**A** **BILL**

TO AMEND SECTION 63‑7‑2570, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO GROUNDS FOR TERMINATING PARENTAL RIGHTS TO A CHILD, SO AS TO CLARIFY THE GROUNDS OF WILFUL FAILURE TO VISIT THE CHILD AND WILFUL FAILURE TO SUPPORT THE CHILD IN THE CASE OF AN INCARCERATED PARENT.

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

SECTION 1. Section 63‑7‑2570 (3) and (4) of the 1976 Code is amended to read:

“(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. For an incarcerated parent, the court shall take into consideration the nature of the parent‑child relationship during the time when the parent was not incarcerated, including the extent of parent‑child contact before incarceration, and during the time the parent is incarcerated, when determining whether the parent’s failure to visit while incarcerated reflects a settled purpose to forego the parental duty to visit the child. If the incarcerated parent does not have the ability to visit or communicate with the child while incarcerated, the court may not determine that the parent’s failure to visit while incarcerated reflects a settled purpose to forego parental duty to visit the child. It is presumed that the incarcerated parent does not have the ability to visit or communicate with the child who is in the custody of the department.

(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. For an incarcerated parent, the court shall take into consideration the nature of the parent‑child relationship during the time when the parent was not incarcerated, including whether the parent made material contributions to the child’s care before incarceration, and during the time the parent is incarcerated, when determining whether the parent’s failure to support while incarcerated reflects a settled purpose to forego the parental duty to support the child. If the incarcerated parent does not have the ability to make a material contribution to the child’s care while incarcerated, the court may not determine that the parent’s failure to support while incarcerated reflects a settled purpose to forego the parental duty to support the child. It is presumed that the incarcerated parent may not have the ability to support the child who is in the custody of the department. In determining whether the incarcerated parent has provided support, the court may consider any third‑party support paid on behalf of the incarcerated parent.”

SECTION 2. This act takes effect upon approval by the Governor.

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