CHAPTER 7

Child Protection and Permanency

CROSS REFERENCES

Compliance with federal law, disability affecting parent’s right to fulfill responsibilities, probable cause order, see Section 63‑21‑20.

Definition of “child placing agency” as used in Persons with Disabilities Right to Parent Act, see Section 63‑21‑10.

ARTICLE 1

General Provisions

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

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| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑7‑10 | 20‑7‑480 |
| 63‑7‑20 | 20‑7‑490 |
| 63‑7‑30 | 20‑7‑500 |
| 63‑7‑40 | 20‑7‑85 |

**SECTION 63‑7‑10.** Purpose.

(A) Any intervention by the State into family life on behalf of children must be guided by law, by strong philosophical underpinnings, and by sound professional standards for practice. Child welfare services must be based on these principles:

(1) Parents have the primary responsibility for and are the primary resource for their children.

(2) Children should have the opportunity to grow up in a family unit if at all possible.

(3) State and community agencies have a responsibility to implement prevention programs aimed at identifying high risk families and to provide supportive intervention to reduce occurrence of maltreatment.

(4) Services for families should be accessible and designed to encourage and enable families to adequately deal with their problems within their own family system.

(5) All child welfare intervention by the State has as its primary goal the welfare and safety of the child.

(6) Child welfare intervention into a family’s life should be structured so as to avoid a child’s entry into the protective service and foster care systems if at all possible.

(7) The state’s child welfare system must be designed to be child‑centered, family‑focused, community‑based, and culturally competent in its prevention and protection efforts.

(8) Neighborhoods and communities are the primary source of opportunities and supports for families and have a primary responsibility in assuring the safety and vitality of their members.

(9) The Department of Social Services shall collaborate with the community to identify, support, and treat families in a nonthreatening manner, in both investigative and family assessment situations.

(10) A family assessment approach, stressing the safety of the child, building on the strengths of the family, and identifying and treating the family’s needs is the appropriate approach for cases not requiring law enforcement involvement or the removal of the child.

(11) Only a comparatively small percentage of current child abuse and neglect reports are criminal in nature or will result in the removal of the child or alleged perpetrator.

(12) Should removal of a child become necessary, the state’s foster care system must be prepared to provide timely and appropriate placements for children with relatives or in licensed foster care settings and to establish a plan which reflects a commitment by the State to achieving permanency for the child within reasonable timelines.

(13) The Department of Social Services staff who investigates serious child abuse and neglect reports with law enforcement must be competent in law enforcement procedures, fact finding, evidence gathering, and effective social intervention and assessment.

(14) Services should be identified quickly and should build on the strengths and resources of families and communities.

(B) It is the purpose of this chapter to:

(1) acknowledge the different intervention needs of families;

(2) establish an effective system of services throughout the State to safeguard the well‑being and development of endangered children and to preserve and stabilize family life, whenever appropriate;

(3) ensure permanency on a timely basis for children when removal from their homes is necessary;

(4) establish fair and equitable procedures, compatible with due process of law to intervene in family life with due regard to the safety and welfare of all family members; and

(5) establish an effective system of protection of children from injury and harm while living in public and private residential agencies and institutions meant to serve them.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Compliance with federal law, disability affecting parent’s right to fulfill responsibilities, probable cause order, see Section 63‑21‑20.

Duties of the department with respect to children abused in family day care homes, see Section 63‑13‑840.

Library References

Infants 17, 131, 194.1.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 12, 14, 24 to 25, 39 to 41, 46 to 48.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 31, Purpose.

S.C. Jur. Death and Right to Die Section 18, Curative Treatment.

S.C. Jur. Death and Right to Die Section 21, Disabled Infants.

Attorney General’s Opinions

Reports under Child Protection Act of institutional abuse and neglect in DYS facility received by SLED should be immediately referred to DSS; Client‑Patient Protection Act provides that SLED receive reports, refer reports to nursing home ombudsman and to use discretion to investigate or refer it to law enforcement agency. 1984 Op. Atty Gen, No. 84‑2, p. 17.

NOTES OF DECISIONS

In general 1

1. In general

Department of Social Services has duty to investigate all reports of child abuse and neglect to determine if the allegations have merit. South Carolina Dept. of Social Services v. Pritcher (S.C.App. 1997) 329 S.C. 242, 495 S.E.2d 242, rehearing denied, certiorari denied. Infants 1556

Just as Department of Social Services has statutory duty to bring before family court meritorious allegations of child abuse and neglect, it also has the responsibility and duty to seek dismissal of those petitions subsequently determined by investigation to be without merit. South Carolina Dept. of Social Services v. Pritcher (S.C.App. 1997) 329 S.C. 242, 495 S.E.2d 242, rehearing denied, certiorari denied. Infants 2092

Family court does not abuse its discretion by dismissing unfounded petition for determination that child is neglected. South Carolina Dept. of Social Services v. Pritcher (S.C.App. 1997) 329 S.C. 242, 495 S.E.2d 242, rehearing denied, certiorari denied. Infants 2092

**SECTION 63‑7‑20.** Definitions.

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

(1) “Abandonment of a child” means a parent or guardian wilfully deserts a child or wilfully surrenders physical possession of a child without making adequate arrangements for the child’s needs or the continuing care of the child.

(2) “Affirmative determination” means a finding by a preponderance of evidence that the child was abused or neglected by the person who is alleged or determined to have abused or neglected the child and who is mentioned by name in a report or finding. This finding may be made only by:

(a) the court;

(b) the Department of Social Services upon a final agency decision in its appeals process; or

(c) waiver by the subject of the report of his right to appeal. If an affirmative determination is made by the court after an affirmative determination is made by the Department of Social Services, the court’s finding must be the affirmative determination.

(3) “Age or developmentally appropriate” means:

(a) activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group;

(b) in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child; and

(c) activities that include, but are not be limited to, the following:

(i) sports;

(ii) field trips;

(iii) extracurricular activities;

(iv) social activities;

(v) after school programs or functions;

(vi) vacations with caregiver lasting up to two weeks;

(vii) overnight activities away from caregiver lasting up to one week;

(viii) employment opportunities; and

(ix) in‑state or out‑of‑state travel, excluding overseas travel;

(d) activities that do not conflict with any pending matters before the court, an existing court order, or the child’s scheduled appointments for evaluations or treatment.

(4) “Caregiver” means a foster parent, kinship foster parent, or employee of a group home who is designated to make decisions regarding age or developmentally appropriate activities or experiences on behalf of a child in the custody of the department.

(5) “Child” means a person under the age of eighteen.

(6) “Child abuse or neglect” or “harm” occurs when the parent, guardian, or other person responsible for the child’s welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:

(i) is administered by a parent or person in loco parentis;

(ii) is perpetrated for the sole purpose of restraining or correcting the child;

(iii) is reasonable in manner and moderate in degree;

(iv) has not brought about permanent or lasting damage to the child; and

(v) is not reckless or grossly negligent behavior by the parents.

(b) commits or allows to be committed against the child a sexual offense as defined by the laws of this State or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child;

(c) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision appropriate to the child’s age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or presents a substantial risk of causing physical or mental injury. However, a child’s absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child’s attendance, and those efforts were unsuccessful because of the parents’ refusal to cooperate. For the purpose of this chapter “adequate health care” includes any medical or nonmedical remedial health care permitted or authorized under state law;

(d) abandons the child;

(e) encourages, condones, or approves the commission of delinquent acts by the child including, but not limited to, sexual trafficking or exploitation, and the commission of the acts are shown to be the result of the encouragement, condonation, or approval; or

(f) has committed abuse or neglect as described in subsections (a) through (e) such that a child who subsequently becomes part of the person’s household is at substantial risk of one of those forms of abuse or neglect.

(7) “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) “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) “Court” means the family court.

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

(11) “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) “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) “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) “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) “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) “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) “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) “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) “Physical custody” means the lawful, actual possession and control of a child.

(20) “Physical injury” means death or permanent or temporary disfigurement or impairment of any bodily organ or function.

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

(22) “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) “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) “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) “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) “Suspected report” means all initial reports of child abuse or neglect received pursuant to this chapter.

(27) “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.

HISTORY: 2008 Act No. 361, Section 2; 2016 Act No. 238 (H.4546), Section 1, eff June 5, 2016.

Effect of Amendment

2016 Act No. 238, Section 1, added (3), (4), and (24), definitions for “age or developmentally appropriate”, “caregiver”, and “reasonable and prudent parent standard”; redesignated the paragraph designators accordingly; and in (6)(e), inserted “including, but not limited to, sexual trafficking or exploitation,”.

CROSS REFERENCES

Abandonment as grounds for termination of parental rights, see Section 63‑7‑2570.

Children in out‑of‑home care, age or developmentally appropriate activities, see Section 63‑7‑25.

Children’s Advocacy Medical Response System, child and child abuse or neglect defined, see Section 63‑11‑420.

County Departments of Social Services generally, see Sections 43‑3‑10 et seq.

Homicide by child abuse, see Section 16‑3‑85.

Order terminating parental rights on basis of children being abused, neglected, or abandoned, see Section 63‑7‑2570.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Penalty for refusal or neglect to provide proper care and attention for child, see Section 63‑5‑70.

Permanency planning, see Section 63‑7‑1700.

Protecting and nurturing children in foster care, see Section 63‑7‑2310.

Removal of child who has been physically injured or endangered as defined in this section, see Sections 63‑7‑1610, 63‑7‑1660.

Upon determination of abuse, neglect or endangerment as defined herein, local child protective services agency may petition to intervene and provide services without removal of child, see Section 63‑7‑1650.

Library References

Infants 132.

Westlaw Topic No. 211.

C.J.S. Infants Sections 12 to 13, 23, 26 to 28.

RESEARCH REFERENCES

ALR Library

25 ALR 7th 1 , Challenges to Placement on State Child Abuse Registries on Other Than Constitutional Bases.

Encyclopedias

S.C. Jur. Children and Families Section 32, Definition.

S.C. Jur. Children and Families Section 51, Pattern or Severity of Abuse or Neglect.

S.C. Jur. Children and Families Section 56.5, Abandonment.

S.C. Jur. Constitutional Law Section 39, Specific Applications.

S.C. Jur. Criminal Sexual Conduct Section 31, Competency.

S.C. Jur. Death and Right to Die Section 18, Curative Treatment.

S.C. Jur. Homicide Section 29, Other Offenses Involving Killing.

S.C. Jur. Public Officers and Public Employees Section 62, Subject Matter Jurisdiction of the State Employee Grievance Committee.

Attorney General’s Opinions

A mandatory reporter would not have to report pursuant to Section 63‑7‑310 when an adult discloses being abused in the past as a child, as long as the adult is not mentally incompetent, as long as there is no information that another child (who is, at the time of the disclosure, under the age of eighteen as defined in Section 63‑3‑20(3)) has been or may be abused or neglected as defined in Section 63‑7‑20(4), and as long as there is no other law that would require the abuse to be reported. S.C. Op.Atty.Gen. (June 30, 2014) 2014 WL 3352174.

The Office of Attorney General will make no determination as to whether children in a private facility which is allegedly operating without meeting safety, fire, etc. standards are “abused or neglected” as provided in sections 63‑7‑310 or 63‑7‑20(4), consideration should be given to reporting the information to the appropriate authorities as specified in section 63‑7‑310 for further investigation and review. S.C. Op.Atty.Gen. (Oct. 7, 2010) 2010 WL 4391636.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

Offenses described in Sections 16‑15‑90, 16‑15‑350, 16‑15‑360, and 16‑15‑380 constitute sexual offenses for purpose of defining “harm” to child’s health or welfare as used in Section 20‑7‑490(c). 1985 Op. Atty Gen, No. 85‑22, p 75.

“Mental injury”, as defined by Section 20‑10‑20 (G), must be proven by a showing of “substantial impairment of the intellectual, psychological and emotional capacity of the child” resulting from inhumane or unconscionable acts and conduct of the parent, guardian or other person responsible for his welfare. Proof of such could be established through a showing of unreasonable restriction on activities set forth in subsection (G) (1), (2) and (3). 1979 Op. Atty Gen, No. 79‑75, p 98.

NOTES OF DECISIONS

In general 2

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Validity 1

1. Validity

Section 20‑7‑490, which prohibits child abuse, is not unconstitutional on the ground that it denies a parent’s right to religious liberty under the First Amendment in punishing his or her child since the statute regulates actions of child abuse which is “subversive of good order.” South Carolina Dept. of Social Services v. Father and Mother (S.C.App. 1988) 294 S.C. 518, 366 S.E.2d 40. Constitutional Law 1408; Infants 1006(12)

2. In general

Custodian, who had custody of child before state Department of Social Services (DSS) took child into emergency protective custody, had standing to participate in dependency proceeding, although custodian was not related to child by blood or marriage, and although custodian failed to comply with treatment and placement plan; custodian had real, material, or substantial interest in long‑term custody and potential adoption of child. Ex parte Morris (S.C. 2006) 367 S.C. 56, 624 S.E.2d 649, rehearing denied. Infants 2076

The scope of Section 20‑7‑490 includes any person who has the power to control or deal with a child within his or the child’s home and the phrase “legally responsible for the child’s welfare within a residential setting” includes those situations in which a person has either the legal power to direct a child’s activities or the physical power of custody and control. South Carolina Dept. of Social Services v. Forrester (S.C.App. 1984) 282 S.C. 512, 320 S.E.2d 39.

3. Child abuse or neglect

Removal of youngest child, who was born during the pendency of abuse and neglect proceeding, from mother’s custody was supported by the evidence; the trial court found, by a preponderance of the evidence, that mother’s older three children had been physically abused, and thus, youngest child was at substantial risk of being subject to abuse or neglect. South Carolina Dept. of Social Services v. Briggs (S.C.App. 2015) 413 S.C. 377, 776 S.E.2d 115. Infants 1976

Mother could not be found to have abused or neglected her child, or have her name placed on the central registry, based on mother ingesting drugs while pregnant with child when mother did not know she was pregnant until she went to the hospital with stomach pains shortly before giving birth to child. South Carolina Dept. of Social Services v. Jennifer M. (S.C.App. 2013) 404 S.C. 269, 744 S.E.2d 591. Infants 1468; Infants 1953

Mother’s participation in sexual intercourse alone was not sufficient to show that she knew, or should have known, that she could become pregnant, for the purpose of determining whether mother abused or neglected child by using drugs during pregnancy of which mother was unaware until she gave birth to child. South Carolina Dept. of Social Services v. Jennifer M. (S.C.App. 2013) 404 S.C. 269, 744 S.E.2d 591. Infants 1953

Family court erred in ordering mother and father to comply with treatment plan, where preponderance of the evidence did not support the allegations in Department of Social Service’s petition. South Carolina Dept. of Social Services v. Scott K. (S.C.App. 2008) 380 S.C. 140, 668 S.E.2d 425. Infants 2169(15)

Department of Social Services erred in classifying reported allegations of alleged abuse and neglect as indicated; Social Services found cluttered home, but its investigation failed to substantiate any of reported allegations, there was no evidence that mother and father’s children had been harmed or were at risk of future harm, all evidence showed children to be healthy and well nurtured, and, in words of guardian ad litem, “they had a good family.” South Carolina Dept. of Social Services v. Scott K. (S.C.App. 2008) 380 S.C. 140, 668 S.E.2d 425. Infants 1468

Report of abuse or neglect is presumed to be unfounded unless Department of Social Services initially determines that a preponderance of evidence supports the report. South Carolina Dept. of Social Services v. Pritcher (S.C.App. 1997) 329 S.C. 242, 495 S.E.2d 242, rehearing denied, certiorari denied. Infants 2159

In an action against foster parents alleging the infliction of abuse and mental injury on the foster child, the evidence supported the trial court’s findings that splashing cool or cold water on the child as punishment was neither abuse nor injury where there was no evidence that the child suffered any permanent or lasting physical damage, and the manner of punishment had been recommended by an authority in the field of child discipline. Florence County Dept. of Social Services v. Ward (S.C.App. 1992) 310 S.C. 69, 425 S.E.2d 61, rehearing denied. Infants 1963

In an action against foster parents alleging the infliction of abuse and mental injury on the foster child by splashing cool or cold water on him as punishment, the trial court did not err in considering the child’s behavior, his characteristics, and the fact that the incident was an isolated one since the alleged abuse was not severe, and the child’s behavior and characteristics were relevant to the evaluation of the foster mother’s behavior. Florence County Dept. of Social Services v. Ward (S.C.App. 1992) 310 S.C. 69, 425 S.E.2d 61, rehearing denied.

4. Abandonment

Unwed parents abandoned children by leaving children at grandparents’ house and by not returning to retrieve them, and parents’ actions provided ground for terminating their parental rights; mother knew grandparents could not provide for children for extended period of time and she promised to be back in 15 minutes and mother broke this promise by embarking on course of illegal behavior that took longer than 15 minutes, and when parents finally did call and were told children had been taken into emergency protective custody, neither made effort to regain custody, and instead, parents proceeded to spend the next two months living in hotel rooms and using crack cocaine. South Carolina Dept. of Social Services v. Truitt (S.C.App. 2004) 361 S.C. 272, 603 S.E.2d 867. Infants 2008; Infants 2009

Sufficient evidence supported trial court’s finding that father effectively abandoned daughter, for purposes of determining whether termination of parental rights (TPR) was proper; father admitted he only attempted to locate his daughter one time and that his effort ended when prison officials were unhelpful, even after learning daughter was in custody of Department of Social Services (DSS), father made no attempt to inquire about her health and wellbeing, and did not make arrangements for his child’s care, and thus, father failed to take necessary steps to assure that there was continuing care for daughter while he was incarcerated. South Carolina Dept. of Social Services v. Ledford (S.C.App. 2004) 357 S.C. 371, 593 S.E.2d 175. Infants 2005; Infants 2015

5. Termination of parental rights

Parental conduct which evinces a settled purpose to forego parental duties may fairly be characterized as “willful,” within statute defining “abandonment” for terminating parental rights as when parent or guardian wilfully deserts or surrenders child without making adequate arrangements, because such conduct manifests a conscious indifference to the rights of the child to receive support and consortium from the parent. South Carolina Dept. of Social Services v. Truitt (S.C.App. 2004) 361 S.C. 272, 603 S.E.2d 867. Infants 2008

Generally, a family court is given wide discretion in making determination of whether’s a parent’s abandonment of child is willful, as required to terminate parental rights; however, the element of willfulness must be established by clear and convincing evidence. South Carolina Dept. of Social Services v. Ledford (S.C.App. 2004) 357 S.C. 371, 593 S.E.2d 175. Infants 2001; Infants 2161

Willfulness, as required to terminate parental rights due to a parent’s abandonment of child, is a question of intent to be determined by the facts and circumstances of each case. South Carolina Dept. of Social Services v. Ledford (S.C.App. 2004) 357 S.C. 371, 593 S.E.2d 175. Infants 2001

**SECTION 63‑7‑25.** Children in out‑of‑home care; age or developmentally appropriate activities.

(A) Every child placed with a caregiver for out‑of‑home care pursuant to this chapter is entitled to participate in age or developmentally appropriate activities.

(B) Each caregiver shall use the reasonable and prudent parent standard, as defined in Section 63‑7‑20, in determining whether to allow a child living in out‑of‑home care to participate in age or developmentally appropriate activities. When using the reasonable and prudent parent standard the caregiver must consider the following:

(1) the best interest of the child based upon information known by the caregiver;

(2) the overall health and safety of the child;

(3) the child’s age, maturity, behavioral history, and ability to participate in the proposed activity;

(4) the potential risks and the appropriateness of the proposed activity;

(5) the importance of encouraging the child’s emotional and developmental growth; and

(6) any permissions or prohibitions outlined in an existing court order.

(C) Each caregiver shall use reasonable and prudent efforts to immediately notify the department when the caregiver approves any overnight travel out‑of‑state, whether with the caregiver or away from the caregiver, so that the department is informed as to where the child will be. Notice to the department may be in the form of a phone call, text message, email, letter, or in‑person conversation with the caseworker assigned to the child.

(D) Department approval is required prior to any overseas travel with the child.

HISTORY: 2016 Act No. 238 (H.4546), Section 2, eff June 5, 2016.

CROSS REFERENCES

Permanency planning, see Section 63‑7‑1700.

Protecting and nurturing children in foster care, see Section 63‑7‑2310.

**SECTION 63‑7‑30.** Seeking assistance.

A person seeking assistance in meeting child care responsibilities may use the services and facilities established by this chapter, including the single statewide telephone number and local child protective services where available. These persons must be referred to appropriate community resources or agencies, notwithstanding whether the problem presented involves child abuse or neglect.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Duty of the Department of Social Services Protective Services and local child protective services agencies to encourage families to seek help consistent with this section, see Section 63‑7‑450.

Library References

Infants 17, 17.5.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9.

**SECTION 63‑7‑40.** Safe haven for abandoned babies.

(A) A safe haven in this State must, without a court order, take temporary physical custody of an infant who is voluntarily left with the safe haven by a person who does not express an intent to return for the infant and the circumstances give rise to a reasonable belief that the person does not intend to return for the infant. If the safe haven is a hospital or hospital outpatient facility, the hospital or hospital facility shall perform any act necessary to protect the physical health or safety of the infant; any other safe haven shall, as soon as possible, but no later than six hours after receiving an infant, transport the infant to a hospital or hospital outpatient facility. The person leaving the infant is not required to disclose his or her identity; however, the person must leave the infant in the physical custody of a staff member or employee of the safe haven.

(B)(1) A facility, agency, or other location designated as a safe haven pursuant to subsection (J)(2) must post a notice prepared by the department on its premises that is prominently displayed for view by the public, stating that the facility, agency, or other location is a safe haven at which a person may leave an infant.

(2) The safe haven must offer the person leaving the infant information concerning the legal effect of leaving the infant with the safe haven.

(3) The safe haven must ask the person leaving the infant to identify any parent of the infant other than the person leaving the infant with the safe haven. The safe haven also must attempt to obtain from the person information concerning the infant’s background and medical history as specified on a form provided by the department. This information must include, but is not limited to, information concerning the use of a controlled substance by the infant’s mother, provided that information regarding the use of a controlled substance by the infant’s mother is not admissible as evidence of the unlawful use of a controlled substance in any court proceeding. The safe haven must give the person a copy of the form and a prepaid envelope for mailing the form to the department if the person does not wish to provide the information to the safe haven. The department must provide these materials to safe havens.

(4) Identifying information disclosed by the person leaving the infant must be kept confidential by the safe haven and disclosed to no one other than the department. However, if a court determines that the immunity provisions of subsection (H) do not apply, the safe haven may disclose the information as permitted by confidentiality protections applicable to records of the safe haven, if the safe haven has such confidentiality protections for records. The department must maintain confidentiality of this information in accordance with Section 63‑7‑1990.

(C) Not later than the close of the first business day after the date on which a hospital or hospital outpatient facility takes possession of an infant pursuant to subsection (A), the hospital or hospital outpatient facility shall notify the department that it has taken temporary physical custody of the infant. The department has legal custody of the infant immediately upon receipt of the notice. The department shall assume physical control of the infant as soon as practicable upon receipt of the notice, but no later than twenty‑four hours after receiving notice that the infant is ready for discharge from the hospital or hospital outpatient facility. Assumption of custody by the department pursuant to this subsection does not constitute emergency protective custody, and the provisions of Subarticle 3 of Article 3 do not apply. The department is not required to initiate a child protective services investigation solely because an infant comes into its custody under this subsection.

(D) Immediately after receiving notice from a hospital or hospital outpatient facility pursuant to subsection (C), the department shall contact the South Carolina Law Enforcement Division for assistance in assuring that the infant is not a missing infant. The South Carolina Law Enforcement Division shall treat the request as ongoing for a period of thirty days and shall contact the department if a missing infant report is received that might relate to the infant.

(E)(1) Within forty‑eight hours after taking legal custody of the infant, the department shall publish notice, in a newspaper of general circulation in the area where the safe haven that initially took the infant is located, and send a news release to broadcast and print media in the area. The notice and the news release must state the circumstances under which the infant was left at the safe haven, a description of the infant, and the date, time, and place of the permanency planning hearing provided for in subsection (E)(2). The notice and the news release must also state that any person wishing to assert parental rights in regard to the infant must do so at the hearing. If the person leaving the infant identified anyone as being a parent of the infant, the notice must be sent by certified mail to the last known address of the person identified as a parent at least two weeks prior to the hearing.

(2) Within forty‑eight hours after obtaining legal custody of the infant, the department shall file a petition alleging that the infant has been abandoned, that the court should dispense with reasonable efforts to preserve or reunify the family, that continuation of keeping the infant in the home of the parent or parents would be contrary to the welfare of the infant, and that termination of parental rights is in the best interest of the infant. A hearing on the petition must be held no earlier than thirty and no later than sixty days after the department takes legal custody of the infant. This hearing is the permanency planning hearing for the infant. If the court approves the permanent plan of termination of parental rights, the order must also provide that a petition for termination of parental rights on the grounds of abandonment must be filed within ten days after receipt of the order by the department.

(F) The act of leaving an infant with a safe haven pursuant to this section is conclusive evidence that the infant has been abused or neglected for purposes of Department of Social Services’ jurisdiction and for evidentiary purposes in any judicial proceeding in which abuse or neglect of an infant is an issue. It is also conclusive evidence that the requirements for termination of parental rights have been satisfied as to any parent who left the infant or acted in concert with the person leaving the infant.

