~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 28, 2018

**H. 3125**

Introduced by Reps. McEachern, Pitts and Toole

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Read the first time March 29, 2017.

**THE GENERAL COMMITTEE**

To whom was referred a Bill (H. 3125) to amend the Code of Laws of South Carolina, 1976, by adding Section 63‑7‑645 so as to allow temporary placement of a child with a relative, 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 SECTION 63‑7‑645 SO AS TO ALLOW TEMPORARY PLACEMENT OF A CHILD WITH A RELATIVE OR ALTERNATIVE CAREGIVER PURSUANT TO A SAFETY PLAN, TO PROVIDE REQUIREMENTS FOR A SAFETY PLAN, AND TO LIMIT THE DURATION OF A SAFETY PLAN TO NINETY DAYS, WITH EXCEPTIONS; BY ADDING SUBARTICLE 10 TO ARTICLE 3, CHAPTER 7, TITLE 63 SO AS TO ALLOW DSS TO OFFER PROTECTIVE SERVICES PURSUANT TO A CHILD AND FAMILY PLAN IN CERTAIN CHILD ABUSE OR NEGLECT MATTERS, TO PROVIDE REQUIREMENTS FOR A CHILD AND FAMILY PLAN, TO LIMIT THE DURATION OF A CHILD AND FAMILY PLAN TO SIX MONTHS, WITH EXCEPTIONS, AND TO PROVIDE FOR TERMINATION OF FAMILY PRESERVATION SERVICES; TO AMEND SECTION 63‑7‑20, AS AMENDED, RELATING TO DEFINITIONS USED IN CHAPTER 7, TITLE 63, SO AS TO ADD DEFINITIONS FOR “SAFETY PLAN”, “PLACEMENT PLAN”, AND “TREATMENT PLAN”; TO AMEND SECTION 63‑7‑650, RELATING TO REQUIREMENTS BEFORE PLACING A CHILD WITH A RELATIVE OR OTHER PERSON WHEN THE CHILD IS TAKEN INTO EMERGENCY PROTECTIVE CUSTODY, SO AS TO MAKE CONFORMING CHANGES; AND TO AMEND SECTION 63‑7‑690, RELATING TO PLACEMENT OF A CHILD WITH A RELATIVE OR OTHER PERSON INSTEAD OF TAKING THE CHILD INTO DSS CUSTODY, SO AS TO MAKE CONFORMING CHANGES.

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

SECTION 1. This act may be cited as the “Safe Children’s Act”.

SECTION 2. Subarticle 3, Article 3, Chapter 7, Title 63 of the 1976 Code is amended by adding:

“Section 63‑7‑645. (A)(1) Following the initiation of an investigation of a report of suspected child abuse or neglect pursuant to Section 63‑7‑920, the department may determine that a child or children need to be temporarily placed with a relative or other person who is willing to serve as an interim placement for the child or children. The relative or other person must meet the requirements established pursuant to subsection (E). The department shall develop and execute a safety plan regarding the placement with the relative or other person within seventy‑two hours of the decision for placement. The purpose of the safety plan is to reduce imminent threats to a child’s safety.

(2) A safety plan does not:

(a) remove legal custody of the child from the parent or guardian; or

(b) modify an existing court order regarding custody of the child, visitation, or child support.

(B)(1) A safety plan expires no later than ninety days after receipt of the report of suspected child abuse or neglect. At the conclusion of the investigation or upon expiration of the safety plan, whichever comes first:

(a) the child may return to the home, if the department determines that return of the child would not cause an unreasonable risk of harm to the child’s physical health, safety, and well‑being;

(b) the department shall file a removal action pursuant to Section 63‑7‑1660;

(c) the department shall file an intervention action pursuant to Section 63‑7‑1650; or

(d) the department shall provide family preservation services pursuant to Section 63‑7‑1510.

(2) A safety plan must terminate immediately upon a determination by the department that a report is unfounded.

