**South Carolina General Assembly**

125th Session, 2023-2024

**A195, R203, H3220**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. W. Newton, Carter, Mitchell, Haddon, Pope, Chumley and Caskey

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Last Amended on May 7, 2024

Currently residing in the House

Governor's Action: May 21, 2024, Signed

Summary: Uniform Child Abduction Prevention Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/8/2022 House Prefiled

12/8/2022 House Referred to Committee on **Judiciary**

1/10/2023 House Introduced and read first time ([House Journal‑page 97](h:\hj\20230110.docx))

1/10/2023 House Referred to Committee on **Judiciary** ([House Journal‑page 97](h:\hj\20230110.docx))

4/19/2023 House Committee report: Favorable **Judiciary** ([House Journal‑page 23](h:\hj\20230419.docx))

4/21/2023 Scrivener's error corrected

4/25/2023 House Member(s) request name added as sponsor: Caskey

4/26/2023 House Requests for debate-Rep(s). McCravy, Harris, Magnuson, Cromer, Nutt, Burns, Chumley, Long, White, TA Morgan, May, Erickson ([House Journal‑page 25](h:\hj\20230426.docx))

5/2/2023 House Debate adjourned ([House Journal‑page 41](h:\hj\20230502.docx))

5/3/2023 House Amended ([House Journal‑page 80](h:\hj\20230503.docx))

5/3/2023 House Read second time ([House Journal‑page 80](h:\hj\20230503.docx))

5/3/2023 House Roll call Yeas-102 Nays-0 ([House Journal‑page 82](h:\hj\20230503.docx))

5/4/2023 House Read third time and sent to Senate ([House Journal‑page 112](h:\hj\20230504.docx))

5/4/2023 Senate Introduced and read first time ([Senate Journal‑page 11](h:\sj\20230504.docx))

5/4/2023 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 11](h:\sj\20230504.docx))

1/19/2024 Senate Referred to Subcommittee: Hutto (ch), Rice, Senn,
Adams, Tedder

4/23/2024 Senate Referred to Subcommittee: Hutto (ch), Adams,
Garrett, Gustafson, Tedder

5/1/2024 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 6](h:\sj\20240501.docx))

5/7/2024 Senate Committee Amendment Adopted

5/7/2024 Senate Amended

5/7/2024 Senate Roll call Ayes-45 Nays-0

5/8/2024 Senate Read third time and returned to House with amendments ([Senate Journal‑page 93](h:\sj\20240508.docx))

5/9/2024 House Concurred in Senate amendment and enrolled ([House Journal‑page 26](h:\hj\20240509.docx))

5/9/2024 House Roll call Yeas-91 Nays-1 ([House Journal‑page 26](h:\hj\20240509.docx))

5/15/2024 Ratified R 203

5/21/2024 Signed By Governor

5/29/2024 Effective date 05/21/24

5/29/2024 Act No. 195

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**VERSIONS OF THIS BILL**

[12/08/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/3220_20221208.docx)

[04/19/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3220_20230419.docx)

[04/21/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3220_20230421.docx)

[05/04/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3220_20230504.docx)

[05/01/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/3220_20240501.docx)

[05/07/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/3220_20240507.docx)

(A195, R203, H3220)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING ARTICLE 6 TO CHAPTER 15, TITLE 63 SO AS TO ENACT THE “UNIFORM CHILD ABDUCTION PREVENTION ACT”, TO PROVIDE A LEGAL MECHANISM TO PROTECT CHILDREN FROM CREDIBLE RISKS OF ABDUCTION RELATED TO LEGAL CUSTODY OR VISITATION, AND FOR OTHER PURPOSES; AND BY AMENDING SECTIONS 63‑7‑2340, 63‑7‑2345, 63‑7‑2350, 63‑13‑50, 63‑13‑60, 63‑13‑190, 63‑13‑420, 63‑13‑430, 63‑13‑620, 63‑13‑630, 63‑13‑820, 63‑13‑830, 63‑13‑1010, AND 63‑11‑70, RELATING TO FINGERPRINT REVIEWS AND BACKGROUND CHECK REQUIREMENTS FOR FOSTER PARENTS, ADOPTIVE PARENTS, CHILD PROTECTIVE SERVICE WORKERS, OTHER CHILD WELFARE EMPLOYEES AND VOLUNTEERS, GROUP CHILDCARE HOMES, FAMILY CHLDCARE HOMES, AND RELIGIOUS CHILDCARE CENTERS, AMONG OTHERS, SO AS TO PROVIDE FOR FINGERPRINT‑BASED BACKGROUND CHECKS AND FOR OTHER PURPOSES.