(G) A person who leaves an infant at a safe haven or directs another person to do so must not be prosecuted for any criminal offense on account of such action if:

(1) the person is a parent of the infant or is acting at the direction of a parent;

(2) the person leaves the infant in the physical custody of a staff member or an employee of the safe haven; and

(3) the infant is not more than sixty days old or the infant is reasonably determined by the hospital or hospital outpatient facility to be not more than sixty days old.

This subsection does not apply to prosecution for the infliction of any harm upon the infant other than the harm inherent in abandonment.

(H) A safe haven and its agents, and any health care professionals practicing within a hospital or hospital outpatient facility, are immune from civil or criminal liability for any action authorized by this section, so long as the safe haven, or health care professional, complies with all provisions of this section.

(I) The department, either alone or in collaboration with any other public entity, shall take appropriate measures to achieve public awareness of the provisions of this section.

(J) For purposes of this section:

(1) “infant” means a person not more than sixty days old; and

(2) “safe haven” means a hospital or hospital outpatient facility, a law enforcement agency, a fire station, an emergency medical services station, or any staffed house of worship during hours when the facility is staffed.

(K) Annually the department shall submit a report to the General Assembly containing data on infants who come into the custody of the department pursuant to this section. The data must include, but are not limited to, the date, time, and place where the infant was left, the hospital to which the infant was taken, the health of the infant at the time of being admitted to the hospital, disposition and placement of the infant, and, if available, circumstances surrounding the infant being left at the safe haven. No data in the report may contain identifying information.

HISTORY: 2008 Act No. 361, Section 2; 2016 Act No. 228 (H.4413), Section 1, eff June 3, 2016.

Effect of Amendment

2016 Act No. 228, Section 1, amended (B), (G)(3), and (J)(1), requiring safe havens to post a notice stating that the location is a safe haven, requiring the department of social services to prepare the notice for use by safe havens, allowing the placement of an infant not more than sixty days old at a safe haven, and changing the definition of “infant”.

Library References

Infants 192.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41 to 42, 46 to 48.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

ARTICLE 3

Identification, Investigation, and Intervention

Subarticle 1

Identifying and Reporting Child Abuse and Neglect

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑7‑310 | 20‑7‑510(A)‑(D, 1st par) |
| 63‑7‑320 | 20‑7‑510(D, 2nd & 3rd par) |
| 63‑7‑330 | 20‑7‑510(E) |
| 63‑7‑340 | 20‑7‑510(F) |
| 63‑7‑350 | 20‑7‑510(G) |
| 63‑7‑360 | 20‑7‑520 |
| 63‑7‑370 | 20‑7‑505 |
| 63‑7‑380 | 20‑7‑530 |
| 63‑7‑390 | 20‑7‑540 |
| 63‑7‑400 | 20‑7‑545 |
| 63‑7‑410 | 20‑7‑560 |
| 63‑7‑420 | 20‑7‑550 |
| 63‑7‑430 | 20‑7‑570 |
| 63‑7‑440 | 20‑7‑567 |
| 63‑7‑450 | 20‑7‑660 |

**SECTION 63‑7‑310.** Persons required to report.

(A) A physician, nurse, dentist, optometrist, medical examiner, or coroner, or an employee of a county medical examiner’s or coroner’s office, or any other medical, emergency medical services, mental health, or allied health professional, member of the clergy including a Christian Science Practitioner or religious healer, school teacher, counselor, principal, assistant principal, school attendance officer, social or public assistance worker, substance abuse treatment staff, or childcare worker in a childcare center or foster care facility, foster parent, police or law enforcement officer, juvenile justice worker, undertaker, funeral home director or employee of a funeral home, persons responsible for processing films, computer technician, judge, or a volunteer non‑attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA must report in accordance with this section when in the person’s professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63‑7‑20.

(B) If a person required to report pursuant to subsection (A) has received information in the person’s professional capacity which gives the person reason to believe that a child’s physical or mental health or welfare has been or may be adversely affected by acts or omissions that would be child abuse or neglect if committed by a parent, guardian, or other person responsible for the child’s welfare, but the reporter believes that the act or omission was committed by a person other than the parent, guardian, or other person responsible for the child’s welfare, the reporter must make a report to the appropriate law enforcement agency.

(C) Except as provided in subsection (A), a person, including, but not limited to, a volunteer non‑attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA, who has reason to believe that a child’s physical or mental health or welfare has been or may be adversely affected by abuse and neglect may report, and is encouraged to report, in accordance with this section.

(D) Reports of child abuse or neglect may be made orally by telephone or otherwise to the county department of social services or to a law enforcement agency in the county where the child resides or is found.

HISTORY: 2008 Act No. 361, Section 2; 2010 Act No. 227, Section 1, eff upon approval (became law without the Governor’s signature on June 8, 2010).

Effect of Amendment

The 2010 amendment in subsection (A), added reference to “school attendance officer”, “foster parent”, “juvenile justice worker”, and “volunteer non‑attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem program or on behalf of Richland County CASA”; and rewrote subsection (C).

CROSS REFERENCES

Civil action created for wrongful termination based on employee having reported child abuse or neglect, see Section 63‑7‑315.

Confidentiality of sexually transmitted disease records, see Section 44‑29‑135.

Management, administration, and staffing, regulations for the licensing of child care centers, see S.C. Code of Regulations R. 114‑503.

Management, administration, and staffing, regulations for the licensing of group child care homes, see S.C. Code of Regulations R. 114‑513.

Management, regulations for the registration of child care centers operated by churches or religious entities, see S.C. Code of Regulations R. 114‑523.

Mandatory reports to medical examiner or coroner of death of child suspected to have resulted from abuse or neglect, see Section 63‑7‑360.

Taking and disposition of photographs and x‑rays of abused or neglected child, see Section 63‑7‑380.

Library References

Infants 13.5.

Westlaw Topic No. 211.

C.J.S. Infants Sections 116 to 117.

RESEARCH REFERENCES

ALR Library

80 ALR 6th 469 , Civil Liability of Psychiatrist Arising Out of Patient’s Violent Conduct Resulting in Injury to or Death of Patient or Third Party Allegedly Caused in Whole or Part by Mental Disorder.

Encyclopedias

S.C. Jur. Action Section 14, Determination of Private Rights.

S.C. Jur. Divorce Section 54, Enforcement.

S.C. Jur. Public Health Section 126, Confidentiality of Records.

Treatises and Practice Aids

58 Causes of Action 2d 137, Cause of Action Against Health Care Provider, School, or Other Statutory Reporter by Parent Wrongfully Accused of Child Abuse or Neglect.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Domestic law. 42 S.C. L. Rev. 89 (Autumn 1990).

Criminal and civil liability for failure to report suspected child abuse in South Carolina. Megan Clemency, 68 S.C. L. Rev. 893 (Spring 2017).

Protecting our children: A reformation of South Carolina’s homicide by child abuse laws. Brigid Benincasa, 65 S.C. L. Rev. 735 (Summer 2014).

Attorney General’s Opinions

Mandatory reporting pursuant to this section does not distinguish physical location as the test but whether the individual listed in the statute is working within the scope of their employment or position enumerated in this section. S.C. Op.Atty.Gen. (January 11, 2016) 2016 WL 386063.

A mandatory reporter would not have to report pursuant to Section 63‑7‑310 when an adult discloses being abused in the past as a child, as long as the adult is not mentally incompetent, as long as there is no information that another child (who is, at the time of the disclosure, under the age of eighteen as defined in Section 63‑3‑20(3)) has been or may be abused or neglected as defined in Section 63‑7‑20(4), and as long as there is no other law that would require the abuse to be reported. S.C. Op.Atty.Gen. (June 30, 2014) 2014 WL 3352174.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

Reports under Child Protection Act of institutional abuse and neglect in DYS facility received by SLED should be immediately referred to DSS; Client‑Patient Protection Act provides that SLED receive reports, refer reports to nursing home ombudsman and to use discretion to investigate or refer it to law enforcement agency. 1984 Op. Atty Gen, No. 84‑2, p. 17.

The reporting provisions of the Child Protection Act of 1977 are applicable to Fort Jackson. 1979 Op. Atty Gen, No 79‑26, p 37.

NOTES OF DECISIONS

In general 1

Photograph developer 2

Search warrant 3

1. In general

Child abuse reporting statute did not create private cause of action for negligence per se based on failure to report suspected or known child abuse; statute did not include language creating civil liability for failure to report suspected or known child abuse, and the purpose of the statute was to protect the public and was not to protect an individual’s private right. Doe v. Marion (S.C. 2007) 373 S.C. 390, 645 S.E.2d 245. Action 3; Infants 1518

Duty to warn did not exist for psychiatrist to all future foreseeable victims arising out of psychiatrist‑patient relationship with physician who allegedly sexually abused minor child; physician did not specifically threaten any readily identifiable party, including minor child. Doe v. Marion (S.C.App. 2004) 361 S.C. 463, 605 S.E.2d 556, rehearing denied, certiorari granted, affirmed 373 S.C. 390, 645 S.E.2d 245. Health 757

There is no general duty to control the conduct of another or to warn a third person or potential victim of danger. Doe v. Marion (S.C.App. 2004) 361 S.C. 463, 605 S.E.2d 556, rehearing denied, certiorari granted, affirmed 373 S.C. 390, 645 S.E.2d 245. Negligence 220; Negligence 221

2. Photograph developer

Retail store was not civilly liable due to store employees’ failure to report suspected child abuse, as required by the South Carolina Reporter’s Statute, depicted in photographs of child great aunt tried to develop at store, in great uncle’s negligence action against retail store; the reporting statute did not create private cause of action for negligence based on failure to report suspected or known child abuse. Doe ex rel. Doe v. Wal‑Mart Stores, Inc. (S.C. 2011) 393 S.C. 240, 711 S.E.2d 908. Action 3; Infants 1508

3. Search warrant

Defendant, who gave her laptop to a computer technician for repair, did not have a reasonable expectation of privacy in a video file on the laptop, which displayed two minor children dancing naked with defendant’s naked boyfriend and contained the sound of defendant’s voice directing the children, and thus a warrant was not required for police officer to view the video, where officer happened to observe on the laptop’s screen, as the laptop progressed through a data transfer, a still image of one of the children, who was naked and wearing a bra, and the computer technician had a statutory duty to report images depicting minors “engaging in sexual conduct, sexual performance, or a sexually explicit posture.” State v. Cardwell (S.C.App. 2015) 414 S.C. 416, 778 S.E.2d 483, rehearing denied. Obscenity 274(2); Searches and Seizures 26

**SECTION 63‑7‑315.** Civil action created for wrongful termination based on employee having reported child abuse or neglect.

(A) An employer must not dismiss, demote, suspend, or otherwise discipline or discriminate against an employee who is required or permitted to report child abuse or neglect pursuant to Section 63‑7‑310 based on the fact that the employee has made a report of child abuse or neglect.

(B) An employee who is adversely affected by conduct that is in violation of subsection (A) may bring a civil action for reinstatement and back pay. An action brought pursuant to this subsection may be commenced against an employer, including the State, a political subdivision of the State, and an office, department, independent agency, authority, institution, association, or other body in state government. An action brought pursuant to this subsection must be commenced within three years of the date the adverse personnel action occurred.

(C) In an action brought pursuant to subsection (B), the court may award reasonable attorney’s fees to the prevailing party; however, in order for the employer to receive reasonable attorney’s fees pursuant to this subsection, the court must make a finding pursuant to Section 63‑7‑2000 that:

(1) the employee made a report of suspected child abuse or neglect maliciously or in bad faith; or

(2) the employee is guilty of making a false report of suspected child abuse or neglect pursuant to Section 63‑7‑440.

HISTORY: 2014 Act No. 291 (H.3124), Section 1, eff June 23, 2014.

**SECTION 63‑7‑320.** Notification; transfer; notice to designated military officials.

(A) Where reports are made pursuant to Section 63‑7‑310 to a law enforcement agency, the law enforcement agency shall notify the county department of social services of the law enforcement’s response to the report at the earliest possible time.

(B) Where a county or contiguous counties have established multicounty child protective services, the county department of social services immediately shall transfer reports pursuant to this section to the service.

(C) In the event the alleged abused or neglected child is a member of an active duty military family, concurrent with the transfer of the report, the county department of social services shall notify the designated authorities at the military installation where the active duty military sponsor is assigned, pursuant to the memorandum of understanding or agreement with the military installation’s command authority.

HISTORY: 2008 Act No. 361, Section 2; 2015 Act No. 62 (H.3548), Section 1, eff June 4, 2015.

Effect of Amendment

2015 Act No. 62, Section 1, added (C).

CROSS REFERENCES

Mandatory reports to medical examiner or coroner of death of child suspected to have resulted from abuse or neglect, see Section 63‑7‑360.

Taking and disposition of photographs and x‑rays of abused or neglected child, see Section 63‑7‑380.

Library References

Infants 13.5, 17.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 116 to 117.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Domestic law. 42 S.C. L. Rev. 89 (Autumn 1990).

Attorney General’s Opinions

The reporting provisions of the Child Protection Act of 1977 are applicable to Fort Jackson. 1979 Op. Atty Gen, No 79‑26, p 37.

Reports under Child Protection Act of institutional abuse and neglect in DYS facility received by SLED should be immediately referred to DSS; Client‑Patient Protection Act provides that SLED receive reports, refer reports to nursing home ombudsman and to use discretion to investigate or refer it to law enforcement agency. 1984 Op. Atty Gen, No. 84‑2, p. 17.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

NOTES OF DECISIONS

In general 1

1. In general

Child abuse reporting statute did not create private cause of action for negligence per se based on failure to report suspected or known child abuse; statute did not include language creating civil liability for failure to report suspected or known child abuse, and the purpose of the statute was to protect the public and was not to protect an individual’s private right. Doe v. Marion (S.C. 2007) 373 S.C. 390, 645 S.E.2d 245. Action 3; Infants 1518

Duty to warn did not exist for psychiatrist to all future foreseeable victims arising out of psychiatrist‑patient relationship with physician who allegedly sexually abused minor child; physician did not specifically threaten any readily identifiable party, including minor child. Doe v. Marion (S.C.App. 2004) 361 S.C. 463, 605 S.E.2d 556, rehearing denied, certiorari granted, affirmed 373 S.C. 390, 645 S.E.2d 245. Health 757

There is no general duty to control the conduct of another or to warn a third person or potential victim of danger. Doe v. Marion (S.C.App. 2004) 361 S.C. 463, 605 S.E.2d 556, rehearing denied, certiorari granted, affirmed 373 S.C. 390, 645 S.E.2d 245. Negligence 220; Negligence 221

**SECTION 63‑7‑330.** Confidentiality of information.

(A) The identity of the person making a report pursuant to this section must be kept confidential by the agency or department receiving the report and must not be disclosed except as provided for in subsection (B) or (C) or as otherwise provided for in this chapter.

(B) When the department refers a report to a law enforcement agency for a criminal investigation, the department must inform the law enforcement agency of the identity of the person who reported the child abuse or neglect. The identity of the reporter must only be used by the law enforcement agency to further the criminal investigation arising from the report, and the agency must not disclose the reporter’s identity to any person other than an employee of the agency who is involved in the criminal investigation arising from the report. If the reporter testifies in a criminal proceeding arising from the report, it must not be disclosed that the reporter made the report.

(C) When a law enforcement agency refers a report to the department for an investigation or other response, the law enforcement agency must inform the department of the identity of the person who reported the child abuse or neglect. The department must not disclose the identity of the reporter to any person except as authorized by Section 63‑7‑1990.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Mandatory reports to medical examiner or coroner of death of child suspected to have resulted from abuse or neglect, see Section 63‑7‑360.

Taking and disposition of photographs and x‑rays of abused or neglected child, see Section 63‑7‑380.

Library References

Infants 13.5, 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95, 116 to 117.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 25, Overview.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Domestic law. 42 S.C. L. Rev. 89 (Autumn 1990).

NOTES OF DECISIONS

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Child abuse reporting statute did not create private cause of action for negligence per se based on failure to report suspected or known child abuse; statute did not include language creating civil liability for failure to report suspected or known child abuse, and the purpose of the statute was to protect the public and was not to protect an individual’s private right. Doe v. Marion (S.C. 2007) 373 S.C. 390, 645 S.E.2d 245. Action 3; Infants 1518

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**SECTION 63‑7‑340.** Previous reports.

When a report is referred to the department for an investigation or other response, the department must determine whether previous reports have been made regarding the same child or the same subject of the report. In determining whether previous reports have been made, the department must determine whether there are any suspected, indicated, or unfounded reports maintained pursuant to Section 63‑7‑930 regarding the same child or the same subject of the report.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Mandatory reports to medical examiner or coroner of death of child suspected to have resulted from abuse or neglect, see Section 63‑7‑360.

Taking and disposition of photographs and x‑rays of abused or neglected child, see Section 63‑7‑380.

Library References

Infants 13.5, 17, 133.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 43, 71 to 95, 116 to 117.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Domestic law. 42 S.C. L. Rev. 89 (Autumn 1990).

Attorney General’s Opinions

The reporting provisions of the Child Protection Act of 1977 are applicable to Fort Jackson. 1979 Op. Atty Gen, No 79‑26, p 37.

Reports under Child Protection Act of institutional abuse and neglect in DYS facility received by SLED should be immediately referred to DSS; Client‑Patient Protection Act provides that SLED receive reports, refer reports to nursing home ombudsman and to use discretion to investigate or refer it to law enforcement agency. 1984 Op. Atty Gen, No. 84‑2, p. 17.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

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**SECTION 63‑7‑350.** Reports for lack of investigation.

If the department does not conduct an investigation as a result of information received pursuant to this subarticle, the department must make a record of the information and must classify the record as a Category IV unfounded report in accordance with Section 63‑7‑930. The department and law enforcement are authorized to use information recorded pursuant to this section for purposes of assessing risk and safety if additional contacts are made concerning the child, the family, or the subject of the report.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Mandatory reports to medical examiner or coroner of death of child suspected to have resulted from abuse or neglect, see Section 63‑7‑360.

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Infants 13.5, 17, 133.

Westlaw Topic No. 211.

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C.J.S. Infants Sections 6, 8 to 9, 43, 71 to 95, 116 to 117.

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**SECTION 63‑7‑360.** Mandatory reporting to coroner.

A person required under Section 63‑7‑310 to report cases of suspected child abuse or neglect, including workers of the department, who has reason to believe a child has died as the result of child abuse or neglect, shall report this information to the appropriate medical examiner or coroner. Any other person who has reason to believe that a child has died as a result of child abuse or neglect may report this information to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report his findings to the appropriate law enforcement agency, circuit solicitor’s office, the county department of social services and, if the institution making a report is a hospital, to the hospital.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Coroners 9.

Infants 13.5.

Westlaw Topic Nos. 100, 211.

C.J.S. Coroners and Medical Examiners Sections 9 to 23, 29 to 30.

C.J.S. Infants Sections 116 to 117.

**SECTION 63‑7‑370.** Domestic violence reporting.

The law enforcement officer upon receipt of a report of domestic violence may report this information to the Department of Social Services. The department may treat the case as suspected report of abuse and may investigate the case as in other allegations of abuse in order to determine if the child has been harmed.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Criminal Law 1224(1).

Infants 13.5, 17.

Westlaw Topic Nos. 110, 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Criminal Law Sections 2402 to 2403.

C.J.S. Infants Sections 6, 8 to 9, 116 to 117.

**SECTION 63‑7‑380.** Photos and x‑rays without parental consent; release of medical records.

A person required to report under Section 63‑7‑310 may take, or cause to be taken, color photographs of the areas of trauma visible on a child who is the subject of a report and, if medically indicated, a physician may cause to be performed a radiological examination or other medical examinations or tests of the child without the consent of the child’s parents or guardians. Copies of all photographs, negatives, radiological, and other medical reports must be sent to the department at the time a report pursuant to Section 63‑7‑310 is made, or as soon as reasonably possible after the report is made. Upon written request of the consulting care physician or the hospital facility and without consent of the child’s parent or legal guardian, the primary care physician shall release the medical records, radiologic imaging, photos, and all other health information only to the consulting care physician and the hospital facility. The consulting care physician and the hospital facility only may release the records to law enforcement in accordance with the Health Insurance Portability and Accountability Act, 45 C.F.R. 164.512(b).

HISTORY: 2008 Act No. 361, Section 2; 2015 Act No. 75 (S.250), Section 1, eff June 8, 2015.

Effect of Amendment

2015 Act No. 75, Section 1, added the last two sentences, relating to the release of records.

Library References

Infants 13.5.

Westlaw Topic No. 211.

C.J.S. Infants Sections 116 to 117.

**SECTION 63‑7‑390.** Reporter immunity from liability.

A person required or permitted to report pursuant to Section 63‑7‑310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this section extends to full disclosure by the person of facts which gave the person reason to believe that the child’s physical or mental health or welfare had been or might be adversely affected by abuse or neglect.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 13.5(2).

Westlaw Topic No. 211.

C.J.S. Infants Section 117.

RESEARCH REFERENCES

Treatises and Practice Aids

58 Causes of Action 2d 137, Cause of Action Against Health Care Provider, School, or Other Statutory Reporter by Parent Wrongfully Accused of Child Abuse or Neglect.

**SECTION 63‑7‑400.** Department of Social Services immunity from liability.

An employee, volunteer, or official of the Department of Social Services required or authorized to perform child protective or child welfare‑related functions or an individual with whom the department has contracted to convene family group conferences or a law enforcement officer required or authorized to perform child protective or child welfare related functions is immune from civil or criminal liability which might otherwise result by reason of acts or omissions within the scope of the official duties of the employee, volunteer, convener, officer, or official, as long as the employee, volunteer, convener, officer, or official acted in good faith and was not reckless, wilful, wanton, or grossly negligent. In all such civil or criminal proceedings good faith is rebuttably presumed. This grant of immunity is cumulative to and does not replace any other immunity provided under the South Carolina Tort Claims Act.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 17.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9.

Notes of Decisions

Civil actions 1

1. Civil actions

Jury verdict in favor of parents on their claims against the Department of Social Services (DSS) for gross negligence and intentional infliction of emotional distress arising from DSS’s removal of children from parents’ custody following receipt of a hospital report of a potential parental poisoning would not be reversed on appeal, even though there was insufficient evidence to support the intentional infliction of emotional distress claim; the jury was provided with a general verdict form without objection, as such, the verdict would be upheld if the verdict was supported by at least one issue, and the Supreme Court upheld the jury’s gross negligence finding. Bass v. South Carolina Dept. of Social Services (S.C. 2015) 414 S.C. 558, 780 S.E.2d 252. Appeal and Error 1136

**SECTION 63‑7‑410.** Failure to report; penalties.

A person required to report a case of child abuse or neglect or a person required to perform any other function under this article who knowingly fails to do so, or a person who threatens or attempts to intimidate a witness is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 13.5(2).

Westlaw Topic No. 211.

C.J.S. Infants Section 117.

**SECTION 63‑7‑420.** Abrogation of privileged communication; exceptions.

The privileged quality of communication between husband and wife and any professional person and his patient or client, except that between attorney and client or clergy member, including Christian Science Practitioner or religious healer, and penitent, is abrogated and does not constitute grounds for failure to report or the exclusion of evidence in a civil protective proceeding resulting from a report pursuant to this article. However, a clergy member, including Christian Science Practitioner or religious healer, must report in accordance with this subarticle except when information is received from the alleged perpetrator of the abuse and neglect during a communication that is protected by the clergy and penitent privilege as provided for in Section 19‑11‑90.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 13.5.

Privileged Communications and Confidentiality 15, 65, 72, 403.

Westlaw Topic Nos. 211, 311H.

C.J.S. Infants Sections 116 to 117.

**SECTION 63‑7‑430.** Civil action for bad faith reporting.

(A) If the family court determines pursuant to Section 63‑7‑2000 that a person has made a report of suspected child abuse or neglect maliciously or in bad faith or if a person has been found guilty of making a false report pursuant to Section 63‑7‑440, the department may bring a civil action to recover the costs of the department’s investigation and proceedings associated with the investigation, including attorney’s fees. The department also is entitled to recover costs and attorney’s fees incurred in the civil action authorized by this section. The decision of whether to bring a civil action pursuant to this section is in the sole discretion of the department.

(B) If the family court determines pursuant to Section 63‑7‑2000 that a person has made a false report of suspected child abuse or neglect maliciously or in bad faith or if a person has been found guilty of making a false report pursuant to Section 63‑7‑440, a person who was subject of the false report has a civil cause of action against the person who made the false report and is entitled to recover from the person who made the false report such relief as may be appropriate, including:

(1) actual damages;

(2) punitive damages; and

(3) a reasonable attorney’s fee and other litigation costs reasonably incurred.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 13.5(2).

Westlaw Topic No. 211.

C.J.S. Infants Section 117.

RESEARCH REFERENCES

Treatises and Practice Aids

58 Causes of Action 2d 137, Cause of Action Against Health Care Provider, School, or Other Statutory Reporter by Parent Wrongfully Accused of Child Abuse or Neglect.

**SECTION 63‑7‑440.** Knowingly making false report.

(A) It is unlawful to knowingly make a false report of abuse or neglect.

(B) A person who violates subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than ninety days, or both.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Civil action created for wrongful termination based on employee having reported child abuse or neglect, see Section 63‑7‑315.

Library References

Infants 13.5(2).

Westlaw Topic No. 211.

C.J.S. Infants Section 117.

