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COMMITTEE REPORT

February 18, 2021

**H. 3567**

Introduced by Reps. Bernstein, Collins, Felder and Hosey

S. Printed 2/18/21--H.

Read the first time January 12, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3567) to amend Section 63‑7‑20, as amended, Code of Laws of South Carolina, 1976, relating to terms defined in the Children’s Code, so as to, etc., respectfully

**REPORT:**

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

CHRIS MURPHY for Committee.

**A** **BILL**

TO AMEND SECTION 63‑7‑20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TERMS DEFINED IN THE CHILDREN’S CODE, SO AS TO ADD A DEFINITION FOR “QUALIFIED RESIDENTIAL TREATMENT PROGRAM” AND OTHER TERMS; TO AMEND SECTIONS 63‑7‑1210 AND 63‑7‑2350, AS AMENDED, RELATING TO INVESTIGATIONS OF INSTITUTIONAL ABUSE AND RESTRICTIONS ON FOSTER CARE PLACEMENTS, RESPECTIVELY, SO AS TO MAKE CONFORMING CHANGES; BY ADDING SECTIONS 63‑7‑1730 AND 63‑7‑1740 SO AS TO REQUIRE ASSESSMENT, CASE PLANNING, AND JUDICIAL REVIEW FOR CHILDREN PLACED IN QUALIFIED RESIDENTIAL TREATMENT PROGRAMS; AND TO AMEND SECTION 63‑7‑1700, RELATING TO PERMANENCY PLANNING, SO AS TO MAKE CONFORMING CHANGES.

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

SECTION 1. Section 63‑7‑20(7)‑(27) of the 1976 Code is amended to read:

“(7) ‘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.

(8) ‘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.

~~(8)~~(9) ‘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.

~~(9)~~(10) ‘Court’ means the family court.

~~(10)~~(11) ‘Department’ means the Department of Social Services.

~~(11)~~(12) ‘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.

~~(12)~~(13) ‘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.

~~(13)~~(14) ‘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.

~~(14)~~(15) ‘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.

~~(15)~~(16) ‘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.

~~(16)~~(17) ‘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.

~~(17)~~(18) ‘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.

~~(18)~~(19) ‘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.

~~(19)~~(20) ‘Physical custody’ means the lawful, actual possession and control of a child.

~~(20)~~(21) ‘Physical injury’ means death or permanent or temporary disfigurement or impairment of any bodily organ or function.

~~(21)~~(22) ‘Preponderance of evidence’ means evidence which, when fairly considered, is more convincing as to its truth than the evidence in opposition.

~~(22)~~(23) ‘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.

~~(23)~~(24) ‘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.

(25) ‘Qualified individual’ means a trained professional or licensed clinician. A ‘qualified individual’ may be an employee of the department or affiliated with the placement setting, but the individual must maintain objectivity in determining the appropriate placement for the child.

(26) ‘Qualified residential treatment program’ means a childcare institution that:

(a) has a trauma‑informed treatment model that is designed to address the needs, including clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances and, with respect to a child, is able to implement the treatment identified for the child by the assessment of the child required pursuant to Section 63‑7‑1730;

(b) has registered or licensed nursing staff and other licensed clinical staff who:

(i) provide care within the scope of their practice as defined by state law;

(ii) are on‑site according to the treatment model referred to in subitem (a); and

(iii) are available twenty‑four hours a day and seven days a week;

(c) to the extent appropriate, and in accordance with the child’s best interests, facilitates participation of family members in the child’s treatment program;

(d) facilitates outreach to the family members of the child, including siblings; documents how the outreach is made, including contact information; and maintains contact information for any known biological family and fictive kin of the child;

(e) documents how family members are integrated into the treatment process for the child, including postdischarge, and how sibling connections are maintained;

(f) provides discharge planning and family‑based aftercare support for at least six months postdischarge; and

(g) is licensed by the department and is accredited by any of the following independent, not‑for‑profit organizations:

(i) Commission on Accreditation of Rehabilitation Facilities (CARF);

(ii) Joint Commission on Accreditation of Health Care Organizations (JCAHO):

(iii) Council on Accreditation (COA);

(iv) Teaching Family Association;

(v) Educational Assessment Guidelines Leading Toward Excellence (EAGLE); or

(vi) another organization approved by the department.

~~(24)~~(27) ‘Reasonable and prudent parent standard’ means the standard of care characterized by careful and sensible parental decisions that maintain the health, safety, and best interest of a child while at the same time encouraging the growth and development of the child, that a caregiver shall use when determining whether to allow a child in foster care to participate in age or developmentally appropriate activities.

~~(25)~~(28) ‘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.

~~(26)~~(29) ‘Suspected report’ means all initial reports of child abuse or neglect received pursuant to this chapter.

~~(27)~~(30) ‘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 63‑7‑1210(A) of the 1976 Code is amended to read:

“(A) The Department of Social Services is authorized to receive and investigate reports of abuse and neglect of children who reside in or receive care or supervision in residential institutions, foster homes, qualified residential treatment programs, and childcare facilities. Responsibility for investigating these entities must be assigned to a unit or units not responsible for selecting or licensing these entities. In no case does the Department of Social Services have responsibility for investigating allegations of abuse and neglect in institutions operated by the Department of Social Services.”