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

Citation

SECTION 1. This act may be cited as the “Uniform Child Abduction Prevention Act”.

Uniform Child Abduction Prevention Act

SECTION 2. Chapter 15, Title 63 of the S.C. Code is amended by adding:

Article 6

Uniform Child Abduction Prevention Act

Section 63‑15‑600. As used in this article:

(1) “Abduction” means the wrongful removal or wrongful retention of a child.

(2) “Child” means an unemancipated individual who is less than eighteen years of age.

(3) “Child‑custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order.

(4) “Child‑custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, or protection from domestic violence.

(5) “Court” means an entity authorized under the law of a state to establish, enforce, or modify a child‑custody determination.

(6) “Petition” means a motion or its equivalent.

(7) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(8) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe or nation.

(9) “Travel document” means records relating to a travel itinerary, including a travel ticket, pass, reservation for transportation*,* or accommodation. The term does not include a passport or visa.

(10) “Wrongful removal” means the taking of a child that breaches rights of custody or visitation given or recognized under the laws of this State.

(11) “Wrongful retention” means the keeping or concealing of a child that breaches rights of custody or visitation given or recognized under the laws of this State.

Section 63‑15‑610. Sections 63‑15‑318, 63‑15‑320, and 63‑15‑322 apply to cooperation and communication among courts in proceedings under this article.

Section 63‑15‑620. (A) A court on its own motion may order abduction prevention measures in a child‑custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child.

(B) A party to a child‑custody determination or another individual or entity having a right under the laws of this State or another state to seek a child‑custody determination for the child may file a petition seeking abduction prevention measures to protect the child under this article.

(C) A prosecutor or public authority designated under Section 63‑15‑378 may seek a warrant to take physical custody of a child under Section 63‑15‑670 or other appropriate prevention measures.

Section 63‑15‑630. (A) A petition under this article may be filed only in a court that has jurisdiction to make a child‑custody determination with respect to the child at issue under S.C. Code Section 63‑15‑300, et seq.

(B) A court of this State has temporary emergency jurisdiction under Section 63‑15‑336 if the court finds a credible risk of abduction.

Section 63‑15‑640. A petition under this article must be verified or supported by a sworn affidavit and include a copy of any existing child‑custody determination, if available. The petition must specify the risk factors for abduction, including the relevant factors described in Section 63‑15‑650. Subject to Section 63‑15‑346(E), if reasonably ascertainable, the petition must contain:

(1) the name, date of birth, and gender of the child;

(2) the customary address and current physical location of the child;

(3) the identity, customary address, and current physical location of the respondent;

(4) a statement of whether a prior action to prevent abduction or domestic violence has been filed by a party or other individual or entity having custody of the child, and the date, location, and disposition of the action;

(5) a statement of whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking, or child abuse or neglect, and the date, location, and disposition of the case; and

(6) any other information required to be submitted to the court for a child‑custody determination under Section 63‑15‑346.

Section 63‑15‑650. (A) In determining whether there is a credible risk of abduction of a child, the court may consider any evidence that the petitioner or respondent:

(1) has previously abducted or attempted to abduct the child;

(2) has threatened to abduct the child;

(3) has recently engaged in activities that may indicate a planned abduction, including:

(a) abandoning employment;

(b) selling a primary residence;

(c) terminating a lease;

(d) closing a bank account or other financial management accounts, liquidating assets, hiding or destroying financial documents, or conducting unusual financial activities;

(e) applying for a passport or visa or obtaining travel documents for the respondent, a family member, or the child; or