**SECTION 63‑7‑450.** Department of Social Services to provide information to public.

(A) The Department of Social Services Protective Services shall inform all persons required to report under this subarticle of the nature, problem, and extent of child abuse and neglect and of their duties and responsibilities in accordance with this article. The department also, on a continuing basis, shall conduct training programs for department staff and appropriate training for persons required to report under this subarticle.

(B) The department, on a continuing basis, shall inform the public of the nature, problem, and extent of the child abuse and neglect and of the remedial and therapeutic services available to children and their families. The department shall encourage families to seek help consistent with Section 63‑7‑30.

(C) The department, on a continuing basis, shall actively publicize the appropriate telephone numbers to receive reports of suspected child abuse and neglect, including the twenty‑four hour, statewide, toll‑free telephone service and respective numbers of the county department offices.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 13.5, 17.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 116 to 117.

NOTES OF DECISIONS

In general 1

1. In general

Sections 20‑7‑640 and 20‑7‑660 deal with the organization and general management of the child protection program at the state‑wide level. They do not impose on state‑wide Department of Social Services officials any duties with respect to individual cases of child abuse; they provide no specific authority for these officials to intervene directly to protect individual children from abuse. Jensen v. South Carolina Dept. of Social Services (S.C.App. 1988) 297 S.C. 323, 377 S.E.2d 102, affirmed 304 S.C. 195, 403 S.E.2d 615. Infants 1435

The portions of Sections 20‑7‑650 and 20‑7‑660 which mandate the training of staff and the staffing of the local agency with persons trained in the investigation of child abuse, prescribe general managerial duties. They relate to the general operations of the local child protection agency, not to the provision of protective services to particular children. These provisions may incidentally benefit abused children, but their essential purpose is to define and allocate the duties of various public agencies, officers and employees. Jensen v. South Carolina Dept. of Social Services (S.C.App. 1988) 297 S.C. 323, 377 S.E.2d 102, affirmed 304 S.C. 195, 403 S.E.2d 615.

Subarticle 3

Emergency Protective Custody

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑7‑610 | 20‑7‑612 |
| 63‑7‑620 | 20‑7‑610(A),(B) |
| 63‑7‑630 | 20‑7‑610(C) |
| 63‑7‑640 | 20‑7‑610(D) |
| 63‑7‑650 | 20‑7‑610(E) |
| 63‑7‑660 | 20‑7‑610(F) |
| 63‑7‑670 | 20‑7‑610(G) |
| 63‑7‑680 | 20‑7‑610(H) |
| 63‑7‑690 | 20‑7‑610(I) |
| 63‑7‑700 | 20‑7‑610(J)‑(L) |
| 63‑7‑710 | 20‑7‑610(M) |
| 63‑7‑720 | 20‑7‑610(N) |
| 63‑7‑730 | 20‑7‑610(O) |
| 63‑7‑740 | 20‑7‑610(P),(Q) |
| 63‑7‑750 | 20‑7‑618 |
| 63‑7‑760 | 20‑7‑610(R) |

**SECTION 63‑7‑610.** Statewide jurisdiction.

(A) A law enforcement officer investigating a case of suspected child abuse or neglect or responding to a request for assistance by the department as it investigates a case of suspected child abuse or neglect has authority to take emergency protective custody of the child pursuant to this subarticle in all counties and municipalities.

(B) Immediately upon taking emergency protective custody, the law enforcement officer shall notify the local office of the department responsible to the county in which the activity under investigation occurred.

(C) The department shall designate by policy and procedure the local department office responsible for procedures required by this subarticle when a child resides in a county other than the one in which the activity under investigation occurred. The probable cause hearing required by Section 63‑7‑710 may be held in the county of the child’s residence or the county of the law enforcement officer’s jurisdiction.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Criminal Law 1224(1).

Infants 192, 196, 203.

Westlaw Topic Nos. 110, 211.

C.J.S. Criminal Law Sections 2402 to 2403.

C.J.S. Infants Sections 24 to 25, 40 to 42, 44 to 48, 58 to 59, 62 to 63, 66, 69 to 70.

**SECTION 63‑7‑620.** Emergency protective custody.

(A) A law enforcement officer may take emergency protective custody of a child without the consent of the child’s parents, guardians, or others exercising temporary or permanent control over the child if:

(1) the officer has probable cause to believe that by reason of abuse or neglect the child’s life, health, or physical safety is in substantial and imminent danger if the child is not taken into emergency protective custody, and there is not time to apply for a court order pursuant to Section 63‑7‑1660. When a child is taken into emergency protective custody following an incident of excessive corporal punishment, and the only injury to the child is external lesions or minor bruises, other children in the home shall not be taken into emergency protective custody solely on account of the injury of one child through excessive corporal punishment. However, the officer may take emergency protective custody of other children in the home if a threat of harm to them is further indicated by factors including, but not limited to, a prior history of domestic violence or other abuse in the home, alcohol or drug abuse if known or evident at the time of the initial contact, or other circumstances indicative of danger to the children;

(2) the child’s parent, parents, or guardian has been arrested or the child has become lost accidentally and as a result the child’s welfare is threatened due to loss of adult protection and supervision; and

(a) in the circumstances of arrest, the parent, parents, or guardian does not consent in writing to another person assuming physical custody of the child;

(b) in the circumstances of a lost child, a search by law enforcement has not located the parent, parents, or guardian.

(B)(1) If the child is in need of emergency medical care at the time the child is taken into emergency protective custody, the officer shall transport the child to an appropriate health care facility. Emergency medical care may be provided to the child without consent, as provided in Section 63‑5‑350. The parent or guardian is responsible for the cost of emergency medical care that is provided to the child. However, the parent or guardian is not responsible for the cost of medical examinations performed at the request of law enforcement or the department solely for the purpose of assessing whether the child has been abused or neglected unless it is determined that the child has been harmed as defined in this chapter.

(2) If the child is not in need of emergency medical care, the officer or the department shall transport the child to a place agreed upon by the department and law enforcement, and the department within two hours shall assume physical control of the child and shall place the child in a licensed foster home or shelter within a reasonable period of time. In no case may the child be placed in a jail or other secure facility or a facility for the detention of criminal or juvenile offenders. While the child is in its custody, the department shall provide for the needs of the child and assure that a child of school age who is physically able to do so continues attending school.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Criminal Law 1224(1).

Infants 192.

Westlaw Topic Nos. 110, 211.

C.J.S. Criminal Law Sections 2402 to 2403.

C.J.S. Infants Sections 24 to 25, 41 to 42, 46 to 48.

Attorney General’s Opinions

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted. 1979 Op. Atty Gen, No. 79‑121, p 167.

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the State in assuring that which is in the minor child’s best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent. 1979 Op. Atty Gen, No. 79‑122, p 171.

Expenditures of public funds to a “not‑for‑profit” organization, such as the Child Abuse Prevention Association, for the purpose of the protection of abused children, would constitute a valid public purpose. 1988 Op. Atty Gen, No. 88‑52, p 152.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op. Atty Gen, No. 88‑83, p 236.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

NOTES OF DECISIONS

In general 2

Validity 1

1. Validity

Statute that authorizes law enforcement officer to take child into emergency protective custody without consent of child’s parents or guardians if officer has probable cause to believe that child is in imminent danger does not violate right of marital privacy under federal constitution; parents’ due process liberty interest in care and custody of their children is not absolute, children have statutory right to be free from abusive or neglectful situations, and emergency protective custody statute has specific deadlines and detailed procedures that safeguard rights of parents and their children. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Constitutional Law 1250; Constitutional Law 4401; Infants 1006(13)

2. In general

Because Department of Social Services (DSS), in filing complaint for intervention, in actuality initiated a removal action instead of an intervention action regarding allegedly neglected children, it was required to follow the statutory procedures for removal and file a petition with the family court after the children were taken into emergency protective custody (EPC). South Carolina Dept. of Social Services v. Randy S. (S.C.App. 2010) 390 S.C. 100, 700 S.E.2d 250, rehearing denied. Infants 2084

Where mother consented to order of family court judge holding that discipline administered was excessive in manner and degree, which order was not appealed, mother was precluded from asserting she was denied due process by removal of child. Doe v. State (S.C. 1987) 294 S.C. 125, 363 S.E.2d 106.

**SECTION 63‑7‑630.** Notification of Department of Social Services.

When an officer takes a child into emergency protective custody under this subarticle, the officer immediately shall notify the department. The department shall notify the parent, guardian, or other person exercising temporary or permanent control over the child as early as reasonably possible of the location of the child unless there are compelling reasons for believing that disclosure of this information would be contrary to the best interests of the child.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Criminal Law 1224(1).

Infants 192.

Westlaw Topic Nos. 110, 211.

C.J.S. Criminal Law Sections 2402 to 2403.

C.J.S. Infants Sections 24 to 25, 41 to 42, 46 to 48.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 35, Protective Custody.

Attorney General’s Opinions

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted. 1979 Op. Atty Gen, No. 79‑121, p 167.

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the State in assuring that which is in the minor child’s best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent. 1979 Op. Atty Gen, No. 79‑122, p 171.

Expenditures of public funds to a “not‑for‑profit” organization, such as the Child Abuse Prevention Association, for the purpose of the protection of abused children, would constitute a valid public purpose. 1988 Op. Atty Gen, No. 88‑52, p 152.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op. Atty Gen, No. 88‑83, p 236.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

**SECTION 63‑7‑640.** Preliminary investigation.

The department shall conduct within twenty‑four hours after the child is taken into emergency protective custody by law enforcement or pursuant to ex parte order a preliminary investigation to determine whether grounds for assuming legal custody of the child exist and whether reasonable means exist for avoiding removal of the child from the home of the parent or guardian or for placement of the child with a relative and means for minimizing the emotional impact on the child of separation from the child’s home and family. During this time the department, if possible, shall convene, a meeting with the child’s parents or guardian, extended family, and other relevant persons to discuss the family’s problems that led to intervention and possible corrective actions, including placement of the child.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Infants 17, 192.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 24 to 25, 41 to 42, 46 to 48.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 35, Protective Custody.

Attorney General’s Opinions

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted. 1979 Op. Atty Gen, No. 79‑121, p 167.

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the State in assuring that which is in the minor child’s best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent. 1979 Op. Atty Gen, No. 79‑122, p 171.

Expenditures of public funds to a “not‑for‑profit” organization, such as the Child Abuse Prevention Association, for the purpose of the protection of abused children, would constitute a valid public purpose. 1988 Op. Atty Gen, No. 88‑52, p 152.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op. Atty Gen, No. 88‑83, p 236.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

**SECTION 63‑7‑650.** Risk assessment before placement.

Before agreeing to or acquiescing in a corrective action that involves placement of the 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 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.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Infants 192, 208.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 40 to 48, 51 to 59, 61 to 62, 66 to 67, 69 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 35, Protective Custody.

S.C. Jur. Children and Families Section 39, Removal Hearings.

Attorney General’s Opinions

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted. 1979 Op. Atty Gen, No. 79‑121, p 167.

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the State in assuring that which is in the minor child’s best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent. 1979 Op. Atty Gen, No. 79‑122, p 171.

Expenditures of public funds to a “not‑for‑profit” organization, such as the Child Abuse Prevention Association, for the purpose of the protection of abused children, would constitute a valid public purpose. 1988 Op. Atty Gen, No. 88‑52, p 152.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op. Atty Gen, No. 88‑83, p 236.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

NOTES OF DECISIONS

In general 1

1. In general

The custody of a child should have been awarded to a foster mother, despite the presumption that the best interest of the child is to be in the custody of its biological parent, where it was shown that (1) the biological mother had an unstable history with men and was seriously involved with 4 different men during the 4 years of the child’s life, (2) the mother failed to provide a stable environment by frequently taking the child to her boyfriend’s trailer during visitations, (3) the child received severe bruises from a spanking by the mother’s boyfriend, yet the mother continued to expose the child to him, (4) the child had firmly bonded with the foster mother, and (5) the foster mother was an exemplary parent. Shake v. Darlington County Dept. of Social Services (S.C.App. 1991) 306 S.C. 216, 410 S.E.2d 923.

**SECTION 63‑7‑660.** Assumption of legal custody.

If the department determines after the preliminary investigation that there is probable cause to believe that by reason of abuse or neglect the child’s life, health, or physical safety is in imminent and substantial danger, the department may assume legal custody of the child without the consent of the child’s parent, guardian, or custodian. The department shall make every reasonable effort to notify the child’s parent, guardian, or custodian of the location of the child and shall make arrangements for temporary visitation unless there are compelling reasons why visitation or notice of the location of the child would be contrary to the best interests of the child. The notification must be in writing and shall include notice of the right to a hearing and right to counsel pursuant to this article. Nothing in this section authorizes the department to physically remove a child from the care of the child’s parent or guardian without an order of the court. The department may exercise the authority to assume legal custody only after a law enforcement officer has taken emergency protective custody of the child or the family court has granted emergency protective custody by ex parte order, and the department has conducted a preliminary investigation pursuant to Section 63‑7‑640.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Infants 192.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41 to 42, 46 to 48.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 19, Evidence and Standard of Proof.

S.C. Jur. Children and Families Section 35, Protective Custody.

S.C. Jur. Children and Families Section 36, Duty of the State Department of Social Services to Investigate.

S.C. Jur. Children and Families Section 37, Duty of the State Department of Social Services to Provide Services.

Attorney General’s Opinions

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted. 1979 Op. Atty Gen, No. 79‑121, p 167.

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the State in assuring that which is in the minor child’s best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent. 1979 Op. Atty Gen, No. 79‑122, p 171.

Expenditures of public funds to a “not‑for‑profit” organization, such as the Child Abuse Prevention Association, for the purpose of the protection of abused children, would constitute a valid public purpose. 1988 Op. Atty Gen, No. 88‑52, p 152.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op. Atty Gen, No. 88‑83, p 236.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

**SECTION 63‑7‑670.** Returning child to parents; alternative procedures.

If emergency protective custody of the child was taken by a law enforcement officer pursuant to this subarticle, and the department concludes after the preliminary investigation that the child should be returned to the child’s parent, guardian, or custodian, the department shall consult with the law enforcement officer who took emergency protective custody unless the department and the law enforcement agency have agreed to an alternative procedure. If the officer objects to the return of the child, the department must assume legal custody of the child until a probable cause hearing can be held. The alternative procedure agreed to by the department and the law enforcement agency may provide that the child must be retained in custody if the officer cannot be contacted, conditions under which the child may be returned home if the officer cannot be contacted, other persons within the law enforcement agency who are to be consulted instead of the officer, or other procedures. If no alternative procedure has been agreed to and the department is unable to contact the law enforcement officer after reasonable efforts to do so, the department shall consult with the officer’s designee or the officer’s agency.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Infants 192.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41 to 42, 46 to 48.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 19, Evidence and Standard of Proof.

S.C. Jur. Children and Families Section 36, Duty of the State Department of Social Services to Investigate.

S.C. Jur. Children and Families Section 37, Duty of the State Department of Social Services to Provide Services.

Attorney General’s Opinions

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted. 1979 Op. Atty Gen, No. 79‑121, p 167.

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the State in assuring that which is in the minor child’s best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent. 1979 Op. Atty Gen, No. 79‑122, p 171.

Expenditures of public funds to a “not‑for‑profit” organization, such as the Child Abuse Prevention Association, for the purpose of the protection of abused children, would constitute a valid public purpose. 1988 Op. Atty Gen, No. 88‑52, p 152.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op. Atty Gen, No. 88‑83, p 236.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

**SECTION 63‑7‑680.** Emergency protective custody extension.

The period of emergency protective custody may be extended for up to twenty‑four additional hours if:

(1) the department concludes that the child is to be placed with a relative or other person instead of taking legal custody of the child;

(2) the department requests the appropriate law enforcement agency to check for records concerning the relative or other person, or any adults in that person’s home; and

(3) the law enforcement agency notifies the department that the extension is needed to enable the law enforcement agency to complete its record check before the department’s decision on whether to take legal custody of the child.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Infants 192, 230.1.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 24 to 25, 41 to 43, 46 to 48, 71 to 95.

Attorney General’s Opinions

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted. 1979 Op. Atty Gen, No. 79‑121, p 167.

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the State in assuring that which is in the minor child’s best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent. 1979 Op. Atty Gen, No. 79‑122, p 171.

Expenditures of public funds to a “not‑for‑profit” organization, such as the Child Abuse Prevention Association, for the purpose of the protection of abused children, would constitute a valid public purpose. 1988 Op. Atty Gen, No. 88‑52, p 152.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op. Atty Gen, No. 88‑83, p 236.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

NOTES OF DECISIONS

Validity 1

1. Validity

Statute that authorizes law enforcement officer to take child into emergency protective custody without consent of child’s parents or guardians if officer has probable cause to believe that child is in imminent danger does not violate right of marital privacy under federal constitution; parents’ due process liberty interest in care and custody of their children is not absolute, children have statutory right to be free from abusive or neglectful situations, and emergency protective custody statute has specific deadlines and detailed procedures that safeguard rights of parents and their children. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Constitutional Law 1250; Constitutional Law 4401; Infants 1006(13)

**SECTION 63‑7‑690.** Relative placement.

(A) 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.

(B) 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) 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.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Infants 192, 198, 203, 204.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 40 to 42, 44 to 50, 58 to 59, 62 to 63, 65 to 66, 69 to 70.

Attorney General’s Opinions

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted. 1979 Op. Atty Gen, No. 79‑121, p 167.

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the State in assuring that which is in the minor child’s best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent. 1979 Op. Atty Gen, No. 79‑122, p 171.

Expenditures of public funds to a “not‑for‑profit” organization, such as the Child Abuse Prevention Association, for the purpose of the protection of abused children, would constitute a valid public purpose. 1988 Op. Atty Gen, No. 88‑52, p 152.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op. Atty Gen, No. 88‑83, p 236.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

NOTES OF DECISIONS

In general 1

1. In general

Custodian, who had custody of child before state Department of Social Services (DSS) took child into emergency protective custody, had standing to participate in dependency proceeding, although custodian was not related to child by blood or marriage, and although custodian failed to comply with treatment and placement plan; custodian had real, material, or substantial interest in long‑term custody and potential adoption of child. Ex parte Morris (S.C. 2006) 367 S.C. 56, 624 S.E.2d 649, rehearing denied. Infants 2076

**SECTION 63‑7‑700.** Emergency protective custody proceedings.

(A) If a law enforcement officer clearly states to the department at the time the officer delivers physical control of the child to the department that the child is not to be returned to the home or placed with a relative before a probable cause hearing regardless of the outcome of a preliminary investigation, the department immediately must take legal custody of the child. In this case, at a minimum, the department shall conduct a preliminary investigation as provided in Section 63‑7‑640 within seventy‑two hours after the child was taken into emergency protective custody and shall make recommendations concerning return of the child to the home or placement with a relative or other person to the family court at the probable cause hearing or take other appropriate action as provided in this chapter.

(B)(1) The department, upon assuming legal custody of the child, shall begin a child protective investigation, including immediate attention to the protection of other children in the home, or other setting where the child was found. The department shall initiate a removal proceeding in the appropriate family court pursuant to Section 63‑7‑1660 on or before the next working day after initiating the investigation. If a noncustodial parent is not named as a party, the department shall exercise every reasonable effort to promptly notify the noncustodial parent that a removal proceeding has been initiated and of the date and time of any hearings scheduled pursuant to this subarticle.

(2) Upon a determination by the department before the probable cause hearing that there is not a preponderance of evidence that child abuse or neglect occurred, the department may place physical custody of the child with the parent, parents, guardian, immediate family member, or relative, with the department retaining legal custody pending the probable cause hearing.

(3) When the facts and circumstances of the report clearly indicate that no abuse or neglect occurred, the report promptly must be determined to be unfounded, and the department shall exercise reasonable efforts to expedite the placement of the child with the parent, parents, guardian, immediate family member, or relative.

(C) If the child is returned to the child’s parent, guardian, or custodian following the preliminary investigation, a probable cause hearing must be held if requested by the child’s parent, guardian, or custodian or the department or the law enforcement agency that took emergency protective custody of the child. The request must be made in writing to the court within ten days after the child is returned. A probable cause hearing pursuant to Section 63‑7‑710 must be scheduled within seven days of the request to determine whether there was probable cause to take emergency physical custody of the child.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Infants 17, 192, 203, 204.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 24 to 25, 40 to 42, 44 to 48, 58 to 59, 62 to 63, 65 to 66, 69 to 70.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 40, Hearings in General.

Attorney General’s Opinions

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted. 1979 Op. Atty Gen, No. 79‑121, p 167.

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the State in assuring that which is in the minor child’s best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent. 1979 Op. Atty Gen, No. 79‑122, p 171.

Expenditures of public funds to a “not‑for‑profit” organization, such as the Child Abuse Prevention Association, for the purpose of the protection of abused children, would constitute a valid public purpose. 1988 Op. Atty Gen, No. 88‑52, p 152.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op. Atty Gen, No. 88‑83, p 236.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

NOTES OF DECISIONS

In general 1

Standing 3

Time requirements for hearing 2

1. In general

Family Court’s refusal to hold removal action in abeyance pending resolution of related criminal charges against one of the parties, who was accused of sexually abusing minor child and allowing her to smoke marijuana, did not deprive such party of his equal protection or due process rights, even if party did not testify at the hearing in the Family Court proceeding for fear of self‑incrimination; statutory mandate existed for expedited resolution of removal actions, party was present at the hearing and was represented by counsel, and party’s decision whether to testify, while difficult, did not implicate the federal or state constitutions. South Carolina Dept. of Social Services v. Walter (S.C.App. 2006) 369 S.C. 384, 631 S.E.2d 913. Constitutional Law 3739; Constitutional Law 4401; Infants 2064

2. Time requirements for hearing

In cases involving children taken into emergency protective custody, the family court should order custody be returned to the child’s parent or legal guardian if the required hearings are not held within ten days after the statutory time limits. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 1844

Schedule of hearings contained in Section 20‑7‑610 must be strictly complied with, and family court judges should order custody be returned to child’s parent or legal guardian if hearings are not held within 10 days after time limitations contained in statute. Doe v. State (S.C. 1987) 294 S.C. 125, 363 S.E.2d 106. Infants 1844

3. Standing

Custodian, who had custody of child before state Department of Social Services (DSS) took child into emergency protective custody, had standing to participate in dependency proceeding, although custodian was not related to child by blood or marriage, and although custodian failed to comply with treatment and placement plan; custodian had real, material, or substantial interest in long‑term custody and potential adoption of child. Ex parte Morris (S.C. 2006) 367 S.C. 56, 624 S.E.2d 649, rehearing denied. Infants 2076

A mother lacked standing to maintain an action to dismiss a petition for removal of the children from their parents’ custody where neither the solicitor nor the Department of Social Services coerced the mother into signing the forms and where the mother voluntarily signed the consents. Edwards v. Hars (S.C. 1985) 284 S.C. 131, 326 S.E.2d 408.

**SECTION 63‑7‑710.** Probable cause hearing.

(A) The family court shall schedule a probable cause hearing to be held within seventy‑two hours of the time the child was taken into emergency protective custody. If the third day falls upon a Saturday, Sunday, or holiday, the probable cause hearing must be held no later than the next working day. If there is no term of court in the county when the probable cause hearing must be held, the hearing must be held in another county in the circuit. If there is no term of family court in another county in the circuit, the probable cause hearing may be heard in another court in an adjoining circuit.

(B) The probable cause hearing may be conducted by video conference at the discretion of the judge.

(C) At the probable cause hearing, the family court shall undertake to fulfill the requirements of Section 63‑7‑1620 and shall determine whether there was probable cause for taking emergency protective custody and for the department to assume legal custody of the child and shall determine whether probable cause to retain legal custody of the child remains at the time of the hearing.

(D) At the probable cause hearing, the respondents may submit affidavits as to facts which are alleged to form the basis of the removal and to cross‑examine the department’s witnesses as to whether there existed probable cause to effect emergency removal.

(E) The hearing on the merits to determine whether removal of custody is needed, pursuant to Section 63‑7‑1660, must be held within thirty‑five days of the date of receipt of the removal petition. At the probable cause hearing, the court shall set the time and date for the hearing on the merits. A party may request a continuance that would result in the hearing being held more than thirty‑five days after the petition was filed, and the court may grant the request for continuance only if exceptional circumstances exist. If a continuance is granted, the hearing on the merits must be completed within sixty‑five days following receipt of the removal petition. The court may continue the hearing on the merits beyond sixty‑five days without returning the child to the home only if the court issues a written order with findings of fact supporting a determination that the following conditions are satisfied, regardless of whether the parties have agreed to a continuance:

(1) the court finds that the child should remain in the custody of the department because there is probable cause to believe that returning the child to the home would seriously endanger the child’s physical safety or emotional well‑being;

(2) the court schedules the case for trial on a date and time certain which is not more than thirty days after the date the hearing was scheduled to be held; and

(3) the court finds that exceptional circumstances support the continuance or the parties and the guardian ad litem agree to a continuance.

(F) The court may continue the case past the date and time certain set forth in subsection (E) only if the court issues a new order as required in subsection (E).

(G) The court may continue the case because a witness is unavailable only if the court enters a finding of fact that the court cannot decide the case without the testimony of the witness. The court shall consider and rule on whether the hearing can begin and then recess to have the witness’ testimony taken at a later date or by deposition. The court shall rule on whether the party offering the witness has exercised due diligence to secure the presence of the witness or to preserve the witness’ testimony.

(H) This section does not prevent the court from conducting a pendente lite hearing on motion of any party and issuing an order granting other appropriate relief pending a hearing on the merits.