(C) A safety plan must be a written document and must be prepared by the department with the participation of the parent, custodian, or guardian and the relative or other person identified by the department to serve as an interim placement for the child or children, and be signed by all participants. It must include, at a minimum:

(1) the name and address of the parent, custodian, or guardian;

(2) the name and address of the relative or other person;

(3) the name, address, and telephone number of the department case worker and supervisor;

(4) the name and date of birth of the child;

(5) a description of the reasons why a safety plan is required;

(6) a description of the actions to be taken by the parent, custodian, or guardian; the responsibilities of the relative or other person; and the responsibilities of the department to protect the child during the safety plan;

(7) a plan for visitation and other contact between the child and the parent, custodian, or guardian;

(8) a description of the immediate needs of the child including, but not limited to, educational, medical, and mental health needs;

(9) the date on which the safety plan expires;

(10) a plan for the financial support of the child, if placed out of the home; and

(11) a statement that the department has the right to file a court action at any time, if the parent, custodian, or guardian or the relative or other person fails to comply with the safety plan or if the department determines that the safety plan otherwise fails to reduce threats to the child’s safety and a statement that the parent, custodian, or guardian may be entitled to representation by an attorney in such court action.

(D) The department shall monitor the safety plan weekly, or more often if considered necessary, to assess the plan’s effectiveness in controlling immediate threats to safety. The department shall make face‑to‑face contact with the child at least monthly. The safety plan may be amended to respond to any needs identified by the participants if amendment would enhance the effectiveness of the safety plan in controlling immediate threats to the child’s safety. Any amendments must comply with the requirements set out in subsection (C). In no event shall an amendment to a safety plan extend the duration of the safety plan beyond ninety days.

(E)(1) Before agreeing to placement of the child with a relative or other person, the department shall:

(a) interview the relative or other person to determine the person’s willingness, fitness, and suitability to serve as a placement; and

(b) visit the relative’s or other person’s home to ensure that the placement is safe and appropriate for the needs of the child.

(2) Within twenty‑four hours of placing the child with a relative or other person, the department shall secure from the person with whom the child is placed and other adults in the home a signed, written statement attesting that no adult or child residing in the home has a history of child abuse or neglect and that no adult or child residing in the home has a criminal history that indicates that there is a significant risk that the child would be threatened with abuse or neglect in the home.

(3) Within five days, the department shall confirm the information supplied in the signed, written statement by checking the Central Registry of Child Abuse and Neglect, other relevant department records, county sex offender registries, and records for the preceding five years of law enforcement agencies in the jurisdiction in which the relative or other person and, to the extent reasonably possible, jurisdictions in which the relative or other person has resided during that period. The relative or other person shall consent to a background check by the department as provided for in this subsection.

(4) The department must not agree to a placement if the interview, home visit, or signed, written statement, or records obtained pursuant to item (3) reveal information indicating there is a significant risk that the child would be threatened with abuse or neglect in the home.”

SECTION 3. Article 3, Chapter 7, Title 63 of the 1976 Code is amended by adding Subarticle 10:

“Subarticle 10

Family Preservation Services

Section 63‑7‑1510. The purpose of this subarticle is to provide a process for the delivery of protective services when a report has been indicated pursuant to subarticles 5 and 13, and is not being brought before the family court for disposition.

The department shall develop a child and family plan pursuant to the requirements established in 63‑7‑1520 for the provision of family preservation services. The department shall monitor the family and, at a minimum, have monthly face‑to‑face visits with any child who suffered harm as that term is defined in Section 63‑7‑20(4). Additionally, the department shall conduct at least monthly face‑to‑face visits with all children who live in the home where the harm occurred and in the home of any perpetrator.

Section 63‑7‑1520. (A) When a report has been indicated pursuant to subarticles 5 and 13 and will not be brought before the family court for disposition, the department immediately shall coordinate services to ensure the safety and welfare of the minor children. However, no later than forty-five days after the indicated case decision, the department shall develop a child and family plan. The plan must be a written document prepared by the department. To the extent possible, the plan must be prepared with the participation of the parents, custodian, or guardian of the child, the child, and any other agency or individual that will be required to provide services in order to implement the plan. At a minimum, the plan must:

(1) be signed by the parents, custodian, or guardian, the department, and, if applicable, the relative or other person designated as an alternative placement for the child;

(2) detail any changes in behavior or home conditions that must be made and any services that must be provided to the family to ensure, to the greatest extent possible, that the child will not be endangered;

(3) describe any limitations on the parent’s, custodian’s, or guardian’s contact with the minor child and a plan for visitation and other contact between the child and the parent, custodian, or guardian;

(4) include the name and address of the parents, custodian, or guardian, and if applicable, the name and address of the relative or other person; the name, address, and telephone number of the department case worker and supervisor; and the name and date of birth of the child;

(5) describe the reasons a plan is required;

(6) describe the actions to be taken by the parent, custodian, or guardian; the responsibilities of the relative or other person; and the responsibilities of the department to protect the child during the plan;

(7) list the needs of the child including, but not limited to, educational, medical, and mental health needs;