(f) seeking to obtain the child’s birth certificate, school or medical records;

(4) has engaged in domestic violence, stalking, child abuse, or neglect;

(5) has refused to follow a child‑custody determination;

(6) lacks strong familial, financial, emotional, or cultural ties to this State or the United States;

(7) has strong familial, financial, emotional, or cultural ties to another state or country;

(8) is likely to take the child to a country that:

(a) is not a party to the Hague Convention on the Civil Aspects of International Child Abduction and does not provide for the extradition of an abducting parent or for the return of an abducted child;

(b) is a party to the Hague Convention on the Civil Aspects of International Child Abduction but:

(i) the Hague Convention on the Civil Aspects of International Child Abduction is not in force between the United States and that country;

(ii) is noncompliant according to the most recent compliance report issued by the United States Department of State; or

(iii) lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention on the Civil Aspects of International Child Abduction;

(c) poses a risk that the child’s physical or emotional health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations committed against children;

(d) has laws or practices that would:

(i) enable the respondent, without due cause, to prevent the petitioner from contacting the child;

(ii) restrict the petitioner from freely traveling to or exiting from the country because of the petitioner’s gender, nationality, marital status, or religion; or

(iii) restrict the child’s ability legally to leave the country after the child reaches the age of majority because of a child’s gender, nationality, or religion;

(e) is included by the United States Department of State on a current list of state sponsors of terrorism;

(f) does not have an official United States diplomatic presence in the country; or

(g) is engaged in active military action or war, including a civil war, to which the child may be exposed;

(9) is undergoing a change in immigration or citizenship status that adversely affects the respondent’s ability to remain in the United States legally;

(10) has had an application for United States citizenship denied;

(11) has forged or presented misleading or false evidence on government forms or supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a Social Security card, a driver’s license, or other government‑issued identification card or has made a misrepresentation to the United States government;

(12) has used multiple names to attempt to mislead or defraud; or

(13) has engaged in any other conduct the court considers relevant to the risk of abduction.

(B) In the hearing on a petition under this article, the court shall consider evidence that the respondent believed in good faith that the respondent’s conduct was necessary to avoid imminent harm to the child or respondent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

Section 63‑15‑660. (A) If a petition is filed under this article, the court may enter an order that must include:

(1) the basis for the court’s exercise of jurisdiction;

(2) the manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding;

(3) a detailed description of each party’s custody and visitation rights and residential arrangements for the child;

(4) a provision stating that a violation of the order may subject the party in violation to civil and criminal penalties; and

(5) identification of the child’s country of habitual residence at the time of the issuance of the order.

(B) If, at a hearing on a petition under this article or on the court’s own motion, the court after reviewing the evidence finds a credible risk of abduction of the child, the court shall enter an abduction prevention order. The order must include the provisions required by subsection (A) and measures and conditions, including those in subsections (C), (D), and (E), that are reasonably calculated to prevent abduction of the child, giving due consideration to the custody and visitation rights of a party. The court shall consider the age of the child, the potential harm to the child from an abduction, the legal and practical difficulties of returning the child to the jurisdiction if abducted, and the reasons for the potential abduction, including evidence of domestic violence, stalking, or child abuse or neglect.

(C) An abduction prevention order may include one or more of the following:

(1) an imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area provide the other party with the following:

(a) the travel itinerary of the child;

(b) a list of physical addresses and telephone numbers at which the child may be reached at specified times; and

(c) a copy of all travel documents;

(2) a prohibition of the respondent directly or indirectly:

(a) removing the child from this State, the United States, or another geographical area without permission of the court or the petitioner’s written consent;

(b) removing or retaining the child in violation of a child‑custody determination;

(c) removing the child from school or a childcare or similar facility; or

(d) approaching the child at a location other than a site designated for supervised visitation;

(3) a requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state;

(4) with regard to the child’s passport:

(a) a direction that the petitioner place the child’s name in the United States Department of State’s Child Passport Issuance Alert Program;

(b) a requirement that the respondent surrender to the court or the petitioner’s attorney any United States or foreign passport issued in the child’s name, including a passport issued in the name of both the parent and the child; and