(I) If the child is returned to the home pending the merits hearing, the court may impose such terms and conditions as it determines appropriate to protect the child from harm, including measures to protect the child as a witness.

(J) When a continuance is granted pursuant to this section, the family court shall ensure that the hearing is rescheduled within the time limits provided in this section and give the hearing priority over other matters pending before the court except a probable cause hearing held pursuant to this section, a detention hearing held pursuant to Section 63‑19‑830, or a hearing held pursuant to Section 63‑19‑1030 or 63‑19‑1210 concerning a child who is in state custody pursuant to Chapter 19. An exception also may be made for child custody hearings if the court, in its discretion, makes a written finding stating compelling reasons, relating to the welfare of the child, for giving priority to the custody hearing.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Infants 192, 203, 204.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 40 to 42, 44 to 48, 58 to 59, 62 to 63, 65 to 66, 69 to 70.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 38, Jurisdiction.

Attorney General’s Opinions

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted. 1979 Op. Atty Gen, No. 79‑121, p 167.

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the State in assuring that which is in the minor child’s best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent. 1979 Op. Atty Gen, No. 79‑122, p 171.

Expenditures of public funds to a “not‑for‑profit” organization, such as the Child Abuse Prevention Association, for the purpose of the protection of abused children, would constitute a valid public purpose. 1988 Op. Atty Gen, No. 88‑52, p 152.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op. Atty Gen, No. 88‑83, p 236.

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NOTES OF DECISIONS

In general 2

Review 5

Standing 3

Timeliness 4

Validity 1

1. Validity

Family Court’s refusal to hold removal action in abeyance pending resolution of related criminal charges against one of the parties, who was accused of sexually abusing minor child and allowing her to smoke marijuana, did not deprive such party of his equal protection or due process rights, even if party did not testify at the hearing in the Family Court proceeding for fear of self‑incrimination; statutory mandate existed for expedited resolution of removal actions, party was present at the hearing and was represented by counsel, and party’s decision whether to testify, while difficult, did not implicate the federal or state constitutions. South Carolina Dept. of Social Services v. Walter (S.C.App. 2006) 369 S.C. 384, 631 S.E.2d 913. Constitutional Law 3739; Constitutional Law 4401; Infants 2064

The family court’s entry of an amended order after father’s merits hearing, which continued custody of mother and father’s children with the Department of Social Services (DSS), violated mother’s due process rights and warranted reversal, in child dependency proceeding; DSS failed to inform mother that it would request continued custody of the children at father’s merits hearing, and it failed to follow its own voluntary placement agreement procedures. South Carolina Dept. of Social Services v. Meek (S.C.App. 2002) 352 S.C. 523, 575 S.E.2d 846, rehearing denied. Constitutional Law 4401; Infants 2070; Infants 2426

Statute that authorizes law enforcement officer to take child into emergency protective custody without consent of child’s parents or guardians if officer has probable cause to believe that child is in imminent danger does not violate due process, equal protection, or search and seizure provisions of state constitution; parents’ liberty interest in care and custody of their children is not absolute, children have statutory right to be free from abusive or neglectful situations, and emergency protective custody statute has specific deadlines and detailed procedures that safeguard rights of parents and their children. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Constitutional Law 3738; Constitutional Law 4401; Infants 1006(13)

Where mother consented to order of family court judge holding that discipline administered was excessive in manner and degree, which order was not appealed, mother was precluded from asserting she was denied due process by removal of child. Doe v. State (S.C. 1987) 294 S.C. 125, 363 S.E.2d 106.

2. In general

In case involving removal of children from parents’ custody, remedy for the failure to timely complete the merits hearings to determine whether the children were abused or neglected is to petition for the return of the children or move to vacate the order granting custody to Department of Social Services (DSS). South Carolina Dept. of Social Services v. Hogan (S.C.App. 2014) 410 S.C. 120, 763 S.E.2d 219. Infants 2100; Infants 2189; Infants 2283

Schedule of hearings contained in Section 20‑7‑610 must be strictly complied with, and family court judges should order custody be returned to child’s parent or legal guardian if hearings are not held within 10 days after time limitations contained in statute. Doe v. State (S.C. 1987) 294 S.C. 125, 363 S.E.2d 106. Infants 1844

3. Standing

Custodian, who had custody of child before state Department of Social Services (DSS) took child into emergency protective custody, had standing to participate in dependency proceeding, although custodian was not related to child by blood or marriage, and although custodian failed to comply with treatment and placement plan; custodian had real, material, or substantial interest in long‑term custody and potential adoption of child. Ex parte Morris (S.C. 2006) 367 S.C. 56, 624 S.E.2d 649, rehearing denied. Infants 2076

A mother lacked standing to maintain an action to dismiss a petition for removal of the children from their parents’ custody where neither the solicitor nor the Department of Social Services coerced the mother into signing the forms and where the mother voluntarily signed the consents. Edwards v. Hars (S.C. 1985) 284 S.C. 131, 326 S.E.2d 408.

4. Timeliness

The family court’s failure to complete the merits hearing on the Department of Social Services (DSS) emergency removal complaint within 65 days of the receipt of the removal petition, pursuant to statutory time limits, did not divest the family court of subject matter jurisdiction, in child dependency proceeding; the family court scheduled the hearing within 35 days, as required by statute, and the remedy for failure to complete the hearing with the statutory time frame was for mother to petition for the return of her children or file a motion to vacate the order granting custody to the DSS. South Carolina Dept. of Social Services v. Meek (S.C.App. 2002) 352 S.C. 523, 575 S.E.2d 846, rehearing denied. Infants 2065; Infants 2100

Hearing on merits of emergency protective removal petition must be scheduled, but not necessarily completed, within 35 days of receipt of removal petition. South Carolina Dept. of Social Services v. Gamble (S.C.App. 1999) 337 S.C. 428, 523 S.E.2d 477. Infants 1844

Statute providing that hearing on merits of emergency protective removal petition must be scheduled within 35 days of receipt of removal petition did not violate mother’s fundamental due process right to bear and raise her child, even though hearing was not held within that 35 day period; while mother did have fundamental right to raise and care for child, child also had fundamental right in being free from abuse or neglect, statute balanced those rights, there was initial determination of probable cause, and hearing on merits was in fact scheduled to be held within 35 days of removal petition. South Carolina Dept. of Social Services v. Gamble (S.C.App. 1999) 337 S.C. 428, 523 S.E.2d 477. Constitutional Law 4401; Infants 1844

In cases involving children taken into emergency protective custody, the family court should order custody be returned to the child’s parent or legal guardian if the required hearings are not held within ten days after the statutory time limits. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 1844

5. Review

An order issued as a result of a probable cause hearing in a case involving the emergency removal of a child is interlocutory in nature and not immediately appealable; at that point, any investigation by law enforcement or Department of Social Services (DSS), as well as any consideration of the case by the family court, is at such an early stage an appellate court would have little or nothing to review. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 2368

Any order issued as a result of a merit hearing in a case involving the emergency removal of a child, as well as any later order issued with regard to a treatment, placement, or permanent plan, is a “final order” that a party must timely appeal; at that point, investigators and the Department of Social Services (DSS) have presented evidence to the family court, the parents or guardians of the child have had an opportunity to challenge the evidence and present their case, and the family court has decided whether the allegations of the removal petition are supported by a preponderance of the evidence. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 2368; Infants 2370; Infants 2387

**SECTION 63‑7‑720.** Reasonable efforts to prevent removal.

(A) An order issued as a result of the probable cause hearing held pursuant to Section 63‑7‑710 concerning a child of whom the department has assumed legal custody shall contain a finding by the court of whether reasonable efforts were made by the department to prevent removal of the child and a finding of whether continuation of the child in the home would be contrary to the welfare of the child. The order shall state:

(1) the services made available to the family before the department assumed legal custody of the child and how they related to the needs of the family;

(2) the efforts of the department to provide services to the family before assuming legal custody of the child;

(3) why the efforts to provide services did not eliminate the need for the department to assume legal custody;

(4) whether a meeting was convened as provided in Section 63‑7‑640, the persons present, and the outcome of the meeting or, if no meeting was held, the reason for not holding a meeting;

(5) what efforts were made to place the child with a relative known to the child or in another familiar environment;

(6) whether the efforts to eliminate the need for the department to assume legal custody were reasonable including, but not limited to, whether services were reasonably available and timely, reasonably adequate to address the needs of the family, reasonably adequate to protect the child and realistic under the circumstances, and whether efforts to place the child in a familiar environment were reasonable.

(B) Reasonable efforts required pursuant to subsection (A) to prevent removal of the child from a parent or legal guardian who has a disability must include efforts that are individualized and based upon a parent’s or legal guardian’s specific disability, including referrals for access to adaptive parenting equipment, referrals for instruction on adaptive parenting techniques, and reasonable accommodations with regard to accessing services that are otherwise made available to a parent or legal guardian who does not have a disability.

(C) If the court finds that reasonable services would not have allowed the child to remain safely in the home, the court shall find that removal of the child without services or without further services was reasonable.

HISTORY: 2008 Act No. 361, Section 2; 2017 Act No. 36 (H.3538), Section 3, eff May 10, 2017.

Effect of Amendment

2017 Act No. 36, Section 3, inserted (B), relating to reasonable efforts requirements for probable cause hearings and requiring certain efforts if a parent or legal guardian has a disability, and redesignated accordingly.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Infants 192, 221.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41 to 43, 46 to 48, 71 to 95.

Attorney General’s Opinions

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted. 1979 Op. Atty Gen, No. 79‑121, p 167.

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the State in assuring that which is in the minor child’s best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent. 1979 Op. Atty Gen, No. 79‑122, p 171.

Expenditures of public funds to a “not‑for‑profit” organization, such as the Child Abuse Prevention Association, for the purpose of the protection of abused children, would constitute a valid public purpose. 1988 Op. Atty Gen, No. 88‑52, p 152.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op. Atty Gen, No. 88‑83, p 236.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

**SECTION 63‑7‑730.** Expedited placement of child with relative.

(A) If the court finds at the probable cause hearing that the department made reasonable efforts to prevent removal of the child and that continuation of the child in the home would be contrary to the welfare of the child, the court may order expedited placement of the child with a grandparent or other relative of the first or second degree. In making this expedited placement decision, the court shall consider the totality of the circumstances including, but not limited to, the individual’s suitability, fitness, and willingness to serve as a placement for the child. A parent who complies with these requirements must be the first relative considered by the court for expedited placement. The court shall require the department to check the names of all adults in the home against the Central Registry of Child Abuse and Neglect, other relevant records of the department, county sex abuse registers, and records for the preceding five years of law enforcement agencies in the jurisdiction in which the person resides and, to the extent reasonably possible, jurisdictions in which the person has resided during that period. The court may hold open the record of the probable cause hearing for up to twenty‑four hours to receive these reports. Nothing in this section precludes the department from requesting or the court from ordering pursuant to the department’s request either a full study of the individual’s home before placement or the licensing or approval of the individual’s home before placement.

(B) If the court orders expedited placement of the child with a grandparent or other relative of the first or second degree, the individual may be added as a party to the action for the duration of the case or until further order of the court.

HISTORY: 2008 Act No. 361, Section 2; 2013 Act No. 58, Section 1, eff June 12, 2013.

Effect of Amendment

The 2013 amendment rewrote the section.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Infants 192.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41 to 42, 46 to 48.

Attorney General’s Opinions

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted. 1979 Op. Atty Gen, No. 79‑121, p 167.

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the State in assuring that which is in the minor child’s best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent. 1979 Op. Atty Gen, No. 79‑122, p 171.

Expenditures of public funds to a “not‑for‑profit” organization, such as the Child Abuse Prevention Association, for the purpose of the protection of abused children, would constitute a valid public purpose. 1988 Op. Atty Gen, No. 88‑52, p 152.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op. Atty Gen, No. 88‑83, p 236.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

**SECTION 63‑7‑740.** Ex parte emergency protective custody.

(A) The family court may order ex parte that a child be taken into emergency protective custody without the consent of parents, guardians, or others exercising temporary or permanent control over the child if:

(1) the family court judge determines there is probable cause to believe that by reason of abuse or neglect there exists an imminent and substantial danger to the child’s life, health, or physical safety; and

(2) parents, guardians, or others exercising temporary or permanent control over the child are unavailable or do not consent to the child’s removal from their custody.

(B) If the court issues such an order, the department shall conduct a preliminary investigation and otherwise proceed as provided in this subarticle.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Infants 192, 208.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 40 to 48, 51 to 59, 61 to 62, 66 to 67, 69 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 25.2, Administrative Process to Establish Paternity.

Attorney General’s Opinions

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted. 1979 Op. Atty Gen, No. 79‑121, p 167.

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the State in assuring that which is in the minor child’s best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent. 1979 Op. Atty Gen, No. 79‑122, p 171.

Expenditures of public funds to a “not‑for‑profit” organization, such as the Child Abuse Prevention Association, for the purpose of the protection of abused children, would constitute a valid public purpose. 1988 Op. Atty Gen, No. 88‑52, p 152.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op. Atty Gen, No. 88‑83, p 236.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

**SECTION 63‑7‑750.** Doctor or hospital may detain child; civil immunity.

(A) A physician or hospital to which a child has been brought for treatment may detain the child for up to twenty‑four hours without the consent of the person responsible for the child’s welfare if the physician or hospital:

(1) has reason to believe that the child has been abused or neglected;

(2) has made a report to a law enforcement agency and the department pursuant to Section 63‑7‑310, stating the time the physician notified the agency or department that the child was being detained until a law enforcement officer could arrive to determine whether the officer should take emergency physical custody of the child pursuant to Subarticle 3; and

(3) has reason to believe that release of the child to the child’s parent, guardian, custodian, or caretaker presents an imminent danger to the child’s life, health, or physical safety. A hospital must designate a qualified person or persons within the hospital who shall have sole authority to detain a child on behalf of the hospital.

(B) A physician or hospital that detains a child in good faith as provided in this section is immune from civil or criminal liability for detaining the child.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Infants 13.5, 192.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41 to 42, 46 to 48, 116 to 117.

Attorney General’s Opinions

When a child has been taken into Emergency Protective Custody by a law enforcement officer, upon proper notification to the local child protective services agency, the officer should be deemed relieved of further responsibility for the care and safety of the child under the Child Protection Act. It is recommended that a formal notification document be adopted. 1979 Op. Atty Gen, No. 79‑121, p 167.

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the State in assuring that which is in the minor child’s best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent. 1979 Op. Atty Gen, No. 79‑122, p 171.

Expenditures of public funds to a “not‑for‑profit” organization, such as the Child Abuse Prevention Association, for the purpose of the protection of abused children, would constitute a valid public purpose. 1988 Op. Atty Gen, No. 88‑52, p 152.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op. Atty Gen, No. 88‑83, p 236.

Adequate health care is to be provided to children; as long as spiritual or other religious means of health care are found to be adequate, satisfactory, sufficient, or suitable, then finding of child abuse or neglect would not be appropriate. If, however, such means of health care are not adequate, our state laws allow appropriate intervention to have needed care provided. 1993 Op. Atty Gen No. 93‑78.

**SECTION 63‑7‑760.** Protocols.

The department and local law enforcement agencies shall develop written protocols to address issues related to emergency protective custody. The protocols shall cover at a minimum information exchange between the department and local law enforcement agencies, consultation on decisions to assume legal custody, and the transfer of responsibility over the child, including mechanisms and assurances for the department to arrange expeditious placement of the child.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Assumption of custody of infant left at hospital not emergency protective custody, see Section 63‑7‑40.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Removal under this section as exception to requirement, when adoptee who has been received into adoptive parents’ home is sought to be removed from such home, that child‑placing agency first secure order from family court, see Section 63‑9‑510.

Termination of parental rights, see Sections 63‑7‑2510 et seq.

Library References

Infants 17, 192.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 24 to 25, 41 to 42, 46 to 48.

Subarticle 5

Intake and Investigation Duties of the Department of Social Services

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

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| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑7‑900 | 20‑7‑650(A), (B),  (T), (V) |
| 63‑7‑910 | 20‑7‑640(A)‑(C),  (E), (F) |
| 63‑7‑920 | 20‑7‑650(C)‑(E), (R) |
| 63‑7‑930 | 20‑7‑650(F)‑(H) |
| 63‑7‑940 | 20‑7‑650(J), (K) |
| 63‑7‑950 | 20‑7‑652 |
| 63‑7‑960 | 20‑7‑650(P) |
| 63‑7‑970 | 20‑7‑650(U) |
| 63‑7‑980 | 20‑7‑650(S) |
| 63‑7‑990 | 20‑7‑616 |

**SECTION 63‑7‑900.** Purpose of the subarticle.

(A) It is the purpose of this subarticle to encourage the voluntary acceptance of any service offered by the department in connection with child abuse and neglect or another problem of a nature affecting the stability of family life.

(B) The department must be staffed adequately with persons trained in the investigation of suspected child abuse and neglect and in the provision of services to abused and neglected children and their families.

(C) The department actively must seek the cooperation and involvement of local public and private institutions, groups, and programs concerned with matters of child protection and welfare within the area it serves.

(D) In all instances, the agency must act in accordance with the policies, procedures, and regulations promulgated and distributed by the State Department of Social Services pursuant to this chapter.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Central Registry of Child Abuse and Neglect, see Sections 63‑7‑1910 et seq.

Department of Child Fatalities to be given information concerning child whose death is under investigation, including strictly confidential information under this section, see Section 63‑11‑1960.

Provision establishing the county Department of Social Services in each county as the child protective services agency, see Section 63‑7‑910.

Provisions relating to review by Family Court and approval of treatment plan, review hearings and termination of protective services, see Section 63‑7‑1670.

Removal of child upon investigation of report received under this section, see Sections 63‑7‑1610, 63‑7‑1660.

State Department of Social Services, generally, see Sections 43‑1‑10 et seq.

Transfer of reports of child abuse or neglect to local child protective services, see Section 63‑7‑310.

Transmission of data by local child protective agencies to the Department of Social Services subject to limitations on identifying characteristics contained in this section, see Section 63‑7‑1910.

Library References

Infants 17.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 37, Duty of the State Department of Social Services to Provide Services.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Known out‑of‑state abuse or neglect determinations or criminal records could be considered as coming within prohibition of “substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Term “foster care” as used in H.3669 could be construed as including foster family home care, child caring facilities and residential group homes. 1993 Op. Atty Gen No. 93‑47.

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. 1993 Op. Atty Gen No. 93‑79.

NOTES OF DECISIONS

In general 1

1. In general

Because Department of Social Services (DSS), in filing complaint for intervention, in actuality initiated a removal action instead of an intervention action regarding allegedly neglected children, it was required to follow the statutory procedures for removal and file a petition with the family court after the children were taken into emergency protective custody (EPC). South Carolina Dept. of Social Services v. Randy S. (S.C.App. 2010) 390 S.C. 100, 700 S.E.2d 250, rehearing denied. Infants 2084

Negligence in failing to properly investigate a report of child abuse may gave rise to a private cause of action under the Child Protection Act against public officials who knew from personal observations that the victim’s brother was being physically abused in their home but failed to gather information or locate the family prior to the beating death of the victim by the mother’s boyfriend; the exception to the general rule of non‑liability is created by a “special duty” owed to the victim. Jensen v. Anderson County Dept. of Social Services (S.C. 1991) 304 S.C. 195, 403 S.E.2d 615.

The trial court properly concluded that social workers had a “special duty,” and thus were negligent in failing to properly investigate a report of child abuse, where it considered the following elements: (1) the purpose of the act was to protect against a particular kind of harm, (2) specific officers had a duty to guard against that harm, (3) the class of protected persons was identifiable before the fact, (4) the plaintiff was a person within the protected class, (5) the officer had reason to know the likelihood of harm if he failed to do his duty, and (6) the officer had sufficient authority, or undertook, to act. Jensen v. Anderson County Dept. of Social Services (S.C. 1991) 304 S.C. 195, 403 S.E.2d 615. Public Employment 897

**SECTION 63‑7‑910.** Duties of the department.

(A)(1) The Department of Social Services may maintain a toll‑free number available to persons throughout the State for the referral of family‑related problems, including:

(a) the reporting of known or suspected cases of child abuse or neglect;

(b) other problems of a nature which may affect the stability of family life.

(2) This telephone service shall operate continuously. Upon receipt of a call involving suspected abuse or neglect, the Department of Social Services shall transmit the full contents of the report to the appropriate county department office. Immediately upon transmitting the report the department shall destroy the contents of the suspected report. Upon receipt of a call involving other problems of a nature which may affect the stability of family life, the department shall refer the call to the appropriate county department office or other service agency where appropriate.

(B) The department shall have within it a separate organizational unit administered within the department with qualified staff and resources sufficient to fulfill the purposes and functions assigned to it by this article.

(C) The department’s responsibilities shall include, but are not limited to:

(1) assigning and monitoring initial child protection responsibility through periodic review of services offered throughout the State;

(2) assisting in the diagnosis of child abuse and neglect;

(3) coordinating referrals of known or suspected child abuse and neglect;

(4) measuring the effectiveness of existing child protection programs and facilitating research, planning, and program development; and

(5) establishing and monitoring a statewide Central Registry for Child Abuse and Neglect.

(D) The department may contract for the delivery of protective services, family preservation services, foster care services, family reunification services, adoptions services, and other related services or programs. The department shall remain responsible for the quality of the services or programs and shall ensure that each contract contains provisions requiring the provider to deliver services in accordance with departmental policies and state and federal law.

(E) The department may promulgate regulations and formulate policies and methods of administration to carry out effectively child protective services, activities, and responsibilities.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Central Registry of Child Abuse and Neglect, see Sections 63‑7‑1910, 63‑7‑1990.

Department of Child Fatalities to be given information concerning child whose death is under investigation, including strictly confidential information under this section, see Section 63‑11‑1960.

Provision establishing the county Department of Social Services in each county as the child protective services agency, see Section 63‑7‑910.

Provisions relating to review by Family Court and approval of treatment plan, review hearings and termination of protective services, see Section 63‑7‑1670.

Removal of child upon investigation of report received under this section, see Sections 63‑7‑1610, 63‑7‑1660.

State Department of Social Services, generally, see Sections 43‑1‑10 et seq.

Transfer of reports of child abuse or neglect to local child protective services, see Section 63‑7‑310.

Transmission of data by local child protective agencies to the Department of Social Services subject to limitations on identifying characteristics contained in this section, see Sections 63‑7‑1970, 63‑7‑1990.

Library References

Infants 17.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Known out‑of‑state abuse or neglect determinations or criminal records could be considered as coming within prohibition of “substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Term “foster care” as used in H.3669 could be construed as including foster family home care, child caring facilities and residential group homes. 1993 Op. Atty Gen No. 93‑47.

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. 1993 Op. Atty Gen No. 93‑79.

NOTES OF DECISIONS

In general 1

1. In general

Sections 20‑7‑640 and 20‑7‑660 deal with the organization and general management of the child protection program at the state‑wide level. They do not impose on state‑wide Department of Social Services officials any duties with respect to individual cases of child abuse; they provide no specific authority for these officials to intervene directly to protect individual children from abuse. Jensen v. South Carolina Dept. of Social Services (S.C.App. 1988) 297 S.C. 323, 377 S.E.2d 102, affirmed 304 S.C. 195, 403 S.E.2d 615. Infants 1435

County agency had no duty, under due process clause of Federal Constitution’s Fourteenth Amendment, to protect child against abuse by his father while child was in father’s custody. DeShaney v. Winnebago County Dept. of Social Services, U.S.Wis.1989, 109 S.Ct. 998, 489 U.S. 189, 103 L.Ed.2d 249.

**SECTION 63‑7‑920.** Investigations and case determination.

(A)(1) Within twenty‑four hours of the receipt of a report of suspected child abuse or neglect or within twenty‑four hours after the department has assumed legal custody of a child pursuant to Section 63‑7‑660 or 63‑7‑670 or within twenty‑four hours after being notified that a child has been taken into emergency protective custody, the department must begin an appropriate and thorough investigation to determine whether a report of suspected child abuse or neglect is “indicated” or “unfounded”.

(2) The finding must be made no later than forty‑five days from the receipt of the report. A single extension of no more than fifteen days may be granted by the director of the department, or the director’s designee, for good cause shown, pursuant to guidelines adopted by the department.

(3) If the investigation cannot be completed because the department is unable to locate the child or family or for other compelling reasons, the report may be classified as unfounded Category III and the investigation may be reopened at a later date if the child or family is located or the compelling reason for failure to complete the investigation is removed. The department must make a finding within forty‑five days after the investigation is reopened.

(B) The department may file with the family court an affidavit and a petition to support issuance of a warrant at any time after receipt of a report. The family court must issue the warrant if the affidavit and petition establish probable cause to believe the child is an abused or neglected child and that the investigation cannot be completed without issuance of the warrant. The warrant may authorize the department to interview the child, to inspect the condition of the child, to inspect the premises where the child may be located or may reside, and to obtain copies of medical, school, or other records concerning the child.

(C) The department or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child’s home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents. To the extent reasonably possible, the needs and interests of the child must be accommodated in making arrangements for interviews, including time, place, method of obtaining the child’s presence, and conduct of the interview. The department or law enforcement, or both, shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will not jeopardize the safety of the child or the course of the investigation. All state, law enforcement, and community agencies providing child welfare intervention into a child’s life should coordinate their services to minimize the number of interviews of the child to reduce potential emotional trauma to the child.

