**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3201**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Whipper

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Introduced in the House on January 13, 2009

Currently residing in the House Committee on **Judiciary**

Summary: Child's right to counsel

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/16/2008 House Prefiled

12/16/2008 House Referred to Committee on **Judiciary**

1/13/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\01-13-09.docx)‑89

1/13/2009 House Referred to Committee on **Judiciary** [HJ](file:///h:\HJ%20Archive\2009\01-13-09.docx)‑89

**VERSIONS OF THIS BILL**

[12/16/2008](file:///p:\pprever\2009-10\3201_20081216.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63‑19‑1050 SO AS TO PROVIDE THAT A CHILD OR THE CHILD’S PARENT OR GUARDIAN MAY NOT WAIVE THE CHILD’S RIGHT TO COUNSEL WHEN THE FAMILY COURT PROCEEDING MAY RESULT IN DETENTION OR CONFINEMENT OF THE CHILD; AND TO AMEND SECTIONS 63-19-830 AND 63-19-1030, RELATING TO FAMILY COURT DETENTION HEARINGS AND PREHEARING INQUIRIES AND INVESTIGATIONS, RESPECTIVELY, BOTH SO AS TO DELETE PROVISIONS ALLOWING A CHILD TO WAIVE THE RIGHT TO COUNSEL UNDER CERTAIN CIRCUMSTANCES.

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

SECTION 1. Article 9, Chapter 19, Title 63 of the 1976 Code is amended by adding:

“Section 63‑19‑1050. A child or parent or guardian of a child involved in a family court proceeding which may result in detention or confinement of the child may not waive the child’s right to counsel.”

SECTION 2. Section 63‑19‑830 of the 1976 Code, as added by Act 361 of 2008 is amended to read:

“Section 63‑19‑830. (A) If the officer who took the child into custody has not released the child to the custody the child’s parents or other responsible adult, the court shall hold a detention hearing within forty‑eight hours from the time the child was taken into custody, excluding Saturdays, Sundays, and holidays. At this hearing, the authorized representative of the department shall submit to the court a report stating the facts surrounding the case and a recommendation as to the child’s continued detention pending the adjudicatory and dispositional hearings. The court shall appoint counsel for the child if none is retained. ~~No~~ A child may not proceed without counsel in this hearing~~, unless the child waives the right to counsel and then only after consulting at least once with an attorney~~. At the conclusion of this hearing, the court shall determine whether probable cause exists to justify the detention of the child and the appropriateness of, and need for, the child’s continued detention. If continued detention of a juvenile is considered appropriate by the court and if a juvenile detention facility exists in that county which meets state and federal requirements for the secure detention of juveniles or if that facility exists in another county with which the committing county has a contract for the secure detention of its juveniles and if commitment of a juvenile by the court to that facility does not cause the facility to exceed its design and operational capacity, the family court shall order the detention of the juvenile in that facility. A juvenile must not be detained in secure confinement in excess of ninety days except in exceptional circumstances as determined by the court. A detained juvenile is entitled to further and periodic review:

(1) within ten days following the juvenile’s initial detention hearing;

(2) within thirty days following the ten‑day hearing; and

(3) at any other time for good cause shown upon motion of the child, the State, or the department.

If the child does not qualify for detention or otherwise require continued detention ~~under~~ pursuant to the terms of Section 63‑19‑820(A) or (B), the child must be released to a parent, guardian, or other responsible person.

(B) A juvenile ordered detained in a facility must be screened within twenty‑four hours by a social worker or if considered appropriate by a psychologist in order to determine whether the juvenile is emotionally disturbed, mentally ill, or otherwise in need of services. The services must be provided immediately.”

SECTION 3. Section 63‑19‑1030 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

“Section 63‑19‑1030. (A) ~~Whenever~~ If a person informs the court that a child is within the purview of this chapter, the court shall make preliminary inquiry to determine whether the interest of the public or of the child requires that further action be taken. ~~Thereupon,~~ The court may make an informal adjustment as is practicable without a petition or may authorize a petition to be filed by any person.

(B) The petition and all subsequent court documents must be entitled:

‘In the Family Court of \_\_\_\_ County.

In the Interest of \_\_\_, a child under seventeen years of age.’

The petition must be verified and may be upon information and belief. It shall set forth plainly:

(1) the facts which bring the child within the purview of this chapter;

(2) the name, age, and residence of the child;

(3) the names and residences of the child’s parents; and

(4) the name and residence of a legal guardian, if there is one, of the person or persons having custody of or control of the child, or of the nearest known relative if no parent or guardian can be found. If any of these facts are not known by the petitioner, the petition ~~shall~~ must state that.

(C) Before the hearing of a case of a child, the judge shall cause an investigation of all the facts pertaining to the issue to be made. The investigation ~~shall~~ must consist of an examination of the parentage and surroundings of the child, the child’s age, habits and history, and also ~~shall~~ must include inquiry into the home conditions, habits and character of the child’s parents or guardian, if ~~that is~~ necessary in the discretion of the court. In these cases the court, if advisable, shall cause the child to be examined as to the child’s mentality by a competent and experienced psychologist or psychiatrist who shall make a report of the findings. Before the hearing in the case of a child, if the child attends school, a report on the child must be obtained from the school which the child attends. The school officials shall furnish the report upon the request of the court or its probation counselor. The court, when it is considered necessary, shall cause a complete physical examination to be made of the child by a competent physician.

(D) In a case where the delinquency proceedings may result in commitment to an institution in which the child’s freedom is curtailed, the child or the child’s parents or guardian must be given written notice with particularity of the specific charge or factual allegations to be considered at the hearing. The notice must be given as soon as practicable and sufficiently in advance to permit preparation. The child or the child’s parent or guardian also must be advised in the notice of their right to be represented by counsel and that, if they are unable to employ counsel, counsel will be appointed to represent them. In the hearing, the parent and child also must be expressly informed of their right to counsel ~~and must be specifically required to consider whether they do or do not waive the right of counsel~~.”

SECTION 4. 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.

SECTION 5. 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.

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

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