(c) a prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa;

(5) as a prerequisite to exercising custody or visitation, a requirement that the respondent provide:

(a) to the United States Department of State Office of Children’s Issues and the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport and travel restrictions for the child;

(b) to the court:

(i) proof that the respondent has provided the information in subitem (a); and

(ii) an acknowledgment in a record from the relevant foreign consulate or embassy that no passport application has been made, or passport issued, on behalf of the child;

(c) to the petitioner, proof of registration with the United States Embassy or other United States diplomatic presence in the destination country and with the Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction, if that convention is in effect between the United States and the destination country, unless one of the parties objects; and

(d) a written waiver under the Privacy Act, 5 U.S.C. Section 552a, as amended, with respect to any document, application, or other information pertaining to the child authorizing its disclosure to the court and the petitioner; and

(6) upon the petitioner’s request, a requirement that the respondent obtain an order from the relevant foreign country containing terms identical to the child‑custody determination issued in the United States.

(D) In an abduction prevention order, the court may impose conditions on the exercise of custody or visitation that:

(1) limit visitation or require that visitation with the child by the respondent be supervised until the court finds that supervision is no longer necessary and order the respondent to pay the costs of supervision;

(2) require the respondent to post a bond or provide other security in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay for the reasonable expenses of recovery of the child, including reasonable attorney’s fees and costs if there is an abduction; and

(3) require the respondent to obtain education on the potentially harmful effects to the child from abduction.

(E) To prevent imminent abduction of a child, a court may:

(1) issue a warrant to take physical custody of the child under Section 63‑15‑670 or the laws of this State other than this article;

(2) direct the use of law enforcement to take any action reasonably necessary to locate the child, obtain return of the child, or enforce a custody determination under this article or the laws of this State other than this article; or

(3) grant other relief allowed under the laws of this State other than this article.

(F) The remedies provided in this article are cumulative and do not affect the availability of other remedies to prevent abduction.

Section 63‑15‑670. (A) If a petition under this article contains allegations, and the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed, the court may issue an ex parte warrant to take physical custody of the child.

(B) The respondent on a petition under subsection (A) must be afforded an opportunity to be heard at the earliest possible time after the ex parte warrant is executed, but no later than the next judicial day unless a hearing on that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

(C) An ex parte warrant under subsection (A) to take physical custody of a child must:

(1) recite the facts upon which a determination of a credible risk of imminent wrongful removal of the child is based;

(2) direct law enforcement officers to take physical custody of the child immediately;

(3) state the date and time for the hearing on the petition; and

(4) provide for the safe interim placement of the child pending further order of the court.

(D) If feasible, before issuing a warrant and before determining the placement of the child after the warrant is executed, the court may order a search of the relevant databases of the National Crime Information Center system and similar state databases to determine if either the petitioner or respondent has a history of domestic violence, stalking, or child abuse or neglect.

(E) The petition and warrant must be served on the respondent when or immediately after the child is taken into physical custody.

(F) A warrant to take physical custody of a child, issued by this State or another state, is enforceable throughout this State. If the court finds that a less intrusive remedy will not be effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court may authorize law enforcement officers to make a forcible entry at any hour.

(G) If the court finds, after a hearing, that a petitioner sought an ex parte warrant under subsection (A) for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorney’s fees, costs, and expenses.

(H) This article does not affect the availability of relief allowed under the laws of this State other than this article.

Section 63‑15‑680. An abduction prevention order remains in effect until the earliest of:

(1) the time stated in the order;

(2) the emancipation of the child;

(3) the child’s attaining eighteen years of age; or

(4) time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under Sections 63‑15‑330, 63‑15‑332, and 63‑15‑334.

Section 63‑15‑690. In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Uniform Child Abduction Prevention Act.

Foreign jurisdictions

SECTION 3. Chapter 15, Title 63 of the S.C. Code is amended by adding:

Section 63‑15‑605. A court of this State shall treat a foreign country as it if were a state of the United States for the purpose of applying this article if its child‑custody determination was made under factual circumstances in substantial conformity with the jurisdictional standards of this article and if the child custody laws of that foreign country do not violate fundamental principles of human rights.

