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COMMITTEE REPORT

March 23, 2022

**H. 3509**

Introduced by Reps. Fry, Felder, Bernstein, Collins, Kimmons, Robinson, Haddon, V.S. Moss, Pope, Forrest, J.L. Johnson, W. Cox, Carter, Oremus, Henegan, Jefferson and R. Williams

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Read the first time March 10, 2022.

**THE COMMITTEE ON**

**FAMILY AND VETERANS' SERVICES**

To whom was referred a Bill (H. 3509) to amend the Code of Laws of South Carolina, 1976, by adding Article 8 to Chapter 7, Title 63 so as to establish an extended foster care program and related, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

KATRINA F. SHEALY for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 8 TO CHAPTER 7, TITLE 63 SO AS TO ESTABLISH AN EXTENDED FOSTER CARE PROGRAM AND RELATED PROCEDURES TO ENABLE CERTAIN CHILDREN IN THE CUSTODY OF THE DEPARTMENT OF SOCIAL SERVICES ON THEIR EIGHTEENTH BIRTHDAY TO CONTINUE TO RECEIVE SERVICES AND SUPPORTS FROM THE DEPARTMENT UNTIL THE AGE OF TWENTY-ONE; TO DEFINE TERMS; TO PROVIDE FOR VOLUNTARY AND COURT-ORDERED EXTENDED FOSTER CARE; TO REQUIRE CASE REVIEW AND PERMANENCY PLANNING; AND FOR OTHER PURPOSES; AND TO AMEND SECTION 63-7-1700, RELATING TO PERMANENCY PLANNING HEARINGS, SO AS TO MAKE CONFORMING CHANGES.

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

SECTION 1. Chapter 7, Title 63 of the 1976 Code is amended by adding:

“Article 8

Extended Foster Care for Persons Age Eighteen to Twenty-one

Section 63‑7‑2700. The purpose of this article is to establish procedures for a child who is or was in the legal custody of the Department of Social Services on the child’s eighteenth birthday and who has not attained age twenty‑one to receive services and supports that promote emotional well‑being, economic productivity, self‑sufficiency, connection to family and community, and a successful transition to adulthood upon leaving the state’s foster care system.

Section 63‑7‑2710. For purposes of this article:

(1) ‘Administrative case review’ means a review open to the child and if the child consents, the child’s parents, conducted by a panel of appropriate persons. Although at least one member of the panel must be a person who is not responsible for the case management of or the delivery of services to the child or the child’s parents, employees of the Department of Social Services are appropriate persons and may participate as panelist.

(2) ‘Child’ means a person who is or was in the legal custody of the department on the person’s eighteenth birthday, who has not attained age twenty‑one, and who meets at least one of the following requirements:

(a) is completing secondary education or a program leading to an equivalent credential;

(b) is enrolled in an institution which provides post‑secondary or vocational education;

(c) is participating in a program or activity designed to promote or remove barriers to employment;

(d) is employed for at least eighty hours a month; or

(e) is incapable of doing any of the above‑described activities due to a physical, intellectual, emotional, or psychiatric condition that limits participation, and the presence of the condition is supported by regularly updated information in the transition plan.

(3) ‘Childcare institution’ means a private childcare institution, or a public childcare institution which accommodates no more than twenty‑five children, that is licensed by the department. ‘Childcare institution’ does not include wilderness camps or training schools, nor does it include any facility that exists primarily for the detention or correction of children.

(4) ‘Court’ means the family court.

(5) ‘Department’ means the Department of Social Services.

(6) ‘Foster family home’ means the private home of an individual or family that is licensed by the department and in which a child in foster care has been placed in the care of an individual who resides with the child; has been licensed by the department to be a foster parent that the department deems capable of adhering to the reasonable and prudent parent standard as defined in Section 63‑7‑20(24); provides twenty‑four hour substitute care for children placed away from their parents or other caretakers; and provides care for children subject to capacity limitations set forth in Section 63‑7‑2400. This term also includes kinship, relative, and child‑specific homes.

(7) ‘Legal custody’ means the right to the physical custody, care, and control of the 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.

(8) ‘Placement and care responsibility’ means the authority conveyed through the court, through written authorization prior to the child’s eighteenth birthday, or through a voluntary placement agreement to provide supervision of the child and the child’s placement.

(9) ‘Supervised independent living setting’ means any housing arrangement that is licensed or approved by the department and which makes support services for a successful transition to adulthood available to the child. Case management for the child must be provided by the department or a contracted provider. The child must reside in the setting voluntarily and the setting does not include wilderness camps or training schools, nor does it include any facility that exists primarily for the detention or correction of children.

(10) ‘Transition plan’ means a written case plan that is personalized, as detailed as the child may elect, and that includes specific options on housing, health insurance, education, local opportunities for mentors and for continuing support services, work force supports, and employment services. A transition plan also must include information about the importance of designating another individual to make health care treatment decisions on behalf of the child if the child becomes unable to participate in such decisions and the child does not have, or does not want, a relative who would otherwise be authorized to make such decisions, and provides the child with the option to execute a health care power of attorney or health care proxy.