(D) The department must furnish to parents or guardians on a standardized form the following information as soon as reasonably possible after commencing the investigation:

(1) the names of the investigators;

(2) the allegations being investigated;

(3) whether the person’s name has been recorded by the department as a suspected perpetrator of abuse or neglect;

(4) the right to inspect department records concerning the investigation;

(5) statutory and family court remedies available to complete the investigation and to protect the child if the parent or guardian or subject of the report indicates a refusal to cooperate;

(6) how information provided by the parent or guardian may be used;

(7) the possible outcomes of the investigation; and

(8) the telephone number and name of a department employee available to answer questions.

(E) This subarticle does not require the department to investigate reports of child abuse or neglect which resulted in the death of the child unless there are other children residing in the home, or a resident of the home is pregnant, or the subject of the report is the parent, guardian, or person responsible for the welfare of another child regardless of whether that child resides in the home.

(F) The department or law enforcement, or both, may collect information concerning the military affiliation of the person having custody or control of the child subject to an investigation and may share this information with the appropriate military authorities pursuant to Section 63‑11‑80.

HISTORY: 2008 Act No. 361, Section 2; 2015 Act No. 62 (H.3548), Section 2, eff June 4, 2015.

Effect of Amendment

2015 Act No. 62, Section 2, added (F).

CROSS REFERENCES

Central Registry of Child Abuse and Neglect, see Sections 63‑7‑1910, 63‑7‑1990.

Department of Child Fatalities to be given information concerning child whose death is under investigation, including strictly confidential information under this section, see Section 63‑11‑1960.

Provision establishing the county Department of Social Services in each county as the child protective services agency, see Section 63‑7‑910.

Provisions relating to review by Family Court and approval of treatment plan, review hearings and termination of protective services, see Section 63‑7‑1670.

Removal of child upon investigation of report received under this section, see Sections 63‑7‑1610, 63‑7‑1660.

State Department of Social Services, generally, see Sections 43‑1‑10 et seq.

Transfer of reports of child abuse or neglect to local child protective services, see Section 63‑7‑310.

Transmission of data by local child protective agencies to the Department of Social Services subject to limitations on identifying characteristics contained in this section, see Sections 63‑7‑1970, 63‑7‑1990.

Library References

Infants 17.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 36, Duty of the State Department of Social Services to Investigate.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Known out‑of‑state abuse or neglect determinations or criminal records could be considered as coming within prohibition of “substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Term “foster care” as used in H.3669 could be construed as including foster family home care, child caring facilities and residential group homes. 1993 Op. Atty Gen No. 93‑47.

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. 1993 Op. Atty Gen No. 93‑79.

NOTES OF DECISIONS

In general 1

Evidence 3

Jurisdiction 2

1. In general

Department of Social Services has duty to investigate all reports of child abuse and neglect to determine if the allegations have merit. South Carolina Dept. of Social Services v. Pritcher (S.C.App. 1997) 329 S.C. 242, 495 S.E.2d 242, rehearing denied, certiorari denied. Infants 1556

Just as Department of Social Services has statutory duty to bring before family court meritorious allegations of child abuse and neglect, it also has the responsibility and duty to seek dismissal of those petitions subsequently determined by investigation to be without merit. South Carolina Dept. of Social Services v. Pritcher (S.C.App. 1997) 329 S.C. 242, 495 S.E.2d 242, rehearing denied, certiorari denied. Infants 2092

The essential purpose of the portions of Section 20‑7‑650 which mandate investigation and intervention to remove an endangered child from the home, is to protect abused children when their cases have been reported to Department of Social Services officials. Section 20‑7‑650 imposes on the local child protection agency and its social workers a specific duty to investigate and to intervene in cases involving abused children. Jensen v. South Carolina Dept. of Social Services (S.C.App. 1988) 297 S.C. 323, 377 S.E.2d 102, affirmed 304 S.C. 195, 403 S.E.2d 615. Infants 1439; Infants 1441

County agency had no duty, under due process clause of Federal Constitution’s Fourteenth Amendment, to protect child against abuse by his father while child was in father’s custody. DeShaney v. Winnebago County Dept. of Social Services, U.S.Wis.1989, 109 S.Ct. 998, 489 U.S. 189, 103 L.Ed.2d 249.

2. Jurisdiction

The Family Court had jurisdiction over a mother’s live‑in boyfriend in an action by the county Department of Social Services seeking intervention for the protection of a child allegedly sexually abused by the boyfriend, even though he had been indicted for criminal sexual conduct with a minor and his trial in general sessions court was pending, since the Family Court action was a civil action aimed at child protection, rather than a criminal action geared toward punishing the defendant. Beaufort County Dept. of Social Services v. Strahan (S.C.App. 1992) 310 S.C. 553, 426 S.E.2d 331.

Double jeopardy did not bar the Family Court’s prosecution of a mother’s live‑in boyfriend, in an action by the county Department of Social Services seeking intervention for the protection of a child allegedly sexually abused by the boyfriend, even though he had been indicted for criminal sexual conduct with a minor and his trial in general sessions court was pending, since the Family Court action was totally independent of the criminal charge and any finding in Family Court would have no effect on the criminal action. Beaufort County Dept. of Social Services v. Strahan (S.C.App. 1992) 310 S.C. 553, 426 S.E.2d 331.

3. Evidence

Child’s hearsay statements were not admissible under “child abuse” exception to hearsay rule in child protective services proceeding, however, this does not preclude admission of child abuse hearsay under some other recognized exceptions to hearsay rule. South Carolina Dept. of Social Services v. Doe (S.C.App. 1987) 292 S.C. 211, 355 S.E.2d 543. Infants 2146(8)

**SECTION 63‑7‑930.** Classification categories.

(A) Reports of child abuse and neglect must be classified in the department’s data system and records in one of three categories: Suspected, Unfounded, or Indicated. If the report is categorized as unfounded, the entry must further state the classification of unfounded reports as set forth in subsection (C). All initial reports must be considered suspected. Reports must be maintained in the category of suspected for no more than sixty days after the report was received by the department. By the end of the sixty‑day time period, suspected reports must be classified as either unfounded or indicated pursuant to the agency’s investigation.

(B)(1) Indicated findings must be based upon a finding of the facts available to the department that there is a preponderance of evidence that the child is an abused or neglected child. Indicated findings must include a description of the services being provided the child and those responsible for the child’s welfare and all relevant dispositional information.

(2) If the family court makes a determination or the process described in Subarticle 9 results in a determination that the indicated finding is not supported by a preponderance of evidence that there was any act of child abuse or neglect, the case classification must be converted to unfounded and Section 63‑7‑940 applies.

(3) If the family court makes a specific determination, or the process described in Subarticle 9 results in a determination that there is not a preponderance of evidence that the person who was the subject of the report committed an act of child abuse or neglect, but that the child was abused or neglected by an unknown person, the department must maintain the case as an indicated case and access to records of the case may be granted as provided in Section 63‑7‑1990. The department shall not delete from its data system or records information indicating that the person was the subject of the report. The department’s data system and records must clearly record the results of the court or administrative proceeding. If the case record and data system included a designation with the name of the subject of the report indicating that the person committed the abuse or neglect, that designation must be removed following the determination that there is not a preponderance of evidence that the subject of the report committed an act of child abuse or neglect.

(C) All reports that are not indicated at the conclusion of the investigation and all records of information for which an investigation was not conducted pursuant to Section 63‑7‑350 must be classified as unfounded. Unfounded reports must be further classified as Category I, Category II, Category III, or Category IV.

(1) Category I unfounded reports are those in which abuse and neglect were ruled out following the investigation. A report falls in this category if evidence of abuse or neglect as defined in this chapter was not found regardless of whether the family had other problems or was in need of services.

(2) Category II unfounded reports are those in which the investigation did not produce a preponderance of evidence that the child is an abused or neglected child.

(3) Category III unfounded reports are those in which an investigation could not be completed because the department was unable to locate the child or family or for some other compelling reason.

(4) Category IV unfounded reports are records of information received pursuant to Section 63‑7‑350, but which were not investigated by the department.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Central Registry of Child Abuse and Neglect, see Sections 63‑7‑1910, 63‑7‑1990.

Department of Child Fatalities to be given information concerning child whose death is under investigation, including strictly confidential information under this section, see Section 63‑11‑1960.

Provision establishing the county Department of Social Services in each county as the child protective services agency, see Section 63‑7‑910.

Provisions relating to review by Family Court and approval of treatment plan, review hearings and termination of protective services, see Section 63‑7‑1670.

Removal of child upon investigation of report received under this section, see Sections 63‑7‑1610, 63‑7‑1660.

State Department of Social Services, generally, see Sections 43‑1‑10 et seq.

Transfer of reports of child abuse or neglect to local child protective services, see Section 63‑7‑310.

Transmission of data by local child protective agencies to the Department of Social Services subject to limitations on identifying characteristics contained in this section, see Sections 63‑7‑1970, 63‑7‑1990.

Library References

Infants 17.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 36, Duty of the State Department of Social Services to Investigate.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Known out‑of‑state abuse or neglect determinations or criminal records could be considered as coming within prohibition of “substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Term “foster care” as used in H.3669 could be construed as including foster family home care, child caring facilities and residential group homes. 1993 Op. Atty Gen No. 93‑47.

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. 1993 Op. Atty Gen No. 93‑79.

**SECTION 63‑7‑940.** Use of unfounded case information.

(A) Information concerning reports classified as unfounded contained in the statewide data system and records must be maintained for not less than five years after the finding. Information contained in unfounded cases is not subject to disclosure under the Freedom of Information Act as provided for in Chapter 4, Title 30. Access to and use of information contained in unfounded cases must be strictly limited to the following purposes and entities:

(1) a prosecutor or law enforcement officer or agency, for purposes of investigation of a suspected false report pursuant to Section 63‑7‑440;

(2) the department or a law enforcement officer or agency, for the purpose investigating allegations of abuse or neglect;

(3) the department or a law enforcement officer or agency, when information is received that allows the reopening of a Category III unfounded report pursuant to Section 63‑7‑920(A);

(4) as evidence in a court proceeding, if admissible under the rules of evidence as determined by a judge of competent jurisdiction;

(5) a person who is the subject of a report in an action brought by a prosecutor or by the department, if otherwise subject to discovery under the applicable rules of procedure;

(6) the department, for program improvement, auditing, and statistical purposes;

(7) as authorized in Section 63‑7‑2000;

(8) the Department of Child Fatalities pursuant to Section 63‑11‑1960; and

(9)(a) the director or his designee who may disclose information to respond to an inquiry by a committee or subcommittee of the Senate or the House of Representatives or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department, provided that such information is reviewed in closed session and kept confidential. Notwithstanding the provisions of Chapter 4, Title 30, meetings to review information disclosed pursuant to this subitem must be held in closed session and any documents or other materials provided or reviewed during the closed session are not subject to public disclosure;

(b) the department shall state that the case was unfounded when disclosing information pursuant to this item.

(B) Except as authorized in this section, no person may disseminate or permit dissemination of information maintained pursuant to subsection (A). A person who disseminates or permits dissemination in violation of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand five hundred dollars or imprisoned not more than one year, or both. A person aggrieved by an unlawful dissemination in violation of this subsection may bring a civil action to recover damages incurred as a result of the unlawful act and to enjoin its dissemination or use.

HISTORY: 2008 Act No. 361, Section 2; 2014 Act No. 291 (H.3124), Section 2, eff June 23, 2014.

Effect of Amendment

2014 Act No. 291, Section 2, added subsection (A)(9), and made other nonsubstantive changes.

CROSS REFERENCES

Central Registry of Child Abuse and Neglect, see Sections 63‑7‑1910, 63‑7‑1990.

Department of Child Fatalities to be given information concerning child whose death is under investigation, including strictly confidential information under this section, see Section 63‑11‑1960.

Provision establishing the county Department of Social Services in each county as the child protective services agency, see Section 63‑7‑910.

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Removal of child upon investigation of report received under this section, see Sections 63‑7‑1610, 63‑7‑1660.

State Department of Social Services, generally, see Sections 43‑1‑10 et seq.

Transfer of reports of child abuse or neglect to local child protective services, see Section 63‑7‑310.

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Library References

Infants 17, 133.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 43, 71 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 19, Evidence and Standard of Proof.

Attorney General’s Opinions

A coroner, while not a law enforcement officer for purposes of this section, does in fact possess the authority to request, access, and use unfounded case information directly from Department of Social Services personnel. S.C. Op.Atty.Gen. (April 25, 2016) 2016 WL 2607247.

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Known out‑of‑state abuse or neglect determinations or criminal records could be considered as coming within prohibition of “substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Term “foster care” as used in H.3669 could be construed as including foster family home care, child caring facilities and residential group homes. 1993 Op. Atty Gen No. 93‑47.

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. 1993 Op. Atty Gen No. 93‑79.

NOTES OF DECISIONS

In general 1

1. In general

The term “report,” as used in Section 20‑7‑650, is not limited to the initial complaint of abuse but refers to all information pertaining to the Department of Social Service’s investigation of alleged abuse or neglect; any other interpretation would render meaningless the mandate that all reports be destroyed if a case is determined to be unfounded. Beattie v. Aiken County Dept. of Social Services (S.C. 1995) 319 S.C. 449, 462 S.E.2d 276. Infants 3174

Pursuant to Section 20‑7‑650, it is patently clear that the identity of the person reporting abuse or neglect of a child cannot be disclosed under any circumstance; consequently, the name of an individual reporting suspected abuse or neglect cannot be disclosed even where the individual is employed by the Department of Social Services. Beattie v. Aiken County Dept. of Social Services (S.C. 1995) 319 S.C. 449, 462 S.E.2d 276.

Information regarding a complaint of the abuse or neglect of a child may not be disclosed even where the complaint is determined to be a false complaint. Beattie v. Aiken County Dept. of Social Services (S.C. 1995) 319 S.C. 449, 462 S.E.2d 276.

**SECTION 63‑7‑950.** Withholding health care.

(A) Upon receipt of a report that a parent or other person responsible for the welfare of a child will not consent to health care needed by the child, the department shall investigate pursuant to Section 63‑7‑920. Upon a determination by a preponderance of evidence that adequate health care was withheld for religious reasons or other reasons reflecting an exercise of judgment by the parent or guardian as to the best interest of the child, the department may enter a finding that the child is in need of medical care and that the parent or other person responsible does not consent to medical care for religious reasons or other reasons reflecting an exercise of judgment as to the best interests of the child. The department may not enter a finding by a preponderance of evidence that the parent or other person responsible for the child has abused or neglected the child because of the withholding of medical treatment for religious reasons or for other reasons reflecting an exercise of judgment as to the best interests of the child. However, the department may petition the family court for an order finding that medical care is necessary to prevent death or permanent harm to the child. Upon a determination that a preponderance of evidence shows that the child might die or suffer permanent harm, the court may issue its order authorizing medical treatment without the consent of the parent or other person responsible for the welfare of the child. The department may move for emergency relief pursuant to family court rules when necessary for the health of the child.

(B) Proceedings brought under this section must be considered child abuse and neglect proceedings only for purposes of appointment of representation pursuant to Section 63‑7‑1620.

(C) This section does not authorize intervention if the child is under the care of a physician licensed under Chapter 47, Title 40, who supports the decision of the parent or guardian as a matter of reasonable medical judgment.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Central Registry of Child Abuse and Neglect, see Sections 63‑7‑1910, 63‑7‑1990.

Department of Child Fatalities to be given information concerning child whose death is under investigation, including strictly confidential information under this section, see Section 63‑11‑1960.

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Library References

Health 911.

Infants 17, 192.

Westlaw Topic Nos. 198H, 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 24 to 25, 41 to 42, 46 to 48.

C.J.S. Physicians, Surgeons, and Other Health Care Providers Section 116.

C.J.S. Right to Die Sections 4, 23 to 26, 51, 53.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Known out‑of‑state abuse or neglect determinations or criminal records could be considered as coming within prohibition of “substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Term “foster care” as used in H.3669 could be construed as including foster family home care, child caring facilities and residential group homes. 1993 Op. Atty Gen No. 93‑47.

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. 1993 Op. Atty Gen No. 93‑79.

**SECTION 63‑7‑960.** Consolidation and delivery of services.

The department is charged with providing, directing, or coordinating the appropriate and timely delivery of services to children found to be abused or neglected and those responsible for their welfare or others exercising temporary or permanent control over these children. Services must not be construed to include emergency protective custody provided for in Subarticle 3.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Central Registry of Child Abuse and Neglect, see Sections 63‑7‑1910, 63‑7‑1990.

Department of Child Fatalities to be given information concerning child whose death is under investigation, including strictly confidential information under this section, see Section 63‑11‑1960.

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State Department of Social Services, generally, see Sections 43‑1‑10 et seq.

Transfer of reports of child abuse or neglect to local child protective services, see Section 63‑7‑310.

Transmission of data by local child protective agencies to the Department of Social Services subject to limitations on identifying characteristics contained in this section, see Sections 63‑7‑1970, 63‑7‑1990.

Library References

Infants 17.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9.

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In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

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Term “foster care” as used in H.3669 could be construed as including foster family home care, child caring facilities and residential group homes. 1993 Op. Atty Gen No. 93‑47.

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. 1993 Op. Atty Gen No. 93‑79.

**SECTION 63‑7‑970.** Children of incarcerated women.

The local office of the department responsible for the county of the mother’s legal residence must provide, direct, or coordinate the appropriate and timely delivery of services to children born of incarcerated mothers where no provision has been made for placement of the child outside the prison setting. Referral of these cases to the appropriate local office is the responsibility of the agency or institution having custody of the mother.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Central Registry of Child Abuse and Neglect, see Sections 63‑7‑1910, 63‑7‑1990.

Department of Child Fatalities to be given information concerning child whose death is under investigation, including strictly confidential information under this section, see Section 63‑11‑1960.

Provision establishing the county Department of Social Services in each county as the child protective services agency, see Section 63‑7‑910.

Provisions relating to review by Family Court and approval of treatment plan, review hearings and termination of protective services, see Section 63‑7‑1670.

Removal of child upon investigation of report received under this section, see Sections 63‑7‑1610, 63‑7‑1660.

State Department of Social Services, generally, see Sections 43‑1‑10 et seq.

Transfer of reports of child abuse or neglect to local child protective services, see Section 63‑7‑310.

Transmission of data by local child protective agencies to the Department of Social Services subject to limitations on identifying characteristics contained in this section, see Sections 63‑7‑1970, 63‑7‑1990.

Library References

Infants 17.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Known out‑of‑state abuse or neglect determinations or criminal records could be considered as coming within prohibition of “substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Term “foster care” as used in H.3669 could be construed as including foster family home care, child caring facilities and residential group homes. 1993 Op. Atty Gen No. 93‑47.

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. 1993 Op. Atty Gen No. 93‑79.

**SECTION 63‑7‑980.** Cooperation between the department and law enforcement.

(A) The department must cooperate with law enforcement agencies within the area it serves and establish procedures necessary to facilitate the referral of child protection cases to the department.

(B)(1) Where the facts indicating abuse or neglect also appear to indicate a violation of criminal law, the department must notify the appropriate law enforcement agency of those facts within twenty‑four hours of the department’s finding for the purposes of police investigation. The law enforcement agency must file a formal incident report at the time it is notified by the department of the finding.

(2) When the intake report is of alleged sexual abuse, the department must notify the appropriate law enforcement agency within twenty‑four hours of receipt of the report to determine if a joint investigation is necessary. The law enforcement agency must file a formal incident report at the time it is notified of the alleged sexual abuse.

(C) The law enforcement agency must provide to the department copies of incident reports generated in any case reported to law enforcement by the department and in any case in which the officer responsible for the case knows the department is involved with the family or the child. The law enforcement officer must make reasonable efforts to advise the department of significant developments in the case, such as disposition in summary court, referral of a juvenile to the Department of Juvenile Justice, arrest or detention, trial date, and disposition of charges.

(D) The department must include in its records copies of incident reports provided under this section and must record the disposition of charges.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Central Registry of Child Abuse and Neglect, see Sections 63‑7‑1910, 63‑7‑1990.

Department of Child Fatalities to be given information concerning child whose death is under investigation, including strictly confidential information under this section, see Section 63‑11‑1960.

Provision establishing the county Department of Social Services in each county as the child protective services agency, see Section 63‑7‑910.

Provisions relating to review by Family Court and approval of treatment plan, review hearings and termination of protective services, see Section 63‑7‑1670.

Removal of child upon investigation of report received under this section, see Sections 63‑7‑1610, 63‑7‑1660.

State Department of Social Services, generally, see Sections 43‑1‑10 et seq.

Transfer of reports of child abuse or neglect to local child protective services, see Section 63‑7‑310.

Transmission of data by local child protective agencies to the Department of Social Services subject to limitations on identifying characteristics contained in this section, see Sections 63‑7‑1970, 63‑7‑1990.

Library References

Infants 17.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Known out‑of‑state abuse or neglect determinations or criminal records could be considered as coming within prohibition of “substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Term “foster care” as used in H.3669 could be construed as including foster family home care, child caring facilities and residential group homes. 1993 Op. Atty Gen No. 93‑47.

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. 1993 Op. Atty Gen No. 93‑79.

**SECTION 63‑7‑990.** Access to sex offender registry.

Notwithstanding any other provision of law, upon request of the department, a criminal justice agency having custody of or access to state or local law enforcement records or county sex offender registries shall provide the department with information pertaining to the criminal history of an adult residing in the home of a child who is named in a report of suspected child abuse or neglect or in a home in which it is proposed that the child be placed. This information shall include conviction data, nonconviction data, arrests, and incident reports accessible to the agency. The department shall not be charged a fee for this service.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Central Registry of Child Abuse and Neglect, see Sections 63‑7‑1910, 63‑7‑1990.

Department of Child Fatalities to be given information concerning child whose death is under investigation, including strictly confidential information under this section, see Section 63‑11‑1960.

Provision establishing the county Department of Social Services in each county as the child protective services agency, see Section 63‑7‑910.

Provisions relating to review by Family Court and approval of treatment plan, review hearings and termination of protective services, see Section 63‑7‑1670.

Removal of child upon investigation of report received under this section, see Sections 63‑7‑1610, 63‑7‑1660.

State Department of Social Services, generally, see Sections 43‑1‑10 et seq.

Transfer of reports of child abuse or neglect to local child protective services, see Section 63‑7‑310.

Transmission of data by local child protective agencies to the Department of Social Services subject to limitations on identifying characteristics contained in this section, see Sections 63‑7‑1970, 63‑7‑1990.

Library References

Infants 17, 133.

Mental Health 21.

Westlaw Topic Nos. 211, 257A.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 43, 71 to 95.

C.J.S. Mental Health Sections 17 to 21.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Known out‑of‑state abuse or neglect determinations or criminal records could be considered as coming within prohibition of “substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Term “foster care” as used in H.3669 could be construed as including foster family home care, child caring facilities and residential group homes. 1993 Op. Atty Gen No. 93‑47.

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. 1993 Op. Atty Gen No. 93‑79.

Subarticle 7

Institutional Abuse and Neglect

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑7‑1210 | 20‑7‑670(A)‑(C),  (E)‑(H) |
| 63‑7‑1220 | 20‑7‑670(D) |
| 63‑7‑1230 | 20‑7‑670(I) |

**SECTION 63‑7‑1210.** Department investigation of institutional abuse.

(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, 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.

(B) Foster homes subject to this section are those which are supervised by or recommended for licensing by the department or by child placing agencies. Indicated reports must be based upon a finding that abuse or neglect is supported by a preponderance of the evidence available to the department.

(C) The Department of Social Services may initiate proceedings in the circuit court to enjoin the operations of a foster home, an institution, or a child placing agency or to require other corrective action if necessary for the safety of the children. The department shall take whatever steps it considers necessary to inform potential reporters of abuse and neglect of its responsibilities under this section.

(D) The Department of Social Services must investigate an allegation of abuse or neglect of a child where the child is in the custody of or a resident of a residential treatment facility or intermediate care facility for persons with intellectual disability licensed by the Department of Health and Environmental Control or operated by the Department of Mental Health.

(E) The Department of Social Services has access to facilities for the purpose of conducting investigations and has authority to request and receive written statements, documents, exhibits, and other information pertinent to an investigation including, but not limited to, hospital records. The appropriate officials, agencies, departments, and political subdivisions of the State must assist and cooperate with the court and the Department of Social Services in furtherance of the purposes of this section.

(F) The Department of Social Services may file with the family court an affidavit and a petition to support issuance of a warrant at any time during an investigation. The family court must issue the warrant if the affidavit and petition establish probable cause to believe the child is an abused or neglected child and that the investigation cannot be completed without issuance of the warrant. The warrant may authorize the department to interview the child, to inspect the premises of the child, to inspect the premise where the child may be located or may reside, and to obtain copies of medical, school, or other records necessary for investigation of the allegations of abuse or neglect.

(G) The department shall promulgate regulations consistent with this authority. The regulations shall cover at a minimum investigation of reports, notice to the institutions and sponsoring agencies, and remedial action.

HISTORY: 2008 Act No. 361, Section 2.

Code Commissioner’s Note

Pursuant to 2011 Act No. 47, Section 14(B), the Code Commissioner substituted “intellectual disability” for “mentally retarded” and “person with intellectual disability” or “persons with intellectual disability” for “mentally retarded”.

CROSS REFERENCES

Child protective services, hearings, review, and final decisions, see S. C. Code of Regulations R. 114‑170.

Licensing of residential group care organizations for children, see S.C. Code of Regulations R. 114‑590.

Library References

Asylums and Assisted Living Facilities 30.