Electronic Signature in Global and National Commerce Act

SECTION 4. The Uniform Child Abduction Prevention Act modifies, limits, and supersedes the federal Electronic Signature in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of the act, 15 U.S.C. Section 7001(c) of that act, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Code Commissioner

SECTION 5. After enactment of the provisions of this act, the Code Commissioner is authorized to insert the Reporter’s Comments, as amended, provided by the Reporter for the South Carolina Law Initiative Council, into the annotated version of the provisions of this act, as contained in the South Carolina Code of Laws, after the appropriate provisions. The Reporter’s Comments, prepared by the Reporter for the South Carolina Law Initiative Council with the intent of aiding the user in understanding the provisions to the Uniform Child Abduction Prevention Act, are not considered part of this act and do not indicate legislative intent. The official comments prepared by the Uniform Law Commissioner are not included in this act, but interested users may access these comments at the Uniform Law Commission’s depository website: https://uniformlaws.org.

Foster parent fingerprint‑based background checks

SECTION 6. Sections 63‑7‑2340 through 63‑7‑2350 of the S.C. Code are amended to read:

Section 63‑7‑2340. (A) A person applying for licensure as a foster parent or for approval for adoption placement, for approval as a prospective legal guardian for a child in the custody of DSS, or seeking employment or a volunteer role with direct, unsupervised contact with children under the age of eighteen in a child-placing agency, qualified residential treatment program or residential facility, or a contracted service provider, and a person eighteen years of age or older, residing in a home in which a person has applied to be licensed as a foster parent or an approved adoption placement, must undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history.

(B) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information.

Section 63‑7‑2345. (A) Notwithstanding the provisions of Section 63‑7‑2350, the department is authorized to pay from funds appropriated for foster care the costs of Federal Bureau of Investigation fingerprint‑based background checks for foster care families recruited and selected as potential adoption and foster care providers for children in the custody of the department.

(B) Costs for Federal Bureau of Investigation fingerprint‑based background checks required for prospective employees or volunteers of a qualified residential treatment program or residential facility, or prospective legal guardians or persons in a prospective placement household aged eighteen years and older, must be paid by the individual or entity requesting the background checks.

Section 63‑7‑2350. (A) No child in the custody of the Department of Social Services may be placed in a foster home, adoptive home, legal guardian's home, qualified residential treatment program, or residential facility with a person if the person or anyone eighteen years of age or older residing in the home or a person working or volunteering with direct unsupervised contact with children under the age of eighteen in the qualified residential treatment program or residential facility:

(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 require that all persons referenced in subsection (A) undergo a fingerprint‑based background check to be conducted by the State Law Enforcement Division and a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation. The department also shall 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 Public Website, and the state sex offender registry for applicants and all persons twelve years of age and older residing in the home of an applicant.

(D) This section does not prevent placement in a foster home, adoptive home, qualified residential treatment program, legal guardian’s home, or residential facility 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.

(E) For the purposes of this section, “residential facility” means a group home, residential treatment center, or other facility that, pursuant to a contract with or a license or permit issued by the department, provides residential services to children in the custody of the department. This includes, but is not limited to, child-caring institutions, emergency shelters, group homes, wilderness therapeutic camps, and organizations with supervised individual living facilities.

(F) Notwithstanding the provisions in this section, in the discretion of the department when it is in a child’s best interest, a child may be placed in the home of a kin or fictive kin caregiver who has been convicted of or has plead guilty or nolo contendere to a criminal offense described in this section if more than five years have elapsed since the conviction, guilty plea, or nolo contendere plea and the criminal offense was not a violent crime as defined in Section 16‑1‑60 or a felony involving violence including, but not limited to, child abuse and neglect, domestic violence, or any crime against a child.