(8) provide the date on which the plan expires;

(9) address the financial support of the child, if placed out of the home;

(10) contain a notice that the department has the right to file a court action for intervention or removal of the child at any time, if the parent, custodian, or guardian or the relative or other person fails to comply with the plan or if the department determines that the plan otherwise fails to reduce threats to the child’s safety and a notice that the parent, custodian, or guardian may be entitled to representation by an attorney in such court action. The notice must be printed in boldface print or in all upper case letters; and

(11) contain the following language in bold face type on the first page: ‘Placing the child or children by the parent(s) or custodian(s) with a third party is a voluntary act. At any time during this agreement the parent(s) or custodian(s) may elect to discontinue the out-of-home placement and request the return of the child or children by notifying the department in writing. However, nothing prevents the department from requesting law enforcement to place the child or children in emergency protective custody, filing an action seeking emergency removal of the child or children including requesting ex parte relief, filing an action for nonemergency removal, or filing an action to intervene to provide services.

(B) The department shall give a copy of the plan to the parents, custodian, or guardian. The department shall give a copy of any portion of the plan that pertains to a relative or other person to that person.

(C) If a child is to be placed out of the home pursuant to a child and family plan:

(1) Before agreeing to placement of the child with a relative or other person, the department shall:

(a) interview the relative or other person to determine the person’s willingness, fitness, and suitability to serve as a placement; and

(b) visit the relative’s or other person’s home to ensure that the placement is safe and appropriate for the needs of the child;

(2) Within twenty‑four hours of placing the child with a relative or other person, the department shall secure from the person with whom the child is placed and other adults in the home a signed, written statement attesting that no adult or child residing in the home has a history of child abuse or neglect and that no adult or child residing in the home has a criminal history that indicates that there is a significant risk that the child would be threatened with abuse or neglect in the home.

(3) Within five days, the department shall confirm the information supplied in the signed, written statement by checking the Central Registry of Child Abuse and Neglect, other relevant department records, county sex offender registries, and records for the preceding five years of law enforcement agencies in the jurisdiction in which the relative or other person and, to the extent reasonably possible, jurisdictions in which the relative or other person has resided during that period. The relative or other person shall consent to a background check by the department as provided for in this subsection.

(4) The department must not agree to a placement if the interview, home visit, or signed, written statement, or records obtained pursuant to item (3) reveal information indicating there is a significant risk that the child would be threatened with abuse or neglect in the home.

(D) At a minimum, the department shall review the effectiveness of the plan every three months to determine whether all issues relating to abuse or neglect of the child are being appropriately addressed by the plan, including whether additional services are needed, progress is being made toward the required behavioral changes, and whether the child can be safely maintained in the home. The plan may be amended at any time if the department, the parent, custodian, or guardian, and, if applicable, the relative or other person agrees to the revision. The plan must terminate within six months unless:

(1) the parent, custodian, or guardian has demonstrated due diligence and a commitment to correcting conditions that led to the indicated case decision;

(2) there are specific reasons to believe the conditions that led to the indicated case decision will be corrected by the end of an extension of time; and

(3) the department documents specific reasons for extension of the plan.

In no event shall the plan exceed twelve months from the date it is first signed. An amendment to a plan or receipt of an additional indicated report must not extend the time.

Section 63‑7‑1530. (A) Family preservation services pursuant to this subarticle must terminate when the department determines the child can be safely maintained in the home. If the child has resided with a relative or other person during the delivery of family preservation services, the child may return home when the child can be safely maintained in the home. In no event may family preservation services pursuant to this subarticle exceed twelve months from the date a child and family plan is first signed.

(B) At any time during the delivery of family preservation services if the department determines that a child cannot be safely maintained in the home of the parent, custodian, or guardian, or a relative or other person, the department may petition the family court for relief pursuant to Section 63‑7‑1650 or 63‑7‑1660. If the department determines there is probable cause to believe that by reason of abuse or neglect there exists imminent and substantial danger to the child’s life, health, or physical safety, the department shall report this determination to a law enforcement officer, or, in the alternative, shall seek ex parte relief from the family court pursuant to Section 63‑7‑740.”

SECTION 4. Section 63‑7‑20 (21) ‑ (27) of the 1976 Code, as last amended by Act 238 of 2016, is further amended to read:

“(21) ‘Placement Plan’ means a plan developed pursuant to Section 63‑7‑1680.

(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.

~~(24)~~(25) ‘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.

(26) ‘Safety Plan’ means a plan developed pursuant to Section 63‑7‑645.

