**South Carolina General Assembly**

125th Session, 2023-2024

**A25, R32, S380**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Shealy, McElveen, Hutto, Jackson, Gustafson and Young

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Introduced in the Senate on January 12, 2023

Introduced in the House on February 16, 2023

Last Amended on February 15, 2023

Currently residing in the Senate

Summary: Kinship Guardianship

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 1/12/2023 Senate Introduced and read first time (Senate Journal‑page 4)

 1/12/2023 Senate Referred to Committee on **Family and Veterans' Services** (Senate Journal‑page 4)

 2/8/2023 Senate Committee report: Favorable with amendment **Family and Veterans' Services** (Senate Journal‑page 48)

 2/9/2023 Scrivener's error corrected

 2/14/2023 Senate Read second time (Senate Journal‑page 26)

 2/15/2023 Senate Committee Amendment Adopted (Senate Journal‑page 9)

 2/15/2023 Senate Read third time and sent to House (Senate Journal‑page 9)

 2/15/2023 Senate Roll call Ayes-41 Nays-0 (Senate Journal‑page 9)

 2/16/2023 Scrivener's error corrected

 2/16/2023 House Introduced and read first time (House Journal‑page 21)

 2/16/2023 House Referred to Committee on **Judiciary** (House Journal‑page 21)

 3/29/2023 House Committee report: Favorable **Judiciary** (House Journal‑page 54)

 4/4/2023 House Debate adjourned (House Journal‑page 37)

 4/5/2023 House Debate adjourned until Tues., 4-18-23 (House Journal‑page 39)

 4/18/2023 House Debate adjourned (House Journal‑page 131)

 4/19/2023 House Debate adjourned (House Journal‑page 10)

 4/20/2023 House Debate adjourned (House Journal‑page 10)

 4/25/2023 House Debate adjourned (House Journal‑page 11)

 4/26/2023 House Debate adjourned (House Journal‑page 24)

 4/27/2023 House Debate adjourned (House Journal‑page 13)

 5/2/2023 House Debate adjourned (House Journal‑page 22)

 5/3/2023 House Read second time (House Journal‑page 23)

 5/3/2023 House Roll call Yeas-103 Nays-0 (House Journal‑page 24)

 5/4/2023 House Read third time and enrolled (House Journal‑page 22)

 5/11/2023 Ratified R 32

 5/16/2023 Signed By Governor

 5/26/2023 Effective date 05/16/23

 5/26/2023 Act No. 25

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(A25, R32, S380)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 63-7-20, RELATING TO children’s code DEFINITIONS, SO AS TO DEFINE “LEGAL GUARDIANSHIP” AND “LEGAL GUARDIAN”; BY AMENDING SECTION 63-7-1700, RELATING TO PERMANENCY PLANNING, SO AS TO PROVIDE FOR PROCEDURES TO ESTABLISH LEGAL GUARDIANSHIP WITH SUPPLEMENTAL BENEFITS WHEN ADOPTION IS NOT AN OPTION AND BY MAKING CONFORMING CHANGES; BY ADDING SECTION 63-7-1705 SO AS TO ESTABLISH PROCEDURES FOR INITIATING THE JUDICIAL ESTABLISHMENT OF LEGAL GUARDIANSHIP WITH SUPPLEMENTAL BENEFITS; BY ADDING ARTICLE 9 TO CHAPTER 7, TITLE 63 SO AS TO REQUIRE THE DEPARTMENT OF SOCIAL SERVICES TO ESTABLISH AND ADMINISTER A PROGRAM OF SUPPLEMENTAL BENEFITS FOR LEGAL GUARDIANSHIP, TO DEFINE TERMS, TO PROVIDE ELIGIBILITY REQUIREMENTS FOR PROGRAM BENEFITS, TO REQUIRE THE DEPARTMENT TO PROMULGATE REGULATIONS, AND FOR OTHER PURPOSES; BY AMENDING SECTION 63-1-20, RELATING TO THE STATE’S CHILDREN’S POLICY, SO AS TO INCLUDE LEGAL GUARDIANSHIP WHEN ADOPTION IS NOT APPROPRIATE; AND BY AMENDING SECTION 63-7-2350, RELATING TO RESTRICTIONS ON FOSTER CARE OR ADOPTION PLACEMENTS, SO AS TO APPLY ALSO TO PLACEMENT OF A CHILD IN A LEGAL GUARDIAN’S HOME.

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

Definitions

SECTION 1. Section 63‑7‑20 (12) and (13) of the S.C. Code is amended to read:

 When used in this chapter or Chapter 9 or 11 and unless the specific context indicates otherwise:

 (12)(a) “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.