Childcare facility employee fingerprint‑based background checks

SECTION 7. Sections 63‑13‑50 and 63‑13‑60 of the S.C. Code are amended to read:

Section 63‑13‑50. The fingerprint‑based background checks required by this chapter are not required of a certified education personnel who has undergone a fingerprint‑based background check pursuant to Section 59‑26‑40 or of a person licensed as a foster parent who has undergone a state and federal fingerprint‑based background check pursuant to Section 63‑7‑2340, and the results of these fingerprint‑based background checks have been submitted to the department and the person has remained employed since the fingerprint‑based background check in certified education or licensed as a foster parent or the fingerprint‑based background checks have been conducted within the preceding six months.

Section 63‑13‑60. For conducting a state fingerprint‑based criminal history record check as required by this chapter, the State Law Enforcement Division may not impose a fee greater than the fee imposed by the Federal Bureau of Investigation for conducting such a fingerprint‑based background check.

Department of Social Services’ employee fingerprint‑based background checks

SECTION 8. Section 63‑13‑190 of the S.C. Code is amended to read:

Section 63‑13‑190. (A)(1) Before the Department of Social Services employs a person in its childcare licensing or child protective services divisions, the person shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history. No person may be employed in these divisions if the person has been convicted of or pled guilty or nolo contendere to any crime listed in Section 63‑13‑40(A).

(2) A volunteer or an employee of a contractor or subcontractor who contracts for delivery of protective services, family preservation services, foster care services, family reunification services, adoption services, and other related services or programs or a person who has direct unsupervised contact with a child in the custody of the Department of Social Services shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history. No person may be employed by a contractor or a subcontractor, act in a volunteer capacity, or have access to a child in the custody of the department if the person has been convicted of or pled guilty or nolo contendere to any crime listed in Section 63‑13‑40(A).

(3) Persons in subsection (A)(1) and (2) shall also submit to a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the state sex offender registry pursuant to Section 23‑3‑430.

(4) This section does not prohibit employment when a conviction or plea of guilty or nolo contendere for one of the crimes listed has been pardoned. However, notwithstanding the entry of a pardon, the department 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 for employment.

(B) Notwithstanding subsection (A) or any other provision of law, a person may be provisionally employed in the childcare licensing or child protective services divisions upon receipt and review of the results of the State Law Enforcement Division fingerprint‑based background check if the results show no convictions of the crimes referenced in subsection (A). Pending receipt of the results of the Federal Bureau of Investigation fingerprint‑based background check, the department must obtain from the prospective employee a written affirmation on a form provided by the department that the employee has not been convicted of any crime referenced in Section 63‑13‑40.

(C) A person who has been convicted of a crime referenced in subsection (A) who applies for employment with the childcare licensing or child protective services divisions, or with a contractor or subcontractor of DSS, or applies or seeks to act in a volunteer capacity for such entities, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(D) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information.

(E) The department shall be responsible for the costs of background checks for prospective employees of the childcare licensing and child protective services divisions. The costs for other fingerprints required under this section shall be the responsibility of the individual, contractor, or subcontractor. Fees shall not exceed the actual cost of processing and administration.

Group family childcare homes, fingerprint‑based background checks

SECTION 9. Section 63‑13‑420(G), (H), (I), and (J) of the S.C. Code is amended to read:

(G) A person eighteen years of age or older living in a group family childcare home, and any person eighteen years of age or older who moves into a group family childcare home after an initial application for licensing is approved, shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. The fingerprint‑based background checks required by this subsection are required to be repeated every five years.

(H) A person fifteen through seventeen years of age living in a group family childcare home, and any person fifteen through seventeen years of age who moves into a group family childcare home after an initial application for licensing is approved, shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The fingerprint‑based background checks required by this subsection are required to be repeated every five years.

(I) A person applying for a license as an operator under this section shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. If a person is not employed or does not provide caregiver services for six months or longer, then the fingerprint‑based background checks must be repeated. The fingerprint‑based background checks required by this subsection are required to be repeated every five years.

(J) A person applying for a license as an operator under this section or seeking employment or seeking to provide caregiver services at a facility licensed under this section shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. If a person is not employed or does not provide caregiver services for six months or longer, then the fingerprint‑based background checks must be repeated. The fingerprint‑based background checks required by this subsection are required to be repeated every five years.