(11) ‘Voluntary placement agreement’ means a written agreement, binding on the child and the department, which describes at a minimum, the legal status of the child, as well as the rights and obligations of the child and the department while the child is under the placement and care responsibility of the department.

Section 63‑7‑2720. There is created within the Department of Social Services an extended foster care program for eligible children, as the term ‘child’ is defined in Section 63‑7‑2710. An eligible child is under the placement and care responsibility of the department while participating in the program. The department must provide placement in a licensed foster family home, childcare institution, or in an approved or licensed supervised independent living setting. The department shall adopt rules and promulgate regulations as necessary to implement the extended foster care program.

Section 63‑7‑2730. (A) Before a child’s eighteenth birthday, the child may provide written authorization to remain under the placement and care responsibility of the department after the child attains age eighteen and the court may conclude that it is in the child’s best interests to remain under the placement and care responsibility of the department after the child’s eighteenth birthday. In such cases, the court’s jurisdiction shall continue until the court issues an order terminating its jurisdiction. In no case may the court’s jurisdiction pursuant to this article continue beyond the child’s twenty‑first birthday.

(B) Subject to eligibility criteria established by the department, after attaining age eighteen, a child may enter into a voluntary placement agreement with the department to remain under or return to the placement and care responsibility of the department. The department must develop a transition plan for a child who remains in or returns to the placement and care responsibility of the department.

(C) A voluntary placement agreement terminates within one hundred eighty days after it is executed, unless the court determines that it is in the child’s best interests to remain under the placement and care responsibility of the department.

Section 63‑7‑2740. (A) Within thirty days of entering a voluntary placement agreement, the department shall initiate proceedings for the review of the agreement by filing with the court a summons, petition, and supplemental report as outlined in subsection (B). The summons, petition, and supplemental report must be served on the child and must include notice of the procedures to request counsel if the child desires representation at the proceedings. No responsive pleading is required. If the child does not have private representation, an attorney can be requested by the child and provided by the Commission on Indigent Defense under the Rule 608 contract program or Rule 608 of the South Carolina Appellate Court Rules.

(B) The supplemental report must include the following:

(1) information necessary to support a determination that the child is eligible to remain under the placement and care responsibility of the department, that the child wants to remain under the placement and care responsibility of the department, and that remaining under the placement and care responsibility of the department is in the child’s best interests;

(2) the voluntary placement agreement; and

(3) a transition plan which states specific, measurable goals and objectives.

(C) The court shall conduct a hearing on the petition within sixty days of the filing of the petition. The department must provide written notice of the hearing to the child at least ten days before the hearing and the child is entitled to be present for the hearing.

(D) The court shall include its findings and conclusions in a written order that addresses whether:

(1) the child wants to remain under the placement and care responsibility of the department;

(2) remaining under the placement and care responsibility of the department is in the best interests of the child;

(3) the services provided to the child improve placement;

(4) the services provided to the child further the child’s educational or vocational goals, as applicable; and

(5) the department has made reasonable efforts to support the child’s transition to living independently.

(E) Under no circumstances may a voluntary placement agreement exceed a child’s twenty‑first birthday.

Section 63‑7‑2750. (A) A child who is in the legal custody of the department on the child’s eighteenth birthday and who, due to a physical, intellectual, emotional, or psychiatric impairment, cannot execute a voluntary placement agreement in accordance with Section 63‑7‑2730 (B), may remain in foster care beyond the child’s eighteenth birthday and until the department has coordinated appropriate services for a successful transition to adulthood.

(B) Before the child’s eighteenth birthday, at a hearing held pursuant to Section 63‑7‑700, 63‑7‑1660, 63‑7‑1680, or 63‑7‑1700, the court must determine that it is in the child’s best interests to remain under the placement and care responsibility of the department beyond the child’s eighteenth birthday due to a physical, intellectual, emotional, or psychiatric impairment and until the department has coordinated appropriate services for a successful transition to adulthood. The court shall continue to review the child’s status annually pursuant to Section 63‑7‑1700.

(C) The child’s guardian ad litem shall continue to serve as outlined in Section 63‑11‑510. If the child’s guardian ad litem cannot continue to serve, the court shall appoint a guardian ad litem to represent the child as outlined in Section 63‑11‑510.

(D) The jurisdiction of the court continues until the court determines the department has coordinated appropriate transitional services, but in no case may the court’s jurisdiction pursuant to this article exceed the child’s twenty‑first birthday.

Section 63‑7‑2760. (A) The department shall establish a developmentally appropriate administrative process to review the case of a child who remains under the placement and care responsibility or in the legal custody of the department beyond the child’s eighteenth birthday pursuant to Section 63‑7‑2730(B) or 63‑7‑2750.

(B) The department or a contracted provider must conduct an administrative case review no less frequently than once every six months to promote the development of a transition plan designed to help the child acquire the skills necessary to live independently or to promote the delivery of supportive services for the child who, due to physical, intellectual, emotional, or psychiatric impairment, cannot live independently.