 (b) Emergency protective custody may be taken only by a law enforcement officer pursuant to this chapter.

 (13) “Legal Guardianship” means:

 (a) a judicially established relationship between a child and caretaker that is intended to be permanent and self‑sustaining and transfers to the caretaker the following parental rights and responsibilities with respect to the child:

 (i) the duty to provide protection, support, food, clothing, shelter, supervision, education, and care;

 (ii) physical custody of the child;

 (iii) legal custody when family court has not awarded legal custody to another person, agency, or institution;

 (iv) the right to consent to marriage, enlistment in the armed forces, and medical and surgical treatment;

 (v) the duty and authority to represent the child in legal actions and to make decisions of substantial legal significance affecting the child;

 (vi) the right to determine the nature and extent of the child’s contact with other persons; and

 (vii) the right to manage the child’s income and assets.

 (b) Unless the court so orders, legal guardianship does not terminate the parent‑child relationship, including the right of the child to inherit from his parent, the parent’s right to consent to the child’s adoption, and the parent’s obligation to provide financial, medical, or other support for the child as the court may order.

Definitions

SECTION 2. Section 63‑7‑20 of the S.C. Code is amended by adding:

 (32) “Legal Guardian” means a person appointed by the court through the judicial establishment of a legal guardianship to become the caretaker of a child.

Permanency planning, legal guardianship

SECTION 3. Section 63‑7‑1700(G) of the S.C. Code is amended to read:

 (G)(1) If after assessing the viability of adoption, the department demonstrates that termination of parental rights is not in the child's best interests, the court may award custody or legal guardianship, or both, to a suitable, fit, and willing relative, nonrelative, or fictive kin if the court finds this to be in the best interest of the child; however, a home study on the individual whom the department is recommending for custody or legal guardianship of the child must be submitted to the court for consideration before custody or legal guardianship, or both, are awarded. If the child’s plan is legal guardianship with a relative or fictive kin with supplemental benefits, the requirements of Section 63‑7‑1705 and Article 9 must be met. The supplemental report and child’s case plan must address:

 (a) how the child meets the eligibility requirements for legal guardianship with supplemental benefits;

 (b) the steps the department has taken to determine that the child’s return home and termination of parental rights and adoption are not appropriate;

 (c) the department’s efforts to discuss adoption with the relative or fictive kin, and the reasons why adoption is not an option;

 (d) the department’s efforts to discuss legal guardianship with supplemental benefits with the child’s parents or reason why efforts were not made;

 (e) the reason why legal guardianship and receipt of supplemental benefits is in the child’s best interests;

 (f) if the child’s placement with the relative or fictive kin does not include siblings, the reason why the child is separated from siblings during placement;

 (g) if the child is fourteen years or older, that the child has been consulted regarding the legal guardianship arrangement; and

 (h) that the relative or fictive kin meets all requirements for licensure as a kinship foster parent.

 (2) The court may order a specified period of supervision and services not to exceed twelve months, and the court may authorize a period of visitation or trial placement prior to receiving a home study.

Permanency planning hearings

SECTION 4. Section 63‑7‑1700(I) of the S.C. Code is amended to read:

 (I) If after the permanency planning hearing, the child is retained in foster care, future permanency planning hearings must be held as follows:

 (1) If the child is retained in foster care and the agency is required to initiate termination of parental rights proceedings, the termination of parental rights hearing may serve as the next permanency planning hearing, but only if it is held no later than one year from the date of the previous permanency planning hearing.

 (2) If the court ordered extended foster care for the purpose of reunification with the parent, the court must select a permanent plan for the child other than another extension for reunification purposes at the next permanency planning hearing. The hearing must be held on or before the date specified in the plan for expected completion of the plan; in no case may the hearing be held any later than six months from the date of the last court order.

 (3) After the termination of parental rights hearing, the requirements of Section 63‑7‑2580 must be met. Permanency planning hearings must be held annually, starting with the date of the termination of parental rights hearing. No further permanency planning hearings may be required after filing a decree of adoption of the child or an order establishing legal guardianship.

 (4) If the court places custody or guardianship with the parent, extended family member, or suitable nonrelative and a period of services and supervision is authorized, services and supervision automatically terminate on the date specified in the court order. Before the termination date, the department or the guardian ad litem may file a petition with the court for a review hearing on the status of the placement. Filing of the petition stays termination of the case until further order from the court. If the court finds clear and convincing evidence that the child will be threatened with harm if services and supervision do not continue, the court may extend the period of services and supervision for a specified time. The court's order must specify the services and supervision necessary to reduce or eliminate the risk of harm to the child.