Infants 17, 17.5, 226.

Westlaw Topic Nos. 43, 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 43, 73 to 92.

Attorney General’s Opinions

Reports under Child Protection Act of institutional abuse and neglect in DYS facility received by SLED should be immediately referred to DSS; Client‑Patient Protection Act provides that SLED receive reports, refer reports to nursing home ombudsman and to use discretion to investigate or refer it to law enforcement agency. 1984 Op. Atty Gen, No. 84‑2, p. 17.

**SECTION 63‑7‑1220.** South Carolina Law Enforcement Division investigation of Department of Juvenile Justice and Department of Social Services institutional abuse cases.

The State Law Enforcement Division is authorized to receive and investigate reports of institutional abuse and neglect alleged to have occurred in any institution or foster home operated by the Department of Juvenile Justice and any institution or childcare facility operated by the Department of Social Services. The State Law Enforcement Division may promulgate regulations consistent with this authority to investigate these reports and take remedial action, if necessary.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Child protective services, hearings, review, and final decisions, see S. C. Code of Regulations R. 114‑170.

Child protective services involving institutions generally, see S.C. Code of Regulations R. 114‑4510 et seq.

Library References

Criminal Law 1224(1).

Infants 17.5, 275.

Westlaw Topic Nos. 110, 211.

C.J.S. Criminal Law Sections 2402 to 2403.

C.J.S. Infants Sections 8 to 9, 307, 373.

Attorney General’s Opinions

Reports under Child Protection Act of institutional abuse and neglect in DYS facility received by SLED should be immediately referred to DSS; Client‑Patient Protection Act provides that SLED receive reports, refer reports to nursing home ombudsman and to use discretion to investigate or refer it to law enforcement agency. 1984 Op. Atty Gen, No. 84‑2, p. 17.

**SECTION 63‑7‑1230.** Immediate entry in Central Registry of name of person determined to have abused child; notification; challenge.

When the investigation performed pursuant to this subarticle results in a determination that an individual has harmed a child or threatened a child with harm, as defined in Section 63‑7‑20, the name of that individual must be entered immediately in the Central Registry of Child Abuse and Neglect. The department must notify the individual in writing by certified mail that his name has been entered in the registry, of his right to request an appeal of the decision to enter his name in the registry, and of the possible ramifications regarding future employment and licensing if he allows his name to remain in the registry. The procedures set forth in Subarticle 9 apply when an individual challenges the entry of his name in the registry and challenges of the entry in the registry pursuant to this section must be given expedited review in the appellate process.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Central registry of child abuse and neglect records and reports, see Sections 63‑7‑1910 et seq.

Child protective services, hearings, review, and final decisions, see S. C. Code of Regulations R. 114‑170.

Investigations, child protective services involving institutions generally, see S.C. Code of Regulations R. 114‑4520.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

Attorney General’s Opinions

Reports under Child Protection Act of institutional abuse and neglect in DYS facility received by SLED should be immediately referred to DSS; Client‑Patient Protection Act provides that SLED receive reports, refer reports to nursing home ombudsman and to use discretion to investigate or refer it to law enforcement agency. 1984 Op. Atty Gen, No. 84‑2, p. 17.

Subarticle 9

Administrative Appeal of Indicated Cases

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑7‑1410 | 20‑7‑655(A) |
| 63‑7‑1420 | 20‑7‑655(C) |
| 63‑7‑1430 | 20‑7‑655(B), (D)‑(F) |
| 63‑7‑1440 | 20‑7‑655(G) |

**SECTION 63‑7‑1410.** Purpose.

The purpose of this subarticle is to provide a child protective services appeals process for reports that have been indicated pursuant to Subarticles 5 and 13 and are not being brought before the family court for disposition and for reports indicated and entered in the Central Registry pursuant to Section 63‑7‑1230 and not being brought before the family court for disposition. The appeals hearing must be scheduled and conducted in accordance with the department’s fair hearing regulations. This process is available only to the person determined to have abused or neglected the child.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Child protective services, hearings, review, and final decisions, see S. C. Code of Regulations R. 114‑170.

Confidential reports made available to individuals must note whether appeal is pending pursuant to this section, see Section 63‑7‑1990.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

**SECTION 63‑7‑1420.** Appeal of judicial determinations.

If a person requests an appeal under this subarticle and the family court has determined that the person is responsible for abuse or neglect of the child, an appeal pursuant to this subarticle is not available. If the family court reaches such a determination after the initiation of the appeal provided for in this subarticle, the department shall terminate the appeal upon receipt of an order that disposes of the issue. If a proceeding is pending in the family court that may result in a finding that will dispose of an appeal under this subarticle, the department shall stay the appeal pending the court’s decision.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Child protective services, hearings, review, and final decisions, see S. C. Code of Regulations R. 114‑170.

Confidential reports made available to individuals must note whether appeal is pending pursuant to this section, see Section 63‑7‑1990.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

**SECTION 63‑7‑1430.** Notice and opportunity to be heard.

(A) If the department determines that a report of suspected child abuse or neglect is indicated and the department is not taking the case to the family court for disposition, or if the case was entered in the Central Registry pursuant to Section 63‑7‑1230 and the department is not taking the case to family court for disposition, the department shall provide notice of the case decision by certified mail to the person determined to have abused or neglected the child. The notice must inform the person of the right to appeal the case decision and that, if he intends to appeal the decision, he must notify the department of his intent in writing within thirty days of receipt of the notice. The notice also must advise the person that the appeal process is for the purpose of determining whether a preponderance of evidence supports the case decision that the person abused or neglected the child. If the person does not notify the department of his intent to appeal in writing within thirty days of receipt of the notice, the right to appeal is waived by the person and the case decision becomes final.

(B) Within fourteen days after receipt of a notice of intent to appeal, an appropriate official of the department designated by the director must conduct an interim review of case documentation and the case determination. The interim review may not delay the scheduling of the contested case hearing. If the official conducting the interim review decides that the determination against the appellant is not supported by a preponderance of evidence, this decision must be reflected in the department’s case record and database as provided in Section 63‑7‑930(B)(2) or (3). If the person’s name was in the Central Registry as a result of a determination pursuant to Section 63‑7‑1230 and the interim review results in a reversal of the decision that supports that entry, the person’s name must be removed from the Central Registry.

(C) The state director shall appoint a hearing officer to conduct a contested case hearing for each case decision appealed. The hearing officer shall prepare recommended findings of fact and conclusions of law for review by the state director or the state director’s designee who shall render the final decision. The designee under this subsection must not be a person who was involved in making the original case decision or who conducted the interim review of the original case decision. The purpose of the hearing is to determine whether there is a preponderance of evidence that the appellant was responsible for abuse or neglect of the child.

(D) After a contested case hearing, if the state director or the director’s designee decides that the determination against the appellant is not supported by a preponderance of evidence, this decision must be reflected in the department’s case record and database as provided in Section 63‑7‑930(B)(2) or (3). If the person’s name was in the Central Registry as a result of a determination pursuant to Section 63‑7‑1230 and the state director or the director’s designee reverses the decision that supports that entry, the person’s name must be removed from the Central Registry. If the state director or the director’s designee affirms the determination against the appellant, the appellant has the right to seek judicial review in the family court of the jurisdiction in which the case originated.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Child protective services, hearings, review, and final decisions, see S. C. Code of Regulations R. 114‑170.

Confidential reports made available to individuals must note whether appeal is pending pursuant to this section, see Section 63‑7‑1990.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

**SECTION 63‑7‑1440.** Judicial review.

An appellant seeking judicial review shall file a petition in the family court within thirty days after the final decision of the department. The appellant 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 that a preponderance of evidence shows that the appellant abused or neglected the child should be affirmed or reversed. The appellant is not entitled to a trial de novo in the family court.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Child protective services, hearings, review, and final decisions, see S. C. Code of Regulations R. 114‑170.

Confidential reports made available to individuals must note whether appeal is pending pursuant to this section, see Section 63‑7‑1990.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

Subarticle 11

Judicial Proceedings

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑7‑1610 | 20‑7‑736(A), 20‑7‑640(D) |
| 63‑7‑1620 | 20‑7‑110 |
| 63‑7‑1630 | 20‑7‑645 |
| 63‑7‑1640 | 20‑7‑763 |
| 63‑7‑1650 | 20‑7‑738 |
| 63‑7‑1660 | 20‑7‑736(B)‑(H) |
| 63‑7‑1670 | 20‑7‑762 |
| 63‑7‑1680 | 20‑7‑764 |
| 63‑7‑1690 | 20‑7‑765 |
| 63‑7‑1700 | 20‑7‑766 |
| 63‑7‑1710 | 20‑7‑768 |
| 63‑7‑1720 | 20‑7‑770 |

**SECTION 63‑7‑1610.** Jurisdiction and venue.

(A) The family court has exclusive jurisdiction over all proceedings held pursuant to this article.

(B) The county in which the child resides is the legal place of venue.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Emergency protective custody of child when there is not time to apply for court order pursuant to this section, see Section 63‑7‑620.

In actions initiated pursuant to this section, fee to be imposed against defendant, see Section 63‑3‑370.

Jurisdiction of the Family Court to terminate parental rights, see Sections 63‑7‑2510 et seq.

Order resulting from proceedings under this section must include determination whether the subject of the report more likely than not abused or neglected child, see Sections 63‑7‑920, 63‑7‑930.

Order terminating parental rights on basis of children being abused, neglected, or abandoned, see Section 63‑7‑2570.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Provisions relating to considerations of treatment plan, see Section 63‑7‑1680.

Provisions relating to review by Family Court and approval of treatment plan, review hearings and termination of protective services, see Section 63‑7‑1670.

Provisions relating to review by Family Court of the status of a child removed, who may initiate such review, and timeliness, see Section 63‑7‑1700.

Federal Aspects

Victims of child abuse act of 1990, P. L. 101‑647 Sections 201 et seq., 42 U.S.C.A. Section 13001 et seq.

Library References

Infants 196.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41, 46 to 48.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 16, Definition of a “Child”.

S.C. Jur. Children and Families Section 38, Jurisdiction.

Attorney General’s Opinions

South Carolina State courts would have jurisdiction over the custody of an abused or neglected child residing within Fort Jackson property unless an action were brought in which diversity, a constitutional question, or a habeas application were present which might give a federal court jurisdiction. 1975‑76 Op. Atty Gen, No. 4491, p 350.

NOTES OF DECISIONS

In general 1

Intervention 2

Jurisdiction 3

1. In general

Family court had jurisdiction to hear termination of parental rights case, despite parent’s contention that no finding of abuse or neglect was ever made and children were improperly removed from home, as family court has exclusive jurisdiction over all termination proceedings and there is no statutory provision divesting court of jurisdiction based on alleged improper removal of child, and, even if there were, parent acquiesced in placement of her children in care of Department of Social Services. South Carolina Dept. of Social Services v. Smith (S.C.App. 2000) 343 S.C. 129, 538 S.E.2d 285, rehearing denied. Infants 2065

2. Intervention

The family court did not abuse its discretion in allowing foster parents’ intervention in a proceeding to terminate parental rights since foster parents have standing to seek termination and the statutory scheme allows removal and termination to be considered together. Greenville County Dept. of Social Services v. Bowes (S.C. 1993) 313 S.C. 188, 437 S.E.2d 107, rehearing denied.

3. Jurisdiction

The failure of the Department of Social Services (DSS) emergency removal complaint to comply with the statutory notice requirements did not divest the family court of subject matter jurisdiction, in child dependency proceeding; the family court had exclusive jurisdiction over matters concerning the abuse or neglect of children, and the statutes did not divest the family court of subject matter jurisdiction based on the DSS’s failure to meet the notice requirements. South Carolina Dept. of Social Services v. Meek (S.C.App. 2002) 352 S.C. 523, 575 S.E.2d 846, rehearing denied. Infants 2065; Infants 2070

The family court’s failure to complete the merits hearing on the Department of Social Services (DSS) emergency removal complaint within 65 days of the receipt of the removal petition, pursuant to statutory time limits, did not divest the family court of subject matter jurisdiction, in child dependency proceeding; the family court scheduled the hearing within 35 days, as required by statute, and the remedy for failure to complete the hearing with the statutory time frame was for mother to petition for the return of her children or file a motion to vacate the order granting custody to the DSS. South Carolina Dept. of Social Services v. Meek (S.C.App. 2002) 352 S.C. 523, 575 S.E.2d 846, rehearing denied. Infants 2065; Infants 2100

A family court judge may order participation by an estranged parent in a plan aimed at reuniting the child with the parent. Thus, a parent and child were under the jurisdiction of the family court, and the court had the authority to require the parents to successfully complete a substance abuse treatment and parenting skills program, following the removal of the child from the parent’s home by the Department of Social Services. Department of Social Services v. Johnson (S.C.App. 1990) 302 S.C. 199, 394 S.E.2d 721.

**SECTION 63‑7‑1620.** Legal representation of children.

In all child abuse and neglect proceedings:

(1) Children must be appointed a guardian ad litem by the family court. A guardian ad litem serving on behalf of the South Carolina Guardian ad Litem Program or Richland County CASA must be represented by legal counsel in any judicial proceeding pursuant to Section 63‑11‑530(C).

(2) The family court may appoint legal counsel for the child. Counsel for the child may not be the same as counsel for:

(a) the parent, legal guardian, or other person subject to the proceeding;

(b) any governmental or social agency involved in the proceeding;

(c) the child’s guardian ad litem.

(3) Parents, legal guardians, or other persons subject to any judicial proceeding are entitled to legal counsel. Those persons unable to afford legal representation must be appointed counsel by the family court.

(4) The interests of the State and the Department of Social Services must be represented by the legal representatives of the Department of Social Services in any judicial proceeding.

HISTORY: 2008 Act No. 361, Section 2; 2008 Act No. 199, Section 1; 2010 Act No. 252, Section 1, eff June 11, 2010.

Effect of Amendment

The 2010 amendment rewrote this section.

CROSS REFERENCES

Direction that all reports made and information collected by child welfare agencies be made available to persons appointed as a child’s guardian ad litem and the child’s attorney pursuant to this section, see Section 63‑7‑1990.

Making information contained in child abuse and neglect reports available to person appointed as guardian ad litem of the child pursuant to this section, see Section 63‑7‑1990.

Notice to parent or guardian of removal hearing including advice as to right of attorney under this section, see Sections 63‑7‑1610, 63‑7‑1660.

Representation in emergency protective custody proceedings, see Section 63‑7‑620.

Right to attorney, pursuant to this section, must be included in notification to parent or guardian of hearing, see Section 63‑7‑1650.

Training and supervision of special advocates for children in abuse and neglect proceedings in Family Court, through Guardian ad Litem program, see Sections 63‑11‑500 et seq.

Library References

Infants 205.

Westlaw Topic No. 211.

C.J.S. Infants Sections 40, 44 to 45, 58 to 59, 62, 66, 69 to 70, 334.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 18, Representation Before the Family Courts.

S.C. Jur. Children and Families Section 115, Abuse and Neglect Cases.

Attorney General’s Opinions

It is incumbent upon the office of the solicitor in each county, as part of their prosecutorial functions, to file the petition and subpoenas in child abuse cases and ensure that service of same is effected. 1979 Op. Atty Gen, No 79‑102, p 143.

NOTES OF DECISIONS

In general 1

1. In general

Orders removing child from custody of parent and terminating parental rights will not be reversed or vacated on appeal, notwithstanding failure to appoint counsel, where Department of Social Services has acted in what it considers to be best interests of child and placed child with prospective adoptive family; however, proceeding will be remanded to family court for rehearing, both adjudicatory and dispositional, on issues of whether child should be removed from parental custody and parental rights terminated; on remand, best interests of child continue to be paramount consideration. South Carolina Dept. of Social Services v. Vanderhorst (S.C. 1986) 287 S.C. 554, 340 S.E.2d 149.

Action to remove child from custody of parent is clearly within class of child abuse and neglect proceedings in which person unable to afford legal representation is entitled to have appointed counsel. South Carolina Dept. of Social Services v. Vanderhorst (S.C. 1986) 287 S.C. 554, 340 S.E.2d 149.

Provision of Section 20‑7‑736 requiring family court to notify parent of right to attorney was enacted primarily to insure notice of right to counsel under Section 20‑7‑110 before initial hearing. South Carolina Dept. of Social Services v. Vanderhorst (S.C. 1986) 287 S.C. 554, 340 S.E.2d 149.

**SECTION 63‑7‑1630.** Notice of hearings.

The department shall provide notice of a hearing held in connection with an action filed or pursued under Subarticle 3 or Section 63‑7‑1650, 63‑7‑1660, 63‑7‑1670, 63‑7‑1680, 63‑7‑1700, or 63‑7‑2550 to the foster parent, the preadoptive parent, or the relative who is providing care for a child. The notice must be in writing and may be delivered in person or by regular mail. The notice shall inform the foster parent, preadoptive parent, or relative of the date, place, and time of the hearing and of the right to attend the hearing and to address the court concerning the child. Notice provided pursuant to this section does not confer on the foster parent, preadoptive parent, or relative the status of a party to the action.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 198.

Westlaw Topic No. 211.

C.J.S. Infants Sections 49 to 50.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 40, Hearings in General.

**SECTION 63‑7‑1640.** Family preservation.

(A)(1) When this chapter requires the department to make reasonable efforts to preserve or reunify a family and requires the family court to determine whether these reasonable efforts have been made, the child’s health and safety must be the paramount concern.

(2) Reasonable efforts required pursuant to item (1) to preserve or reunify a family in which the parent or legal guardian has a disability must include efforts that are individualized and based upon a parent’s or legal guardian’s specific disability, including referrals for access to adaptive parenting equipment, referrals for instruction on adaptive parenting techniques, and reasonable accommodations with regard to accessing services that are otherwise made available to a parent or legal guardian who does not have a disability.

(B) The family court may rule on whether reasonable efforts to preserve or reunify a family should be required in hearings regarding removal of custody, review of amendments to a placement plan, review of the status of a child in foster care, or permanency planning or in a separate proceeding for this purpose. The court may consider this issue on the motion of a named party, the child’s guardian ad litem, or the foster care review board, provided that the foster care review board has reviewed the case pursuant to Section 63‑11‑720 or the child has previous entry into foster care.

(C) The family court may authorize the department to terminate or forego reasonable efforts to preserve or reunify a family when the records of a court of competent jurisdiction show or when the family court determines that one or more of the following conditions exist:

(1) the parent has subjected the child or another child while residing in the parent’s domicile to one or more of the following aggravated circumstances:

(a) severe or repeated abuse;

(b) severe or repeated neglect;

(c) sexual abuse;

(d) acts the judge finds constitute torture; or

(e) abandonment;

(2) the parent has been convicted of or pled guilty or nolo contendere to murder of another child, or an equivalent offense, in this jurisdiction or another;

(3) the parent has been convicted of or pled guilty or nolo contendere to voluntary manslaughter of another child, or an equivalent offense, in this jurisdiction or another;

(4) the parent has been convicted of or pled guilty or nolo contendere to aiding, abetting, attempting, soliciting, or conspiring to commit murder or voluntary manslaughter of the child or another child while residing in the parent’s domicile, or an equivalent offense, in this jurisdiction or another;

(5) physical abuse of a child resulted in the death or admission to the hospital for in‑patient care of that child and the abuse is the act for which the parent has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting:

(a) an offense against the person, as provided for in Title 16, Chapter 3;

(b) criminal domestic violence, as defined in Section 16‑25‑20;

(c) criminal domestic violence of a high and aggravated nature, as defined in Section 16‑25‑65; or

(d) the common law offense of assault and battery of a high and aggravated nature, or an equivalent offense in another jurisdiction;

(6) the parental rights of the parent to another child of the parent have been terminated involuntarily;

(7) the parent has a diagnosable condition unlikely to change within a reasonable time including, but not limited to, alcohol or drug addiction, mental deficiency, mental illness, or extreme physical incapacity, and the condition makes the parent unable or unlikely to provide minimally acceptable care of the child;

(8) other circumstances exist that the court finds make continuation or implementation of reasonable efforts to preserve or reunify the family inconsistent with the permanent plan for the child.

(D) The department may proceed with efforts to place a child for adoption or with a legal guardian concurrently with making efforts to prevent removal or to make it possible for the child to return safely to the home.

(E) If the family court’s decision that reasonable efforts to preserve or reunify a family are not required results from a hearing other than a permanency planning hearing, the court’s order shall require that a permanency planning hearing be held within thirty days of the date of the order.

(F) In determining whether to authorize the department to terminate or forego reasonable efforts to preserve or reunify a family, the court must consider whether initiation or continuation of reasonable efforts to preserve or reunify the family is in the best interests of the child. If the court authorizes the department to terminate or forego reasonable efforts to preserve or reunify a family, the court must make specific written findings in support of its conclusion that one or more of the conditions set forth in subsection (C)(1) through (8) are shown to exist, and why continuation of reasonable efforts is not in the best interest of the child. If the court does not authorize the department to terminate or forego reasonable efforts where one or more of the conditions set forth in subsection (C)(1) through (8) are shown to exist, the court must make specific written findings in support of its conclusion that continuation of reasonable efforts is in the best interest of the child. The court must not consider the availability or lack of an adoptive resource as a reason to deny the request to terminate or forego reasonable efforts.

(G) In any case in which the court authorizes the department to terminate or forego reasonable efforts to preserve or reunify a family, the department shall file a petition for termination of parental rights within sixty days, unless there are compelling reasons why termination of parental rights would be contrary to the best interests of the child.

HISTORY: 2008 Act No. 361, Section 2; 2010 Act No. 160, Section 1, eff May 12, 2010; 2017 Act No. 36 (H.3538), Section 4, eff May 10, 2017.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

Effect of Amendment

The 2010 amendment added the phrase starting with “or in a separate proceeding” to the end of the first sentence of subsection (B); added the second sentence to subsection (B); added the phrase starting “or another child” to subparagraph (C)(1); made nonsubstantive changes in subparagraph (C)(1)(d); deleted “of the parent” following “another child” in subparagraphs (C)(2), (C)(3), and (C)(5); substituted “of the child or another child while residing in the parent’s domicile,” for “pursuant to item (1), (2), or (3),” in subparagraph (C)(4); substituted “another child of the parent” for “a sibling of the child” in subparagraph (C)(6); added a new subparagraph (C)(7), relating to diagnosable conditions of a parent that would permit termination of reunification efforts; redesignated former subparagraph (C)(7) as subparagraph (C)(8); added the second through fourth sentences to subsection (F), relating to the requirement of written findings by the court in certain circumstances; and added subsection (G), relating to filing of a petition for termination of parental rights.

2017 Act No. 36, Section 4, inserted the (A)(1) identifier, and added (A)(2), relating to family court determinations whether to require reasonable efforts to preserve or reunify a family when the parent or legal guardian has a disability.

Library References

Infants 155.

Westlaw Topic No. 211.

C.J.S. Infants Sections 20 to 22, 26 to 28, 40, 42, 44 to 45, 58 to 59.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 41, Reasonable Cause and Review Hearings.

Notes of Decisions

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1. In general

Remand for a new permanency hearing was warranted, where the trial court allowed the Department of Social Services (DSS) to forego reasonable efforts at reunifying mother with her children, but it failed to specify which statutory conditions existed that would allow the court to forego reasonable efforts to reunify a family. South Carolina Dept. of Social Services v. Briggs (S.C.App. 2015) 413 S.C. 377, 776 S.E.2d 115. Infants 2435

**SECTION 63‑7‑1650.** Services without removal.

(A) Upon investigation of a report under Section 63‑7‑920 or at any time during the delivery of services by the department, the department may petition the family court for authority to intervene and provide protective services without removal of custody if the department determines by a preponderance of evidence that the child is an abused or neglected child and that the child cannot be protected from harm without intervention.

(B) The petition shall contain a full description of the basis for the department’s belief that the child cannot be protected adequately without department intervention, including a description of the condition of the child, any previous efforts by the department to work with the parent or guardian, treatment programs which have been offered and proven inadequate, and the attitude of the parent or guardian towards intervention and protective services.

(C) Upon receipt of a petition under this section, the family court shall schedule a hearing to be held within thirty‑five days of the filing date to determine whether intervention is necessary.

(D) The parties to the petition must be served with a summons and notices of right to counsel and of the hearing date and time along with the petition. Personal jurisdiction over the parties is effected if they are served at least seventy‑two hours before the hearing. No responsive pleading to the petition is required. The court may authorize service by publication in appropriate cases and may waive the thirty‑five days requirement when necessary to achieve service. A party may waive service or appear voluntarily.

(E) Intervention and protective services must not be ordered unless the court finds that the allegations of the petition are supported by a preponderance of the evidence including a finding that the child is an abused or neglected child as defined in Section 63‑7‑20 and the child cannot be protected from further harm without intervention.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

At close of hearing pursuant to this section family court shall review and approve treatment plan, see Section 63‑7‑1670.

Family court order resulting from proceedings initiated pursuant to this section must include judicial determination for inclusion in statewide Central Registry whether or not subject of the report more likely than not abused or neglected the child, see Sections 63‑7‑920, 63‑7‑930.

In actions initiated pursuant to this section, fee to be imposed against defendant, see Section 63‑3‑370.

Library References

Infants 155, 192.

Westlaw Topic No. 211.

C.J.S. Infants Sections 20 to 22, 24 to 28, 40 to 42, 44 to 48, 58 to 59.

RESEARCH REFERENCES

ALR Library

25 ALR 7th 1 , Challenges to Placement on State Child Abuse Registries on Other Than Constitutional Bases.

Encyclopedias

S.C. Jur. Children and Families Section 16, Definition of a “Child”.