(C) Administrative case reviews must include the child and if the child consents, the child’s parents, and any other supportive adult identified by the child.

(D) The panel conducting the administrative case review shall present its findings and conclusions to all parties who are entitled to participate in the administrative case review in a written report on a form approved by the department.

Section. 63‑7‑2770. (A) If a child remains in the legal custody of the department in accordance with Section 63‑7‑2750, permanency planning hearings must be held annually and in accordance with Section 63‑7‑1700. The court shall review the status of the child, the child’s transition plan, and the progress being made to coordinate supportive services for the child’s successful transition to adulthood.

(B) If a child is under the placement and care responsibility of the department in accordance with Section 63‑7‑2730(B), upon motion filed by the department, the court shall conduct a permanency planning hearing. A permanency planning hearing must be held on an annual basis for as long as the child remains under the placement and care responsibility of the department. The department shall attach a supplemental report to the motion for permanency planning that includes the transition plan and the report of the administrative case review conducted pursuant to Section 63‑7‑2760. The motion, supplemental report, and notice of the hearing must be served upon the child at least ten days before the permanency planning hearing and the child is entitled to be present for the hearing. The notice of the hearing must inform the child of the procedures to request counsel if the child desires representation. No responsive pleading is required.

(C) The order issued as a result of a hearing pursuant to subsection (B) must make specific findings regarding progress being made toward the child’s successful transition from the placement and care responsibility of the department and achieving independence, including whether:

(1) the child wants to remain under the placement and care responsibility of the department pursuant to a voluntary placement agreement;

(2) there is a transition plan that contains specific, measurable goals;

(3) the services being provided are designed to support the child’s successful transition to living independently;

(4) the services being provided further the child’s placement, vocational, or educational goals;

(5) additional services are necessary to support the child’s successful transition to living independently; and

(6) the department has made reasonable efforts to support the child’s transition to living independently.

(D) A permanency planning hearing held pursuant to this section meets the requirements of the case review required pursuant to Section 63‑7‑2760.

Section 63‑7‑2780. Upon motion of the child or the department at any time, the court may review the child’s case to address progress being made toward meeting the child’s goals as set forth in the transition plan. The department must provide notice at least ten days before a hearing held pursuant to this section, and the notice must advise the child of the procedures to request counsel if the child desires representation. The child is entitled to be present for the hearing. No responsive pleading is required.

Section 63‑7‑2790. (A) If the department denies, disqualifies, terminates, or suspends a child from participation in the extended foster care program created pursuant to this article, the department shall notify the child in writing of the right to appeal the adverse decision through the department’s fair hearings procedures, unless there is a case pending before the family court that can dispose of the issue. Such notice must be served by certified mail. The notice must explain the fair hearings procedures and must inform the child that notice of intent to appeal must be submitted within thirty days of receipt of the adverse decision. If the department denies, disqualifies, terminates, or suspends a child from participation in the extended foster care program, that child is automatically entitled to representation by a South Carolina licensed attorney. If the child does not have private representation, an attorney can be requested by the child and provided by the Commission on Indigent Defense under the Rule 608 contract program or Rule 608 of the South Carolina Appellate Court Rules.

(B) Judicial review of a final agency decision is in the family court. A child seeking judicial review shall file a petition in the family court within thirty days after the final decision of the department. The child shall serve a copy of the petition upon the department. The family court shall conduct a judicial review in accordance with the standards of review provided for in Section 1‑23‑380. The court may enter judgment upon the pleadings and a certified transcript of the record which must include the evidence upon which the findings and decisions appealed are based. The judgment must include a determination of whether the decision of the department to disqualify, terminate, or suspend the child from participation in the extended foster care program should be affirmed or reversed. The child is not entitled to a trial de novo in the family court.”

SECTION 2. A. Section 63‑7‑1700(H)(8)‑(10) of the 1976 Code is amended to read:

“(8) whether the child has provided written authorization to remain in foster care after the child’s eighteenth birthday and whether the court finds that it would be in the child’s best interests to remain in foster care after the child’s eighteenth birthday for a period not to exceed the child’s twenty‑first birthday pursuant to Article 8;

(9) whether the child’s current placement is safe and appropriate;

~~(9)~~(10) whether the department has made reasonable efforts to assist the parents in remedying the causes of the child’s placement or retention in foster care, unless the court has previously authorized the department to terminate or forego reasonable efforts pursuant to Section 63‑7‑1640; and

~~(10)~~(11) the steps the department is taking to promote and expedite the adoptive placement and to finalize the adoption of the child, including documentation of child specific recruitment efforts.”

B. Section 63‑7‑1700(I)(5) of the 1976 Code is amended to read:

“(5) If the child is retained in foster care pursuant to a plan other than one described in items (1) through (4), future permanency planning hearings must be held at least annually. If the child has provided written authorization to remain in foster care after the child’s eighteenth birthday, the court shall specify whether it is in the child’s best interests to remain in foster care for a period not to exceed the child’s twenty‑first birthday pursuant to Article 8.”

SECTION 3. This act takes effect upon approval by the Governor and is contingent upon funding in the general appropriations bill.

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