 (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.

Legal guardianship proceedings

SECTION 5. Subarticle 11, Article 3, Chapter 7, Title 63 of the S.C. Code is amended by adding:

 Section 63‑7‑1705. (A) Upon motion by the department or any party in interest at any hearing held pursuant to this article, the court may establish legal guardianship with supplemental benefits.

 (1) The department or any party in interest may request that the court establish legal guardianship with supplemental benefits by filing and service of a motion setting forth:

 (a) the following case plan requirements:

 (i) how the child meets the eligibility requirements for legal guardianship with supplemental benefits;

 (ii) the steps the department has taken to determine that the child’s return home and termination of parental rights and adoption are not appropriate;

 (iii) the department’s efforts to discuss adoption with the relative or fictive kin, and the reasons why adoption is not an option;

 (iv) the department’s efforts to discuss legal guardianship with supplemental benefits with the child’s parents or reason why efforts were not made;

 (v) the reason why legal guardianship and receipt of supplemental benefits is in the child’s best interests;

 (vi) if the child’s placement with the relative or fictive kin does not include siblings, the reason why the child is separated from siblings during placement;

 (vii) if the child is fourteen years or older, that the child has been consulted regarding the legal guardianship arrangement; and

 (viii) that the relative or fictive kin meets all requirements for licensure as a kinship foster parent;

 (b) the movant’s intention to join as a party to the action, a successor legal guardian who is identified in the legal guardianship with supplemental benefits agreement.

 (B) The motion must be filed with the court and served on:

 (1) the department, unless the department is the moving party;

 (2) the child, if the child is fourteen years of age or older;

 (3) the child’s guardian ad litem;

 (4) the child’s parents;

 (5) the relative or fictive kin; and

 (6) the prospective successor legal guardian.

 (C) The court shall order legal guardianship with supplemental benefits upon finding by a preponderance of evidence that the department has entered a written agreement with a relative or fictive kin for legal guardianship with supplemental benefits and that placement is in the child’s best interests. The court shall issue a separate order establishing that the relative or fictive kin is the child’s legal guardian, and the court shall specify in its order:

 (1) return home and adoption are not in the child’s best interests;

 (2) the relative or fictive kin commits to providing the child permanency and stability until the child reaches age eighteen and to preparing the child for adulthood and independence;

 (3) the child has resided in the home of the relative or fictive kin for six consecutive months, during which the child was in the legal custody of the department, and the relative was licensed as a kinship foster parent;

 (4) the child and the relative share a strong attachment;

 (5) the duties, rights, and responsibilities of the relative or fictive kin to the child;

 (6) the child meets eligibility requirements for supplemental benefits;

 (7) the date on which the department and the relative or fictive kin entered a written agreement for supplemental legal guardianship benefits;

 (8) an adult who shall become the successor legal guardian and who is bound by the duties, rights, and responsibilities of the legal guardian stated in the order in the event of the death or incapacity of the legal guardian;

 (9) that the relative, fictive kin, and the adult identified as the successor legal guardian received a copy of the supplemental legal guardianship benefits agreement; and

 (10) the court’s order shall further specify:

 (a) the frequency and nature of any parental or sibling visitation;

 (b) the frequency and nature of any parental contact;

 (c) the effect the order has on other parental rights and responsibilities, including inheritance, child support, and medical decisions; and

 (d) that the legal guardian is prohibited from returning the child to the care, custody, and control of the child’s parents, except upon issuance of a court order finding clear and convincing evidence that there has been a material change in circumstances.

Legal guardianship, supplemental benefits

SECTION 6. Chapter 7, Title 63 of the S.C. Code is amended by adding:

 Article 9

 Legal Guardianship with Supplemental Benefits

 Section 63‑7‑2810. The purpose of this article is to supplement the South Carolina legal guardianship law by making possible through public supplemental benefits the most appropriate placement of a child with a legal guardian certified by the Department of Social Services as requiring a supplemental benefit to assure legal guardianship.

 Section 63‑7‑2820. When used in this article:

 (1) “Child” means a person under the age of twenty‑one.

 (2) “Department” means the Department of Social Services.

 (3) “Fictive kin” means an individual who is not related by birth, adoption, or marriage to a child but has an emotionally significant relationship with the child or the child’s family.

 (4) “Relative” means an individual within the first, second, or third degree to a parent or stepparent of a child who may be related through blood, marriage, or adoption or through the establishment of a fictive kin relationship.

