions:~~

~~(i)~~ ~~the person who placed the child has legal custody of the child;~~

~~(ii)~~ ~~no court has ordered or approved the placement of the child in the care of the child caring facility except as a part of an order granting legal custody of the child to a parent or legal guardian;~~

~~(iii)~~ ~~the facility has no knowledge that a child has ever been abused, neglected, or abandoned while under the care of the person who placed the child in the facility;~~

~~(iv)~~ ~~the person who placed the child contributes regularly to the support of the child to the level of his ability and has done so for a period of six months immediately prior to the date of the affidavit;~~

~~(v)~~ ~~the person who placed the child has maintained contact and visitation with the child to the best of his ability under existing circumstances.~~

(3) to encourage the return of children to their natural parents, ~~except as provided in item (2) of this section,~~ or, upon determination during a case review of the local review board that this return is not in the best interest of the child, to recommend to the appropriate agency action be taken for a maximum effort to place the child for adoption;

(4) to promote and encourage all agencies and facilities involved in placing children in foster care to place children with persons suitable and eligible as adoptive parents;

(5) to advise foster parents of their right to petition the family court for termination of parental rights and for adoption and to encourage these foster parents to initiate these proceedings in an appropriate case when it has been determined by the local review board that return to the natural parent is not in the best interest of the child;

(6) to recommend that a child caring facility or agency exert all possible efforts to make arrangements for permanent foster care or guardianship for children for whom return to natural parents or adoption is not feasible or possible as determined during a case review by the local review board;

(7) to report to the state office of the Department of Social Services and other adoptive or foster care agencies any deficiencies in these agencies’ efforts to secure permanent homes for children discovered in the local board’s review of these cases as provided for in ~~items~~ item (1) ~~and (2) of this section~~.

(B) Any case findings or recommendations of a local review board are advisory.”

SECTION 5. Section 63‑11‑750 of the 1976 Code is amended to read:

“Section 63‑11‑750. The Foster Care Review Board may participate through counsel in ~~judicial reviews~~ child abuse and neglect proceedings pursuant to Sections 63‑7‑1660, 63‑7‑1700, and 63‑7‑2520 and in any hearing held pursuant to a motion filed by a named party or party in interest. Participation includes the right to introduce, examine, and cross‑examine witnesses and to present arguments to the court, but the Foster Care Review Board shall file a motion to intervene if it intends to become a party to the action. There is a rebuttable presumption that the motion to intervene must be granted, absent a showing that intervention would be unjust or inappropriate in a particular case.”

SECTION 6. This act takes effect upon approval by the Governor.

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