S.C. Jur. Children and Families Section 17, Abuse or Neglect of an Unborn Child.

S.C. Jur. Children and Families Section 19, Evidence and Standard of Proof.

S.C. Jur. Children and Families Section 37, Duty of the State Department of Social Services to Provide Services.

S.C. Jur. Children and Families Section 38, Jurisdiction.

S.C. Jur. Children and Families Section 39, Removal Hearings.

S.C. Jur. Children and Families Section 41, Reasonable Cause and Review Hearings.

NOTES OF DECISIONS

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Child witness testimony outside presence of parent or defendant 2

Judge’s discretion to speak with child 3

Sufficiency of evidence 4

1. In general

After Court of Appeals concluded that family court erred in granting custody of allegedly neglected children to aunt and allowing Department of Social Services (DSS) to close its case when DSS had filed complaint for intervention, not complaint for removal, best interests of children required that custody be awarded to DSS and that case be remanded for permanency planning hearing; immediate change of custody may not have been proper given that children had been out of father’s home for over four years, and hearing would allow parties to update family court on what had occurred during last four years and would give DSS opportunity to offer any necessary services to father. South Carolina Dept. of Social Services v. Randy S. (S.C.App. 2010) 390 S.C. 100, 700 S.E.2d 250, rehearing denied. Infants 2435

In intervention action that was filed by Department of Social Services (DSS) concerning allegedly neglected minor children, family court could not grant custody of children to aunt and allow DSS to close its case; intervention statute did not contemplate placement of children with third parties but rather contemplated provision of protective services without removal. South Carolina Dept. of Social Services v. Randy S. (S.C.App. 2010) 390 S.C. 100, 700 S.E.2d 250, rehearing denied. Infants 2222

The statutory proceeding for the Department of Social Services’ (DSS) intervention for and protection of an abused or neglected child is a civil action aimed at protection of a child, not a criminal action geared toward punishing a defendant. South Carolina Dept. of Social Services v. Wilson (S.C. 2002) 352 S.C. 445, 574 S.E.2d 730. Infants 1813

2. Child witness testimony outside presence of parent or defendant

In a proceeding for Department of Social Services’ (DSS) intervention for and protection of an abused or neglected child, the child witness’ testimony generally should be given in the presence of the parent/defendant; however, in some circumstances it is necessary to protect sensitive witnesses, especially minors, from the trauma of testifying. South Carolina Dept. of Social Services v. Wilson (S.C. 2002) 352 S.C. 445, 574 S.E.2d 730. Infants 2104

If the family court determines the child witness may testify outside the parent/defendant’s presence in the proceeding for the Department of Social Services’ (DSS) intervention for and protection of an abused or neglected child, the testimony should be given in an environment which indicates the seriousness of the matter, arrangements should be made for the parent/defendant to hear the child while she testifies, the parent/defendant should have reasonable opportunities to confer with counsel during the child’s testimony, and the parent/defendant’s counsel should have the opportunity to cross‑examine the child witness. South Carolina Dept. of Social Services v. Wilson (S.C. 2002) 352 S.C. 445, 574 S.E.2d 730. Infants 2104

Statute on evidence, allowing admission of a child witness’ hearsay statements, does not authorize the exclusion of the parent/defendant, in a proceeding for intervention for and protection of an abused or neglected child, from the child’s video deposition or closed circuit television taping, or from the hearing at which the child testifies. South Carolina Dept. of Social Services v. Wilson (S.C. 2002) 352 S.C. 445, 574 S.E.2d 730. Infants 2086; Infants 2105; Witnesses 228

In determining whether the child witness would be traumatized by testifying in the presence of the parent/defendant, as first step in determining whether the child witness should be permitted to testify outside the presence of the parent/defendant in a proceeding for the Department of Social Services’ (DSS) intervention for and protection of an abused or neglected child, the family court may consider the child’s age, mentality, and any other pertinent information, and should consider the testimony of the child and/or other relevant witnesses. South Carolina Dept. of Social Services v. Wilson (S.C. 2002) 352 S.C. 445, 574 S.E.2d 730. Infants 2105

3. Judge’s discretion to speak with child

The parent/defendant’s due process right to be present when a child testifies in a proceeding for the Department of Social Services’ (DSS) intervention for and protection of an abused or neglected child does not interfere with the application of the family court rule providing the family court judge with discretion to speak with the child in private conference. South Carolina Dept. of Social Services v. Wilson (S.C. 2002) 352 S.C. 445, 574 S.E.2d 730. Constitutional Law 4401; Infants 2096; Infants 2104

4. Sufficiency of evidence

While appellate court has jurisdiction in a Department of Social Services (DSS) intervention action to find facts based on its own view of the preponderance of evidence, when evidence presented in the record adequately supports the findings of the family court, due deference should be given to the family court’s judgment based on its superior position in weighing such evidence. South Carolina Dept. of Social Services v. Mary C. (S.C.App. 2011) 396 S.C. 15, 720 S.E.2d 503, rehearing denied. Infants 2415(1)

Evidence in Department of Social Services’ (DSS) intervention action against mother and father, which alleged that child’s placement with father put child at substantial risk of sexual abuse, supported family court’s finding that an unknown perpetrator, as opposed to father, sexually abused child; expert in clinical and forensic psychology stated that father was not a pedophile and he could not conclude with a reasonable degree of medical certainty that father was the perpetrator, father’s two older daughters strongly denied that father had ever acted inappropriately, either towards them or towards child, and father’s ex‑wife testified that he was a good father to her daughters and to child and that based on her observations, child was extremely affectionate towards and attached to father. South Carolina Dept. of Social Services v. Mary C. (S.C.App. 2011) 396 S.C. 15, 720 S.E.2d 503, rehearing denied. Infants 2169(10)

**SECTION 63‑7‑1660.** Services with removal.

(A) Upon investigation of a report received under Section 63‑7‑310 or at any time during the delivery of services by the department, the department may petition the family court to remove the child from custody of the parent, guardian, or other person legally responsible for the child’s welfare if the department determines by a preponderance of evidence that the child is an abused or neglected child and that the child cannot be safely maintained in the home in that he cannot be protected from unreasonable risk of harm affecting the child’s life, physical health, safety, or mental well‑being without removal. If a noncustodial parent is not named as a party in the removal petition, the agency shall exercise every reasonable effort to promptly notify the noncustodial parent that a removal proceeding has been initiated and of the date and time of any hearings scheduled pursuant to this section.

(B)(1) The petition shall contain a full description of the reasons why the child cannot be protected adequately in the custody of the parent or guardian, including facts supporting the department’s allegation that the child is an abused or neglected child as defined in Section 63‑7‑20 and that retention of the child in or return of the child to the home would place the child at unreasonable risk of harm affecting the child’s life, physical health or safety, or mental well‑being and the child cannot reasonably be protected from this harm without being removed, a description of the condition of the child, any previous efforts to work with the parent or guardian, in‑home treatment programs which have been offered and proven inadequate, and the attitude of the parent or guardian towards placement of the child in an alternative setting. The petition also shall contain a statement of the harms the child is likely to suffer as a result of removal and a description of the steps that will be taken to minimize the harm to the child that may result upon removal.

(2) The petition for removal may include a petition for termination of parental rights. The petition for removal must include a petition for termination of parental rights if court records or other evidence indicate the existence of one or more of the conditions set forth in Section 63‑7‑1640(C)(1) through (8), unless there are compelling reasons for believing that termination of parental rights would be contrary to the best interests of the child.

(C)(1) Whether or not the petition for removal includes a petition for termination of parental rights, the petition shall contain a notice informing the parents of the potential effect of the hearing on their parental rights and a notice to all interested parties that objections to the sufficiency of a placement plan, if ordered, or of any recommendations for provisions in the plan or court order must be raised at the hearing. The notice must be printed in boldface print or in all upper case letters and set off in a box.

(2) If the petition includes a petition for termination of parental rights, the notice shall state: “As a result of this hearing, you could lose your rights as a parent”.

(3) If the petition does not include a petition for termination of parental rights, the notice shall state: “At this hearing the court may order a treatment plan. If you fail to comply with the plan, you could lose your rights as a parent”.

(D) Upon receipt of a removal petition under this section, the family court shall schedule a hearing to be held within thirty‑five days of the date of receipt to determine whether removal is necessary. The parties to the petition must be served with a summons and notices of right to counsel and the hearing date and time along with the petition. Personal jurisdiction over the parties is effected if they are served at least seventy‑two hours before the hearing. No responsive pleading to the petition is required. The court may authorize service by publication in appropriate cases and may waive the thirty‑five days requirement when necessary to achieve service. A party may waive service or appear voluntarily.

(E) The court shall not order that a child be removed from the custody of the parent or guardian unless the court finds that the allegations of the petition are supported by a preponderance of evidence including a finding that the child is an abused or neglected child as defined in Section 63‑7‑20 and that retention of the child in or return of the child to the home would place the child at unreasonable risk of harm affecting the child’s life, physical health or safety, or mental well‑being and the child cannot reasonably be protected from this harm without being removed.

(F)(1) It is presumed that a newborn child is an abused or neglected child as defined in Section 63‑7‑20 and that the child cannot be protected from further harm without being removed from the custody of the mother upon proof that:

(a) a blood or urine test of the child at birth or a blood or urine test of the mother at birth shows the presence of any amount of a controlled substance or a metabolite of a controlled substance unless the presence of the substance or the metabolite is the result of medical treatment administered to the mother of the infant or the infant, or

(b) the child has a medical diagnosis of fetal alcohol syndrome; and

(c) a blood or urine test of another child of the mother or a blood or urine test of the mother at the birth of another child showed the presence of any amount of a controlled substance or a metabolite of a controlled substance unless the presence of the substance or the metabolite was the result of medical treatment administered to the mother of the infant or the infant, or

(d) another child of the mother has the medical diagnosis of fetal alcohol syndrome.

(2) This presumption may be rebutted by proof that the father or another adult who will assume the role of parent is available and suitable to provide care for the child in the home of the mother. The father or the other adult must be made a party to the action and subject to the court’s order establishing the conditions for maintaining the child in the mother’s home. This statutory presumption does not preclude the court from ordering removal of a child upon other proof of alcohol or drug abuse or addiction by the parent or person responsible for the child who has harmed the child or threatened the child with harm.

(G) If the court removes custody of the child, the court’s order shall contain a finding by the court of whether reasonable efforts were made by the department to prevent removal of the child and a finding of whether continuation of the child in the home would be contrary to the welfare of the child. The order shall state:

(1) the services made available to the family before the removal of the child and how they related to the needs of the family;

(2) the efforts of the agency to provide these services to the family before removal;

(3) why the efforts to provide services did not eliminate the need for removal; and

(4) whether the efforts to eliminate the need for removal were reasonable including, but not limited to, whether they were reasonably available and timely, reasonably adequate to address the needs of the family, reasonably adequate to protect the child and realistic under the circumstances. If the department’s first contact with the child occurred under such circumstances that reasonable services would not have allowed the child to remain safely in the home, the court shall find that removal of the child without services or without further services was reasonable.

HISTORY: 2008 Act No. 361, Section 2; 2010 Act No. 160, Section 2, eff May 12, 2010.

Effect of Amendment

The 2010 amendment added the second sentence to subparagraph (B)(2), relating to when a petition for removal must include a petition for termination of parental rights.

CROSS REFERENCES

Emergency protective custody of child when there is not time to apply for court order pursuant to this section, see Section 63‑7‑620.

In actions initiated pursuant to this section, fee to be imposed against defendant, see Section 63‑3‑370.

Jurisdiction of the Family Court to terminate parental rights, see Sections 63‑7‑2510 et seq.

Order resulting from proceedings under this section must include determination whether the subject of the report more likely than not abused or neglected child, see Sections 63‑7‑920, 63‑7‑930.

Order terminating parental rights on basis of children being abused, neglected, or abandoned, see Section 63‑7‑2570.

Out‑of‑court statements by certain children, see Section 19‑1‑180.

Provisions relating to considerations of treatment plan, see Section 63‑7‑1680.

Provisions relating to review by Family Court and approval of treatment plan, review hearings and termination of protective services, see Section 63‑7‑1670.

Provisions relating to review by Family Court of the status of a child removed, who may initiate such review, and timeliness, see Section 63‑7‑1700.

Federal Aspects

Victims of child abuse act of 1990, P. L. 101‑647 Sections 201 et seq., 42 U.S.C.A. Section 13001 et seq.

Library References

Infants 155, 192.

Westlaw Topic No. 211.

C.J.S. Infants Sections 20 to 22, 24 to 28, 40 to 42, 44 to 48, 58 to 59.

RESEARCH REFERENCES

ALR Library

25 ALR 7th 1 , Challenges to Placement on State Child Abuse Registries on Other Than Constitutional Bases.

Encyclopedias

S.C. Jur. Children and Families Section 38, Jurisdiction.

Attorney General’s Opinions

South Carolina State courts would have jurisdiction over the custody of an abused or neglected child residing within Fort Jackson property unless an action were brought in which diversity, a constitutional question, or a habeas application were present which might give a federal court jurisdiction. 1975‑76 Op. Atty Gen, No. 4491, p 350.

NOTES OF DECISIONS

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Termination of parental rights 3

1. In general

Because Department of Social Services (DSS), in filing complaint for intervention, in actuality initiated a removal action instead of an intervention action regarding allegedly neglected children, it was required to follow the statutory procedures for removal and file a petition with the family court after the children were taken into emergency protective custody (EPC). South Carolina Dept. of Social Services v. Randy S. (S.C.App. 2010) 390 S.C. 100, 700 S.E.2d 250, rehearing denied. Infants 2084

After Court of Appeals concluded that family court erred in granting custody of allegedly neglected children to aunt and allowing Department of Social Services (DSS) to close its case when DSS had filed complaint for intervention, not complaint for removal, best interests of children required that custody be awarded to DSS and that case be remanded for permanency planning hearing; immediate change of custody may not have been proper given that children had been out of father’s home for over four years, and hearing would allow parties to update family court on what had occurred during last four years and would give DSS opportunity to offer any necessary services to father. South Carolina Dept. of Social Services v. Randy S. (S.C.App. 2010) 390 S.C. 100, 700 S.E.2d 250, rehearing denied. Infants 2435

Existence of the Americans with Disabilities Act (ADA) does not prevent termination of parental rights (TPR) when it is in the child’s best interest and Department of Social Services (DSS) makes reasonable efforts to remedy any conditions leading to the child’s removal. South Carolina Dept. of Social Services v. Mother ex rel. Minor Child (S.C.App. 2007) 375 S.C. 276, 651 S.E.2d 622. Civil Rights 1057; Infants 1911

A family court judge may order participation by an estranged parent in a plan aimed at reuniting the child with the parent. Thus, a parent and child were under the jurisdiction of the family court, and the court had the authority to require the parents to successfully complete a substance abuse treatment and parenting skills program, following the removal of the child from the parent’s home by the Department of Social Services. Department of Social Services v. Johnson (S.C.App. 1990) 302 S.C. 199, 394 S.E.2d 721.

2. Jurisdiction

The failure of the Department of Social Services (DSS) emergency removal complaint to comply with the statutory notice requirements did not divest the family court of subject matter jurisdiction, in child dependency proceeding; the family court had exclusive jurisdiction over matters concerning the abuse or neglect of children, and the statutes did not divest the family court of subject matter jurisdiction based on the DSS’s failure to meet the notice requirements. South Carolina Dept. of Social Services v. Meek (S.C.App. 2002) 352 S.C. 523, 575 S.E.2d 846, rehearing denied. Infants 2065; Infants 2070

The family court’s failure to complete the merits hearing on the Department of Social Services (DSS) emergency removal complaint within 65 days of the receipt of the removal petition, pursuant to statutory time limits, did not divest the family court of subject matter jurisdiction, in child dependency proceeding; the family court scheduled the hearing within 35 days, as required by statute, and the remedy for failure to complete the hearing with the statutory time frame was for mother to petition for the return of her children or file a motion to vacate the order granting custody to the DSS. South Carolina Dept. of Social Services v. Meek (S.C.App. 2002) 352 S.C. 523, 575 S.E.2d 846, rehearing denied. Infants 2065; Infants 2100

3. Termination of parental rights

Family court had jurisdiction to hear termination of parental rights case, despite parent’s contention that no finding of abuse or neglect was ever made and children were improperly removed from home, as family court has exclusive jurisdiction over all termination proceedings and there is no statutory provision divesting court of jurisdiction based on alleged improper removal of child, and, even if there were, parent acquiesced in placement of her children in care of Department of Social Services. South Carolina Dept. of Social Services v. Smith (S.C.App. 2000) 343 S.C. 129, 538 S.E.2d 285, rehearing denied. Infants 2065

A petition for removal may include a petition for termination of parental rights. Greenville County Dept. of Social Services v. Bowes (S.C. 1993) 313 S.C. 188, 437 S.E.2d 107, rehearing denied. Infants 2157

In a removal action, as opposed to a termination proceeding, abuse need only be shown by a preponderance of the evidence; consequently, a finding of abuse in a removal order was an insufficient finding of harm to support termination under the clear and convincing standard. Greenville County Dept. of Social Services v. Bowes (S.C. 1993) 313 S.C. 188, 437 S.E.2d 107, rehearing denied. Infants 2108; Infants 2159

4. Right to counsel

Provision of Section 20‑7‑736 requiring family court to notify parent of right to attorney was enacted primarily to insure notice of right to counsel under Section 20‑7‑110 before initial hearing. South Carolina Dept. of Social Services v. Vanderhorst (S.C. 1986) 287 S.C. 554, 340 S.E.2d 149.

5. Standing

The family court did not abuse its discretion in allowing foster parents’ intervention in a proceeding to terminate parental rights since foster parents have standing to seek termination and the statutory scheme allows removal and termination to be considered together. Greenville County Dept. of Social Services v. Bowes (S.C. 1993) 313 S.C. 188, 437 S.E.2d 107, rehearing denied.

A mother lacked standing to maintain an action to dismiss a petition for removal of the children from their parents’ custody where neither the solicitor nor the Department of Social Services coerced the mother into signing the forms and where the mother voluntarily signed the consents. Edwards v. Hars (S.C. 1985) 284 S.C. 131, 326 S.E.2d 408.

6. Hearing

Merits hearing to determine whether the children were abused or neglected must be scheduled to be held within thirty‑five days of the date of receipt of petition to remove children from parents’ custody, but not necessarily completed within the thirty‑five days. South Carolina Dept. of Social Services v. Hogan (S.C.App. 2014) 410 S.C. 120, 763 S.E.2d 219. Infants 2100

Family court had the authority to order a merits hearing to determine whether the children were abused or neglected, following receipt of petition to remove children from parents’ custody, and it should have done so at the parents’ request, given that the family court had never made an affirmative finding of abuse or neglect and the parents never had an opportunity to present evidence to contest such a finding; under these circumstances, family court had more options at the permanency planning hearing, and it should have scheduled a merits hearing at the request of the parents, and, had the family court previously made a finding of abuse or neglect, it would have been correct in finding it could not order an extension for reunification. South Carolina Dept. of Social Services v. Hogan (S.C.App. 2014) 410 S.C. 120, 763 S.E.2d 219. Infants 2037; Infants 2095

Hearing on merits of emergency protective removal petition must be scheduled, but not necessarily completed, within 35 days of receipt of removal petition. South Carolina Dept. of Social Services v. Gamble (S.C.App. 1999) 337 S.C. 428, 523 S.E.2d 477. Infants 1844

7. Attorney’s fees

The enactment of Section 20‑7‑420 did not intend to repeal that portion of Section 15‑77‑300 precluding the assessment of attorney’s fees against the state in child abuse and neglect actions, despite the provision of Section 20‑7‑736 giving the Family Court exclusive jurisdiction over proceedings brought to protect abused and neglected children, since (1) the legislature has determined that state intervention on behalf of abused and neglected children could be chilled if attorney’s fees were levied against the state, and (2) the Department of Social Services often must act quickly and without thorough investigation to remove children, who may have been abused or neglected, from potentially dangerous situations. Spartanburg County Dept. of Social Services v. Little (S.C. 1992) 309 S.C. 122, 420 S.E.2d 499.

8. Private cause of action

Negligence in failing to properly investigate a report of child abuse may gave rise to a private cause of action under the Child Protection Act against public officials who knew from personal observations that the victim’s brother was being physically abused in their home but failed to gather information or locate the family prior to the beating death of the victim by the mother’s boyfriend; the exception to the general rule of non‑liability is created by a “special duty” owed to the victim. Jensen v. Anderson County Dept. of Social Services (S.C. 1991) 304 S.C. 195, 403 S.E.2d 615.

The trial court properly concluded that social workers had a “special duty,” and thus were negligent in failing to properly investigate a report of child abuse, where it considered the following elements: (1) the purpose of the act was to protect against a particular kind of harm, (2) specific officers had a duty to guard against that harm, (3) the class of protected persons was identifiable before the fact, (4) the plaintiff was a person within the protected class, (5) the officer had reason to know the likelihood of harm if he failed to do his duty, and (6) the officer had sufficient authority, or undertook, to act. Jensen v. Anderson County Dept. of Social Services (S.C. 1991) 304 S.C. 195, 403 S.E.2d 615. Public Employment 897

9. Sufficiency of evidence

Removal of youngest child, who was born during the pendency of abuse and neglect proceeding, from mother’s custody was supported by the evidence; the trial court found, by a preponderance of the evidence, that mother’s older three children had been physically abused, and thus, youngest child was at substantial risk of being subject to abuse or neglect. South Carolina Dept. of Social Services v. Briggs (S.C.App. 2015) 413 S.C. 377, 776 S.E.2d 115. Infants 1976

**SECTION 63‑7‑1670.** Treatment plan.

(A) At the close of a hearing pursuant to Section 63‑7‑1650 or 63‑7‑1660 and upon a finding that the child shall remain in the home and that protective services shall continue, the family court shall review and approve a treatment plan designed to alleviate any danger to the child and to aid the parents so that the child will not be endangered in the future.

(B) The plan must be prepared by the department and shall detail any changes in parental behavior or home conditions that must be made and any services which will be provided to the family to ensure, to the greatest extent possible, that the child will not be endangered. Whenever possible, the plan must be prepared with the participation of the parents, the child, and any other agency or individual that will be required to provide services. The plan must be submitted to the court at the hearing. If any changes in the plan are ordered, the department shall submit a revised plan to the court within two weeks of the hearing, with copies to the parties and legal counsel. Any dispute regarding the plan must be resolved by the court. The terms of the plan must be included as part of the court order. The court order shall specify a date when treatment goals must be achieved and court jurisdiction ends, unless the court specifically finds that the matter must be brought back before the court for further review before the case may be closed. If the order requires further court review before case closure, the order shall specify a time limit for holding the next hearing.

(C)(1) Unless services are to terminate earlier, the department shall schedule a review hearing before the court at least once every twelve months to establish whether the conditions which required the initial intervention exist. If the conditions no longer exist, the court shall order termination of protective services, and the court’s jurisdiction shall end. If the court finds that the conditions which required the initial intervention are still present, it shall establish:

(a) what services have been offered to or provided to the parents;

(b) whether the parents are satisfied with the delivery of services;

(c) whether the department is satisfied with the cooperation given to the department by the parents;

(d) whether additional services should be ordered and additional treatment goals established; and

(e) the date when treatment goals must be achieved and court jurisdiction ends.

(2) The court order shall specify a date upon which jurisdiction will terminate automatically, which must be no later than eighteen months after the initial intervention. Jurisdiction may be extended pursuant to a hearing on motion by any party, if the court finds that there is clear and convincing evidence that the child is threatened with harm absent a continuation of services.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Provisions relating to duties of local child protective agency where agency initiates protective services in cases of indicated physical, mental or sexual abuse, see Section 63‑7‑900.

Provisions relating to jurisdiction of Family Court under Article 9, removal proceedings, and procedures, see Sections 63‑7‑1610, 63‑7‑1660.

Provisions relating to review by Family Court of the status of a child removed, who may initiate such review, and timeliness, see Section 63‑7‑1700.

Review of plans to terminate parental rights for children being abused, neglected, or abandoned, see Sections 63‑7‑2580 et seq.

Library References

Infants 155, 192, 231.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 20 to 22, 24 to 28, 40 to 48, 58 to 59, 71 to 95.

Notes of Decisions

In general 1

1. In general

Statute, pertaining to treatment plans, applied to intervention actions, rather than removal actions, and thus, family court erred in applying it and dismissing oldest son from the action when he was removed pursuant to a removal action and custody was never permanently awarded to a third party. South Carolina Dept. of Social Services v. Hogan (S.C.App. 2014) 410 S.C. 120, 763 S.E.2d 219. Infants 1846

**SECTION 63‑7‑1680.** Approval or amendment of plan.

(A) If the court orders that a child be removed from the custody of the parent or guardian, the court must approve a placement plan. A plan must be presented to the court for its approval at the removal hearing or within ten days after the removal hearing. If the plan is presented subsequent to the removal hearing, the court shall hold a hearing on the plan if requested by a party. 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 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.

(B) The first section of the plan shall set forth the changes that must occur in the home and family situation before the child can be returned. These changes must be reasonably related to the reasons justifying removal of the child from the custody of the parents or guardian. This section of the plan must contain a notice to the parents or guardian that failure to make the indicated changes within six months may result in termination of parental rights.