~~(25)~~(27) ‘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)~~(28) ‘Suspected report’ means all initial reports of child abuse or neglect received pursuant to this chapter.

(29) ‘Treatment Plan’ means a plan developed pursuant to Section 63‑7‑1670.

~~(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 5. Section 63‑7‑650 of the 1976 Code is amended to read:

“Section 63‑7‑650. Before agreeing to or acquiescing in ~~a corrective action that involves~~ the placement of ~~the~~ a child with a relative or other person ~~or making an interim placement with a relative~~ while retaining custody of the child or as soon as possible after agreeing to or acquiescing to the placement of the child, the department shall follow procedures established in Section 63‑7‑645. ~~in a corrective action, the department shall secure from the relative or other person and other adults in the home an affidavit attesting to information necessary to determine whether a criminal history or history of child abuse or neglect exists and whether this history indicates there is a significant risk that the child would be threatened with abuse or neglect in the home of the relative or other person. As soon as possible, the department shall confirm the information supplied in the affidavit by checking the Central Registry of Child Abuse and Neglect, other relevant department records, county sex offender registries, and records for the preceding five years of law enforcement agencies in the jurisdiction in which the relative or other person resides and, to the extent reasonably possible, jurisdictions in which the relative or other person has resided during that period. The department must not agree to or acquiesce in a placement if the affidavit or these records reveal information indicating there is a significant risk that the child would be threatened with abuse or neglect in the home of the relative or other person. The relative or other person must consent to a check of the above records by the department.~~”

SECTION 6. Section 63‑7‑690 of the 1976 Code is amended to read:

“Section 63‑7‑690. (A) ~~If within the twenty‑four hours following removal of the child~~ The department may place the child with a relative or other person instead of taking legal custody of the child if within the twenty‑four hours following removal of the child:

(1) the department has identified a specified relative or other person with whom it has determined that the child is to be placed ~~instead of the department’s taking legal custody of the child~~; and

(2) ~~both the relative or other person with whom the child is to be placed and the child’s parent or guardian have agreed to the placement, the department may retain physical custody of the child for no more than five additional days if necessary to enable the relative or other person to make travel or other arrangements incident to the placement~~ the department and the relative or other person have complied with the requirements of Section 63‑7‑645.

(B) The department may retain physical custody of the child for no more than five additional days if necessary to enable the relative or other person to make travel or other arrangements incident to the placement.

(C) A probable cause hearing pursuant to Section 63‑7‑710 shall not be held unless the placement fails to occur as planned within the five‑day period or the child’s parent or guardian makes a written request for a hearing to the department. The department must give the child’s parent or guardian written notice of the right to request a probable cause hearing to obtain a judicial determination of whether removal of the child from the home was and remains necessary. Upon receipt of a written request for a hearing from the child’s parent or guardian, the department shall schedule a hearing for the next date on which the family court is scheduled to hear probable cause hearings.

~~(C)~~(D) If the placement does not occur as planned within the five‑day period, the department immediately must determine whether to assume legal custody of the child and file a petition as provided in Section 63‑7‑700(B). The department shall assure that the child is given age‑appropriate information about the plans for placement and any subsequent changes in those plans at the earliest feasible time.”

SECTION 7. Section 43-3-60 of the 1976 Code is amended to read:

“Section 43-3-60. (A) The respective county directors shall act as the representatives of the director in administering such welfare activities within the county as are provided for by law or as are directed and required by the director when not otherwise provided for by law. Each of such county directors shall see that all laws are enforced for the protection and welfare of minors and the removal of moral menaces to the young and to safeguard and promote the health, education and general welfare of minors. Subject to the rules and regulations of the state department, each of the county directors may use any funds supplied by the county in which the county department operates for such purposes as may be directed by law, in addition to their other duties. Each county director shall serve as the agent of the state department in the performance of such functions as the director may delegate to it.

(B) The respective county directors shall act as the representatives of the director in facilitating the department’s responsibilities in child abuse or neglect matters including, but not limited to, child abuse or neglect judicial proceedings. Legal counsel for the department shall abide by the decisions of the South Carolina Department of Social Services concerning the objectives of the representation in a child abuse or neglect action. When a caseworker, or other county department employee, communicates with the department’s legal counsel about the case, the communication is protected as a confidential attorney-client communication; however, the caseworker, or other employee of the county department, is not the client for purposes of communicating the department’s decisions concerning the objectives of the representation.”

SECTION 8. This act takes effect upon approval by the Governor.

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