SECTION 3. Section 63‑7‑2350(A) of the 1976 Code, as last amended by Act 140 of 2020, before the numbered items, is further amended to read:

“(A) No child in the custody of the Department of Social Services may be placed in a foster home, adoptive 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 in the qualified residential treatment program or residential facility:”

SECTION 4. Subarticle 11, Article 3, Chapter 7, Title 63 of the 1976 Code is amended by adding:

“Section 63‑7‑1730. (A) A child in the department’s custody who is placed in a qualified residential treatment program is subject to assessment, case planning, and documentation requirements as outlined in this section.

(B) Within thirty days of the start of each placement in a qualified residential treatment program, a qualified individual shall:

(1) assess the strengths and needs of the child using an age‑appropriate, evidence‑based, validated, functional assessment tool approved by the department;

(2) determine whether the needs of the child can be met with family members or through placement in a foster family home or, if not, which placement setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and would be consistent with the short‑ and long‑term goals for the child, as specified in the permanency plan for the child; and

(3) develop a list of child‑specific short‑ and long‑term mental and behavioral health goals.

(C) The department shall assemble a child and family team for the child. The qualified individual conducting the assessment required pursuant to this section shall work in conjunction with the child and family team while conducting and making the assessment.

(D) The child and family team shall consist of all appropriate biological family members, relatives, and fictive kin of the child, as well as, appropriate professionals who are a resource to the family of the child, such as teachers, medical or mental health providers who have treated the child, or clergy. In the case of a child who has attained age fourteen, the child and family team shall include the members of the permanency team selected by the child.

(E) The department shall document in the child’s case plan:

(1) the reasonable and good faith efforts of the department to identify and include all the individuals described in subsection (D) on the child and family team;

(2) all contact information for members of the child and family team, as well as contact information for other family members and fictive kin who are not part of the child and family team;

(3) evidence that meetings of the child and family team, including meetings relating to the assessment required pursuant to subsection (B), are held at a time and place convenient for family;

(4) if reunification is the goal, evidence demonstrating that the parent from whom the child was removed provided input on the members of the child and family team;

(5) evidence that the assessment required pursuant to subsection (B) is determined in conjunction with the child and family team;

(6) the placement preferences of the child and family team relative to the assessment that recognizes children should be placed with their siblings unless there is a finding by the court that such placement is contrary to their best interest; and

(7) if the placement preferences of the child and family team and child are not the placement setting recommended by the qualified individual conducting the assessment pursuant to subsection (B), the reasons why the preferences of the team and of the child were not recommended.

(F) In the case of a child who the qualified individual conducting the assessment pursuant to subsection (B) determines should not be placed in a foster family home, the qualified individual shall specify in writing the reasons why the needs of the child cannot be met by the family of the child or in a foster family home. A shortage or lack of foster family homes is not an acceptable reason for determining that the needs of the child cannot be met in a foster family home. The qualified individual also shall specify in writing why the recommended placement in a qualified residential treatment program is the setting that will provide the child with the most effective and appropriate level of care in the least restrictive environment and how that placement is consistent with the short‑ and long‑term goals for the child, as specified in the permanency plan for the child.

Section 63‑7‑1740. (A) The court shall review the status of a child placed in a qualified residential treatment program as prescribed in this section.

(B) Within sixty days of the start of each placement in a qualified residential treatment program, the court independently, shall:

(1) consider the assessment, determination, and documentation of the qualified individual conducting the assessment pursuant to Section 63‑7‑1730;

(2) determine whether the needs of the child can be met through placement in a foster family home or, if not, whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short‑ and long‑term goals for the child, as specified in the permanency plan for the child; and

(3) approve or disapprove the placement in a written court order.

(C) The written documentation required pursuant to Section 63‑7‑1730(E) and the court’s approval or disapproval of the placement in a qualified residential treatment program must be included in the case plan for the child and must be incorporated in the court order.

(D) As long as a child remains in a qualified residential treatment program, the department shall submit evidence at any subsequent hearing:

(1) demonstrating that ongoing assessment of the strengths and needs of the child continues to support the determination that the needs of the child cannot be met through placement in a foster family home,

(2) that the placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment;

(3) that the placement is consistent with the short‑ and long‑term goals for the child, as specified in the permanency plan for the child;

(4) documenting the specific treatment or service needs that will be met for the child in the placement and the length of time the child is expected to need the treatment or services; and

(5) documenting the efforts made by the department to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, an adoptive parent, or in a foster family home.

(E) The evidence required pursuant to subsection (D) must be included in the case plan for the child. The order of the court must address the evidence and must state whether the court approves or disapproves the placement in a qualified residential treatment program.”

SECTION 5.A. Section 63‑7‑1700(B) of the 1976 Code is amended by adding:

“(7) that information necessary to support the determinations required pursuant to Section 63‑7‑1740.”

B. Section 63‑7‑1700 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) In the case of a child who remains in a qualified residential treatment program, the court in its order shall address the evidence presented pursuant to subsection (B)(7) and shall state whether the court approves or disapproves the placement in a qualified residential treatment program.”

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

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