 (5) “Supplemental legal guardianship benefits” means monthly payments made by the department to a legal guardian pursuant to and after entering a written agreement with a relative or fictive kin to provide support for a child who without supplemental support may not achieve permanency through legal guardianship.

 Section 63‑7‑2830. The department shall establish and administer an ongoing program of supplemental benefits for legal guardianship. Supplemental benefits and services for children under this program must be provided with funds appropriated to the department for these purposes.

 Section 63‑7‑2840. (A) In order for a child to be eligible for supplemental legal guardianship benefits, the department shall determine that the following provisions apply:

 (1) the child is in the legal custody of the department by a removal action under Section 63‑7‑1660;

 (2) the child resided in the home of the relative for a consecutive, six‑month period during which the child was in the legal custody of the department and the relative was licensed as a kinship foster parent;

 (3) the department determined that return home and adoption are not in the child’s best interests;

 (4) the child and the relative share a strong attachment, and the relative has a strong commitment to permanently caring for the child; and

 (5) if the child is fourteen years of age or older, the department consulted the child regarding the legal guardianship; or

 (6) due to the death or incapacity of the legal guardian, the child has been placed with the successor legal guardian named in the supplemental legal guardianship benefits agreement.

 (B) Death or incapacity of the legal guardian does not affect the child’s eligibility for supplemental legal guardianship benefits if the child is placed with the successor legal guardian named in the supplemental legal guardianship agreement, and the need for supplemental legal guardianship benefits still exists.

 Section 63‑7‑2850. (A) When the department determines that a child is eligible for supplemental legal guardianship benefits, the department and relative must execute a written agreement before the court may order legal guardianship. The department must provide a copy of the written agreement to the relative. At a minimum, the written agreement must specify:

 (1) the amount of supplemental legal guardianship benefits the department will provide;

 (2) when and how the department will provide the payment;

 (3) the manner in which the payment may be adjusted based upon the circumstances of the legal guardian or child, and that prior to making an adjustment, the department must consult with the legal guardian;

 (4) any additional services or assistance for which the child and legal guardian will be eligible;

 (5) when and how the legal guardian may request additional services;

 (6) that the agreement remains in effect regardless of the legal guardian’s state of residency; and

 (7) that the amount of the payment cannot exceed the amount of the foster care board payment the child would have received if the child remained in foster care.

 (B) The agreement terminates upon the occurrence of the following events:

 (1) the department determines that the legal guardian is no longer responsible for a child under the age of eighteen;

 (2) the department determines that the legal guardian is no longer providing support for the child; or

 (3) the child attains the age of eighteen or twenty‑one, if the child meets the department’s requirements for extended assistance under the agreement.

 Section 63‑7‑2860. A decision regarding supplemental legal guardianship benefits by the department that is adverse to the relative, fictive kin, or legal guardian is reviewable according to the department’s fair hearing regulations, unless there is an action pending in family court that can dispose of the issue.

 Section 63‑7‑2870. The department may promulgate regulations as necessary to implement the provisions of this article, including regulations targeting certain age groups for participation in this program, conditions for legal guardians, and child support enforcement regarding the child’s parents.

State children's policy

SECTION 7. Section 63‑1‑20(D) of the S.C. Code is amended to read:

 (D) When children or their families request help, state and local government resources shall be utilized to compliment community efforts to help meet the needs of children by aiding in the prevention and resolution of their problems. The State shall direct its efforts first to strengthen and encourage family life as the most appropriate environment for the care and nurturing of children. To this end, the State shall assist and encourage families to utilize all available resources. For children in need of services, care, and guidance the State shall secure those services as are needed to serve the emotional, mental, and physical welfare of children and the best interests of the community, preferably in their homes or the least restrictive environment possible. When children must be placed in care away from their homes, the State shall insure that they are protected against any harmful effects resulting from the temporary or permanent inability of parents to provide care and protection for their children. It is the policy of this State to reunite the child with his family in a timely manner, whether or not the child has been placed in the care of the State voluntarily. When children must be permanently removed from their homes, they shall be placed in adoptive homes so that they may become members of a family by legal adoption or, when adoption is not appropriate, in the legal guardianship of relatives or fictive kin to preserve family connections, or absent that possibility, other permanent settings.

Foster care and adoption home placement restrictions

SECTION 8. Section 63‑7‑2350 of the S.C. Code is amended to read:

 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 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 review to be conducted by the State Law Enforcement Division and a fingerprint review 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 Registry, 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, 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.

Time effective

SECTION 9. This act takes effect upon approval by the Governor.

Ratified the 11th day of May, 2023.

Approved the 16th day of May, 2023.

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