Childcare center license renewal, fingerprint‑based background checks

SECTION 10. Section 63‑13‑430(F) of the S.C. Code is amended to read:

(F) A licensee seeking license renewal under this section, its employees, and its caregivers, who have not done so previously, on the first renewal after June 30, 1995, shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

Statement of approval, fingerprint‑based background checks

SECTION 11. Section 63‑13‑620(C) of the S.C. Code is amended to read:

(C) A person applying for approval under this section shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. The fingerprint‑based background checks required by this subsection are required to be repeated every five years.

Statement of approval renewal, fingerprint‑based background checks

SECTION 12. Section 63‑13‑630(D)(1) of the S.C. Code is amended to read:

(1) A person applying for approval renewal under this section, a person who will operate the facility, and its employees and caregivers, who have not done so previously, on the first approval renewal after June 30, 1995, shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

Family childcare homes, fingerprint‑based background checks

SECTION 13. Section 63‑13‑820(C) and (D) of the S.C. Code is amended to read:

(C) A person applying to become a registered operator of a family childcare home under this section, a person eighteen years of age or older living in the family childcare home, and any person eighteen years of age or older who moves into the family childcare home after the initial application for registration is approved shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The fingerprint‑based background checks required by this subsection are required to be repeated every five years.

(D) A person fifteen through seventeen years of age living in a family childcare home and any person fifteen through seventeen years of age who moves into a family childcare home after an initial application for registration is approved shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The fingerprint‑based background checks required by this subsection are required to be repeated every five years.

Family childcare homes, fingerprint‑based background checks

SECTION 14. Section 63‑13‑830(C)(1) of the S.C. Code is amended to read:

(1) A person applying for renewal of registration as an operator of a family childcare home registered under this article and a person employed or providing caregiver services at a family childcare home registered under this article, who has not done so previously, on the first renewal after June 30, 1996, shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

Religious childcare centers, fingerprint‑based background checks

SECTION 15. Section 63‑13‑1010(E), (G), and (H) of the S.C. Code is amended to read:

(E) A person applying for a license or registration as an operator of a church or religious childcare center shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. If a person is not employed or does not provide caregiver services for six months or longer, then the fingerprint‑based background checks must be repeated. The fingerprint‑based background checks required by this subsection are required to be repeated every five years.

(G) A person applying for a license or registration as an operator of a church or religious childcare center or seeking employment or seeking to provide caregiver services at a church or religious childcare center shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. The fingerprint‑based background checks required by this subsection are required to be repeated every five years.

(H) A person applying for renewal of a license or registration as an operator of a church or religious childcare center licensed or registered under this chapter and a person employed or registered under this chapter, who has not done so previously, on the first renewal after June 30, 1996, shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

Background checks

SECTION 16. Section 63‑11‑70 of the S.C. Code is amended to read:

Section 63‑11‑70. (A) A person seeking employment with a child welfare agency for a position with direct unsupervised contact with children must undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history. A person seeking to serve as a volunteer with a child welfare agency for a position with direct unsupervised contact with children must undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history. Additionally, the persons described in this section must also undergo a check of the State Central Registry of Child Abuse and Neglect, DSS department records, the equivalent registry system for each state in which the person has resided for five years preceding an application for employment or as a volunteer, the National Sex Offender Public Website, and the state sex offender registry.

(B) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information.

(C) Costs for Federal Bureau of Investigation fingerprint‑based background checks required for prospective employees of a child welfare agency must be paid by the individual or entity requesting the background checks.

(D) When a provision of law or regulation provides for a criminal history background check in connection with licensing, placement, service as a volunteer, or employment with a child welfare agency, the provision of law or regulation may not operate to prohibit licensing, placement, service as a volunteer, or employment when a conviction or plea of guilty or nolo contendere has been pardoned. However, notwithstanding the entry of a pardon, the department, child welfare agency, or employer may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited for licensing, placement, service as a volunteer, or employment.

Savings

SECTION 17. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Severability

SECTION 18. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 19. This act takes effect upon approval by the Governor.

Ratified the 15th day of May, 2024.

Approved the 21st day of May, 2024.

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