(C) The second section of the plan shall set forth:

(1) specific actions to be taken by the parents or guardian of the child; and

(2) social or other services to be provided or made available to the parent or guardian of the child.

This section of the plan must include time frames for commencement or completion of specific actions or services. This section must contain a notice to the parents or guardian that completion of the indicated actions will not result in return of the child unless the changes set forth in section one of the plan have occurred.

(D) The third section of the plan shall set forth rights and obligations of the parents or guardian while the child is in custody including, but not limited to:

(1) the responsibility of the parents or guardian for financial support of the child during the placement; and

(2) the visitation rights and obligations of the parents or guardian during the placement.

The department may move before the family court for termination or suspension of visits between the parent or guardian and the child. The family court may order termination or suspension of the visits if ongoing contact between the parent or guardian and the child would be contrary to the best interests of the child. This section of the plan must include a notice to the parents or guardian that failure to support or visit the child as provided in the plan may result in termination of parental rights.

(E) The fourth section of the plan must address matters relating to the placement of the child including, but not limited to, the following:

(1) the nature and location of the placement of the child, unless there are compelling reasons for concluding that disclosure of the location of the placement to the parents, guardian, or other person would be contrary to the best interests of the child. The placement must be as close to the child’s home as is reasonably possible, unless there are compelling reasons for concluding that placement at a greater distance is necessary to promote the child’s well‑being. In the absence of good cause to the contrary, preference must be given to placement with a relative or other person who is known to the child and who has a constructive and caring relationship with the child;

(2) visitation or other contact with siblings, other relatives, and other persons important to the child. The plan shall provide for as much contact between the child and these persons as is reasonably possible and consistent with the best interests of the child;

(3) social and other supportive services to be provided to the child and the foster parents, including counseling or other services to assist the child in dealing with the effects of separation from the child’s home and family; and

(4) the minimum number and frequency of contacts that a caseworker with the department will have with the child, which must be based on the particular needs and circumstances of the individual child but which must not be less than once a month for a child placed in this State.

(F) The court shall approve the plan only if it finds that:

(1) the plan is consistent with the court’s order placing the child in the custody of the department;

(2) the plan is consistent with the requirements for the content of a placement plan set forth in subsections (B) through (E);

(3) if the parents or guardian of the child did not participate in the development of the plan, that the department made reasonable efforts to secure their participation; and

(4) the plan is meaningful and designed to address facts and circumstances upon which the court based the order of removal.

If the court determines that any of these criteria are not satisfied, the court shall require that necessary amendments to the plan be submitted to the court within a specified time but no later than seven days. A hearing on the amended plan must be held if requested by a party.

(G) The court shall include in its order and shall advise defendants on the record that failure to remedy the conditions that caused the removal within six months, may result in termination of parental rights, subject to notice and a hearing as provided in Article 7. Before the court orders return of the child, the court must find that the changes in the home and family situation specified in section one of the plan have occurred and that the child can be safely returned to the home. Completion of the tasks specified in section two of the plan is not in itself sufficient basis for return of the child.

(H) The department immediately shall give a copy of the plan to the parents or guardian of the child, and any other parties identified by the court, including the child if the court considers it appropriate. If a copy of the plan is not given to the child, the department shall provide the child with age‑appropriate information concerning the substance of the plan unless the court finds that disclosure of any part of the plan to the child would be inconsistent with the child’s best interests. A copy of any part of the plan that directly pertains to the foster family or the foster child must be provided to the foster parents.

(I) The plan may be amended at any time if all parties agree to the revisions, and the revisions are approved by the court. The amended plan must be submitted to the court with a written explanation for the proposed change. The plan also may be amended by the court upon motion of a party after a hearing based on evidence demonstrating the need for the amendment. A copy of the amended plan immediately must be given to the parties specified in subsection (H).

(J) Any objections to the sufficiency of a plan or the process by which a plan was developed must be made at the hearing on the plan. Failure to request a hearing or to enter an objection at the hearing constitutes a waiver of the objection. The sufficiency of the plan or of the process for developing the plan may not be raised as an issue in a proceeding for termination of parental rights under Article 7.

(K) Upon petition of a party in interest, the court may order the state or county director or other authorized representative of the department to show cause why the agency should not be required to provide services in accordance with the plan. The provisions of the plan must be incorporated as part of a court order issued pursuant to this section. A person who fails to comply with an order may be held in contempt and subject to appropriate sanctions imposed by the court.

HISTORY: 2008 Act No. 361, Section 2; 2010 Act No. 160, Section 3, eff May 12, 2010; 2014 Act No. 281 (H.3102), Section 4, eff June 10, 2014.

Effect of Amendment

The 2010 amendment rewrote this section.

2014 Act No. 281, Section 4, in the undesignated paragraph under subsection (D), added the first two sentences, relating to termination or suspension of visits.

CROSS REFERENCES

Permanency planning, see Section 63‑7‑1700.

Procedure for filing petition for termination of parental rights, see Section 63‑7‑2530.

Provisions relating to jurisdiction of Family Court under article 9, removal proceedings, and procedure, see Sections 63‑7‑1610, 63‑7‑1660.

Review of plans to terminate parental rights for children being abused, neglected, or abandoned, see Sections 63‑7‑2580 et seq.

Library References

Infants 155, 192, 231.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 20 to 22, 24 to 28, 40 to 48, 58 to 59, 71 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 17, Abuse or Neglect of an Unborn Child.

S.C. Jur. Children and Families Section 35, Protective Custody.

S.C. Jur. Children and Families Section 46, Petition.

S.C. Jur. Children and Families Section 52, Failure to Remedy the Conditions Causing the Child’s Removal.

S.C. Jur. Children and Families Section 152, Modification.

NOTES OF DECISIONS

In general 1

Sufficiency of removal order 2

1. In general

On review of status of children who had been removed from custody of mother, family court was not required to formulate treatment plan which would indicate steps mother had to take in order to enable her to resume custody of her children, since proceeding in which family court ordered that mother was barred from any further contact with her children and that state Department of Social Services was to refrain from any further attempts to rehabilitate or reunite mother with two oldest children was judicial review hearing, not removal hearing. Dorchester County Dept. of Social Services v. Miller (S.C.App. 1996) 324 S.C. 445, 477 S.E.2d 476. Infants 2283

A family court judge may order participation by an estranged parent in a plan aimed at reuniting the child with the parent. Thus, a parent and child were under the jurisdiction of the family court, and the court had the authority to require the parents to successfully complete a substance abuse treatment and parenting skills program, following the removal of the child from the parent’s home by the Department of Social Services. Department of Social Services v. Johnson (S.C.App. 1990) 302 S.C. 199, 394 S.E.2d 721.

2. Sufficiency of removal order

Family court’s order removing children from mother’s care sufficiently set forth the conditions which caused the removal and included necessary information regarding treatment plan; children were removed from the home because mother stipulated to abuse and neglect of the children and the guardian ad litem recommended the removal, and, according to the plan, mother had to cooperate with counseling until released by her counselor, obtain an assessment and complete any recommended drug programs, refrain from using illegal drugs and from abusing alcohol, submit to random drug and alcohol screens, and submit to an evaluation to address her ability to obtain employment. Department of Social Services v. Phillips (S.C.App. 2005) 365 S.C. 572, 618 S.E.2d 922, rehearing denied. Infants 1843

Mother waived her right to object to sufficiency of family order removing child from mother’s custody in her appeal of judgment terminating her parental rights, where, after the order for removal was filed by the family court, mother raised no objection to the treatment plan the order set out or any of its other findings, but rather consented to the plan. Department of Social Services v. Phillips (S.C.App. 2005) 365 S.C. 572, 618 S.E.2d 922, rehearing denied. Infants 2380; Infants 2408

**SECTION 63‑7‑1690.** Placement plans; substance abuse issues.

(A) When the conditions justifying removal pursuant to Section 63‑7‑1660 include the addiction of the parent or abuse by the parent of controlled substances, the court may require as part of the placement plan ordered pursuant to Section 63‑7‑1680:

(1) the parent to successfully complete a treatment program operated by the Department of Alcohol and Other Drug Abuse Services or another treatment program approved by the department before return of the child to the home;

(2) any other adult person living in the home who has been determined by the court to be addicted to or abusing controlled substances or alcohol and whose conduct has contributed to the parent’s addiction or abuse of controlled substances or alcohol to successfully complete a treatment program approved by the department before return of the child to the home; and

(3) the parent or other adult, or both, identified in item (2) to submit to random testing for substance abuse and to be alcohol or drug free for a period of time to be determined by the court before return of the child. The parent or other adult identified in item (2) must continue random testing for substance abuse and must be alcohol or drug free for a period of time to be determined by the court after return of the child before the case will be authorized to be closed.

(B) Results of tests ordered pursuant to this section must be submitted to the department and are admissible only in family court proceedings brought by the department.

HISTORY: 2008 Act No. 361, Section 2; 2014 Act No. 281 (H.3102), Section 5, eff June 10, 2014.

Effect of Amendment

2014 Act No. 281, Section 5, in subsections (A)(1), (A)(2), substituted “to successfully complete” for “successfully must complete”; and in subsection (A)(3), substituted “to submit” for “must submit”, substituted “to be alcohol or drug free” for “must be alcohol or drug free”, and substituted “authorized to be closed” for “authorized closed”.

Library References

Infants 155, 192, 231.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 20 to 22, 24 to 28, 40 to 48, 58 to 59, 71 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 46, Petition.

**SECTION 63‑7‑1700.** Permanency planning.

(A) The family court shall review the status of a child placed in foster care upon motion filed by the department to determine a permanent plan for the child. The permanency planning hearing must be held no later than one year after the date the child was first placed in foster care. At the initial permanency planning hearing, the court shall review the status of the child and the progress being made toward the child’s return home or toward any other permanent plan approved at the removal hearing. The court’s order shall make specific findings in accordance with this section. An action for permanency planning must be brought for a child who enters the custody of the department by any mechanism, including subarticle 3 or Section 63‑7‑1660 or 63‑9‑330. If the child enters the custody of the department pursuant to Section 63‑9‑330 and no action is pending in the family court concerning the child, the department may initiate the permanency planning hearing with a summons and petition for review. All parties must be served with the motion or the summons and petition at least ten days before the hearing, and no responsive pleading is required.

(B) The department shall attach a supplemental report to the motion or summons and petition which must contain at least:

(1) that information necessary to support findings required in subsections (C) through (H), as applicable;

(2) the recommended permanent plan and suggested timetable for attaining permanence;

(3) a statement of whether or not the court has authorized the department to forego or terminate reasonable efforts pursuant to Section 63‑7‑1640;

(4) the most recent written report of the local foster care review board;

(5) results of consultation with children, age fourteen or older, to include the placement request of the child; and

(6) steps the department is taking to facilitate the caregiver’s compliance with the reasonable and prudent parent standard, pursuant to Section 63‑7‑20 and Section 63‑7‑25, and the department’s efforts to determine whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities.

The department may use the same form for the supplemental report, reports from the department to the local foster care review board, and reports compiled for internal department reviews.

(C) At the permanency planning hearing, the court shall approve a plan for achieving permanence for the child.

(1) The court shall review the proposed plans of the department, the guardian ad litem, and the local foster care review board and shall address the recommendations of each in the record.

(2) At each permanency planning hearing where the department’s plan is not reunification with the parents, custody or guardianship with a fit and willing relative, or termination of parental rights and adoption, the department must provide documentation of the department’s intensive, ongoing, yet unsuccessful efforts to return the child home or secure a placement for the child with a fit and willing relative, a legal guardian, or an adoptive parent. If the court approves a plan of another planned permanent living arrangement (APPLA), the court must find compelling reasons for approval of the plan, including compelling reasons why reunification with the parents, custody, or guardianship with a fit and willing relative, or termination of parental rights and adoption is not in the best interest, and that the plan is and continues to be in the child’s best interest. The court shall not approve or order APPLA pursuant to this item for children under the age of sixteen. At each hearing in which the court approves or renews APPLA for a child over the age of sixteen, the court must ask the child about the child’s wishes as to the placement plan.

(3) In addition to the requirements in items (1) and (2), at each permanency planning hearing, the court shall review the department’s efforts to facilitate the caregiver’s compliance with the reasonable and prudent parent standard pursuant to Section 63‑7‑20 and Section 63‑7‑25 and the department’s efforts to determine whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities.

(D) If the court determines at the permanency planning hearing that the child may be safely maintained in the home in that the parent has remedied the conditions that caused the removal and the return of the child to the child’s parent would not cause an unreasonable risk of harm to the child’s life, physical health, safety, or mental well‑being, the court shall order the child returned to the child’s parent. The court may order a specified period of supervision and services not to exceed twelve months. When determining whether the child should be returned, the court shall consider all evidence; if the removal of the child from the family was due to drug use by one or both parents, then a drug test must be administered to the parent or both parents, as appropriate, and the results must be considered with all other evidence in determining whether the child should be returned to the parents’ care; and the supplemental report including whether the parent has substantially complied with the terms and conditions of the plan approved pursuant to Section 63‑7‑1680.

(E) Unless subsection (C), (F), or (G) applies, if the court determines at the permanency planning hearing that the child should not be returned to the child’s parent at that time, the court’s order shall require the department to file a petition to terminate parental rights to the child not later than sixty days after receipt of the order. If a petition to terminate parental rights is to be filed, the department shall exercise and document every reasonable effort to promote and expedite the adoptive placement and adoption of the child, including a thorough adoption assessment and child‑specific recruitment. Adoptive placements must be diligently sought for the child and failure to do so solely because a child is classified as “special needs” is expressly prohibited. An adoption may not be delayed or denied solely because a child is classified as “special needs”. For purposes of this subsection:

(1) “thorough adoption assessment” means conducting and documenting face‑to‑face interviews with the child, foster care providers, and other significant parties; and

(2) “child specific recruitment” means recruiting an adoptive placement targeted to meet the individual needs of the specific child including, but not be limited to, use of the media, use of photo listings, and any other in‑state or out‑of‑state resources which may be utilized to meet the specific needs of the child, unless there are extenuating circumstances that indicate that these efforts are not in the best interest of the child.

(F) If the court determines that the criteria in subsection (D) are not met but that the child may be returned to the parent within a specified reasonable time not to exceed eighteen months after the child was placed in foster care, the court may order an extension of the plan approved pursuant to Section 63‑7‑1680 or may order compliance with a modified plan, but in no case may the extension for reunification continue beyond eighteen months after the child was placed in foster care. An extension may be granted pursuant to this section only if the court finds:

(1) that the parent has demonstrated due diligence and a commitment to correcting the conditions warranting the removal so that the child could return home in a timely fashion;

(2) that there are specific reasons to believe that the conditions warranting the removal will be remedied by the end of the extension;

(3) that the return of the child to the child’s parent would not cause an unreasonable risk of harm to the child’s life, physical health, safety, or mental well‑being;

(4) that, at the time of the hearing, initiation of termination of parental rights is not in the best interest of the child; and

(5) that the best interests of the child will be served by the extended or modified plan.

(G) 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 or nonrelative 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 of the child must be submitted to the court for consideration before custody or legal guardianship, or both, are awarded. 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.

(H) If at the initial permanency planning hearing the court does not order return of the child pursuant to subsection (D), in addition to those findings supporting the selection of a different plan, the court shall specify in its order:

(1) what services have been provided to or offered to the parents to facilitate reunification;

(2) the compliance or lack of compliance by all parties to the plan approved pursuant to Section 63‑7‑1680;

(3) the extent to which the parents have visited or supported the child and any reasons why visitation or support has not occurred or has been infrequent;

(4) whether previous services should continue and whether additional services are needed to facilitate reunification, identifying the services, and specifying the expected date for completion, which must be no longer than eighteen months from the date the child was placed in foster care;

(5) whether return of the child can be expected and identification of the changes the parent must make in circumstances, conditions, or behavior to remedy the causes of the child’s placement or retention in foster care;

(6) whether the child’s foster care is to continue for a specified time and, if so, how long;

(7) if the child has attained the age of sixteen, the services needed to assist the child to make the transition to independent living;

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

(9) 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) 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.

(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.

(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.

(J) A named party, the child’s guardian ad litem, or the local foster care review board may file a motion for review of the case at any time. Any other party in interest may move to intervene in the case pursuant to the rules of civil procedure and if the motion is granted, may move for review. Parties in interest include, but are not limited to, the individual or agency with legal custody or placement of the child and the foster parent. The notice of motion and motion for review must be served on the named parties at least ten days before the hearing date. The motion must state the reason for review of the case and the relief requested.

(K) The pendency of an appeal concerning a child in foster care does not deprive the court of jurisdiction to hear a case pursuant to this section. The court shall retain jurisdiction to review the status of the child and may act on matters not affected by the appeal.

HISTORY: 2008 Act No. 361, Section 2; 2010 Act No. 160, Section 4, eff May 12, 2010; 2014 Act No. 281 (H.3102), Section 9, eff June 10, 2014; 2016 Act No. 238 (H.4546), Section 3, eff June 5, 2016.

Effect of Amendment

The 2010 amendment rewrote this section.

2014 Act No. 281, Section 9, in subsection (D), added the last sentence, relating to the determination of whether the child should be returned.

2016 Act No. 238, Section 3, in (B)(4), substituted “the most recent written report” for “any reports” and “board” for “board which pertain to the child”; added (B)(5) and (B)(6); and rewrote (C).

CROSS REFERENCES

Functions and powers of local boards, see Section 63‑11‑720.

Placement with relatives, see Section 63‑7‑2330.

Procedure for filing petition for termination of parental rights, see Section 63‑7‑2530.

Provisions relating to jurisdiction of Family Court under article 9, removal proceedings, and procedures, see Sections 63‑7‑1610, 63‑7‑1660.

Provisions relating to review by Family Court of a treatment plan, review hearings and termination of protective services, see Section 63‑7‑1670.

Review of plans to terminate parental rights for children being abused, neglected, or abandoned, see Sections 63‑7‑2580 et seq.

Library References

Infants 155, 197, 204, 208, 222, 226, 231.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 20 to 22, 26 to 28, 40, 42 to 45, 51 to 59, 61 to 62, 65 to 67, 69 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 17, Abuse or Neglect of an Unborn Child.

S.C. Jur. Children and Families Section 40, Hearings in General.

S.C. Jur. Children and Families Section 46, Petition.

S.C. Jur. Children and Families Section 56, The Diagnosable Condition of the Parent.

NOTES OF DECISIONS

In general 1

Evidentiary hearing 2

Review 4

Termination of parental rights 3

1. In general

Trial court order granting relative custody of child was a relative placement pending the completion of the treatment plan, rather than a final order transferring permanent custody to relative; actions of the parties showed the transfer of custody was a relative placement pending completion of the placement plan, rather than an order awarding relative permanent custody, and, had the parties intended for the order to grant relative permanent custody of child, the parties would not have continued to address child’s custody at later hearings. South Carolina Dept. of Social Services v. Hogan (S.C.App. 2014) 410 S.C. 120, 763 S.E.2d 219. Infants 2222

After Court of Appeals concluded that family court erred in granting custody of allegedly neglected children to aunt and allowing Department of Social Services (DSS) to close its case when DSS had filed complaint for intervention, not complaint for removal, best interests of children required that custody be awarded to DSS and that case be remanded for permanency planning hearing; immediate change of custody may not have been proper given that children had been out of father’s home for over four years, and hearing would allow parties to update family court on what had occurred during last four years and would give DSS opportunity to offer any necessary services to father. South Carolina Dept. of Social Services v. Randy S. (S.C.App. 2010) 390 S.C. 100, 700 S.E.2d 250, rehearing denied. Infants 2435

Custodian, who had custody of child before state Department of Social Services (DSS) took child into emergency protective custody, had standing to participate in dependency proceeding, although custodian was not related to child by blood or marriage, and although custodian failed to comply with treatment and placement plan; custodian had real, material, or substantial interest in long‑term custody and potential adoption of child. Ex parte Morris (S.C. 2006) 367 S.C. 56, 624 S.E.2d 649, rehearing denied. Infants 2076

2. Evidentiary hearing

Family court had the authority to order a merits hearing to determine whether the children were abused or neglected, following receipt of petition to remove children from parents’ custody, and it should have done so at the parents’ request, given that the family court had never made an affirmative finding of abuse or neglect and the parents never had an opportunity to present evidence to contest such a finding; under these circumstances, family court had more options at the permanency planning hearing, and it should have scheduled a merits hearing at the request of the parents, and, had the family court previously made a finding of abuse or neglect, it would have been correct in finding it could not order an extension for reunification. South Carolina Dept. of Social Services v. Hogan (S.C.App. 2014) 410 S.C. 120, 763 S.E.2d 219. Infants 2037; Infants 2095

It is error, in the face of a request by a party for an evidentiary hearing in a dependency proceeding, for the Family Court to issue a permanency planning order based on an examination of the file and pleadings, the arguments of counsel, and the guardian ad litem’s (GAL’s) report, but without considering testimony and evidence at a hearing where witnesses are subject to direct and cross‑examination. Ex parte Morris (S.C. 2006) 367 S.C. 56, 624 S.E.2d 649, rehearing denied. Infants 2095

Family Court was required to conduct evidentiary hearing before issuing permanency planning order in dependency action. Ex parte Morris (S.C. 2006) 367 S.C. 56, 624 S.E.2d 649, rehearing denied. Infants 203

Family court may not base necessary findings of fact and conclusions of law solely on counsel’s statements of fact or arguments at permanency planning hearing in dependency action. Ex parte Morris (S.C. 2006) 367 S.C. 56, 624 S.E.2d 649, rehearing denied. Infants 2108

3. Termination of parental rights

Preponderance of the evidence in child protection proceedings supported reunification, rather than termination of parental rights (TPR), and mandated children’s return pursuant to statute, where evidence established that return of children to mother’s home would not cause unreasonable risk of harm to children’s life, physical health, safety, or mental well‑being; mother successfully fulfilled each requirement of her plan, including successful completion of intensive drug treatment program and obtaining suitable housing, mother legally separated from children’s father, and guardian ad litem and children’s foster father both opined that TPR was not in children’s best interests. South Carolina Dept. of Social Services v. Mother (S.C.App. 2011) 396 S.C. 390, 720 S.E.2d 920. Infants 2170(1)

4. Review

Remand was required to allow the family court to reconsider whether the permanent plan for children should be an extension of reunification, rather than relative custody concurrent with termination of parental rights and adoption; the court determined the children could not be safely returned home at the time of the permanency planning hearing, the court seemed to base its decision on the fact that mother had been discharged from family counseling center program even though mother’s refusal to sign a new consent form, after center had closed and then reopened, without consulting with her attorney first was reasonable, even if it ended up resulting in her dismissal from the program, and mother was doing well in counseling with oldest child. South Carolina Dept. of Social Services v. Briggs (S.C.App. 2015) 413 S.C. 377, 776 S.E.2d 115. Infants 2435

**SECTION 63‑7‑1710.** Standards for terminating parental rights.

(A) When a child is in the custody of the department, the department shall file a petition to terminate parental rights or shall join as party in a termination petition filed by another party if:

(1) a child has been in foster care under the responsibility of the State for fifteen of the most recent twenty‑two months;

(2) a court of competent jurisdiction has determined the child to be an abandoned infant;

(3) a court of competent jurisdiction has determined that the parent has committed murder, voluntary manslaughter, or homicide by child abuse of another child of the parent;

(4) a court of competent jurisdiction has determined that the parent has aided, abetted, conspired, or solicited to commit murder, voluntary manslaughter, or homicide by child abuse of another child of the parent;

(5) a court of competent jurisdiction has determined that the parent has committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent; or

(6) a court of competent jurisdiction has found the parent to be in wilful contempt on two occasions over a twelve‑month period for failure to comply with the terms of the treatment plan or placement plan established pursuant to subarticle 11.

(B) Concurrently with filing of the petition, the department shall seek to identify, recruit, process, and approve a qualified family for adoption of the child if an adoptive family has not yet been selected and approved.

(C) This section does not apply:

(1) to a child for whom the family court has found that initiation of termination of parental rights is not in the best interests of the child, after applying the criteria of Section 63‑7‑1700(C), (D), (F), or (G) and entering the findings required to select a permanent plan for the child from Section 63‑7‑1700(C), (D), (F), or (G). For this exemption to apply, the court must find that there are compelling reasons for selection of a permanent plan other than termination of parental rights;

(2) if the family court finds that the department has not afforded services to the parents provided for in the treatment plan approved pursuant to Section 63‑7‑1680 in a manner that was consistent with the time periods in the plan or that court hearings have been delayed in such a way as to interfere with the initiation, delivery, or completion of services, but only if:

(a) the parent did not delay the court proceedings without cause or delay or refuse the services;

(b) successful completion of the services in question may allow the child to be returned as provided for in Section 63‑7‑1700(F) within the extension period; and

(c) the case is not one for which the court has made a determination that reasonable efforts to preserve or reunify the family are not necessary pursuant to Section 63‑7‑1640.

HISTORY: 2008 Act No. 361, Section 2; 2014 Act No. 281 (H.3102), Section 6, eff June 10, 2014.

Effect of Amendment

2014 Act No. 281, Section 6, in subsections (A)(3), (A)(4), substituted “murder, voluntary manslaughter, or homicide by child abuse of” for “murder of another child of the parent or has committed voluntary manslaughter or”; and added subsection (A)(6), relating to contempt.

Library References

Infants 155 to 157, 200.

Westlaw Topic No. 211.

C.J.S. Infants Sections 19 to 22, 24 to 28, 40 to 42, 44 to 48, 58 to 59.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 51.3, Child in Foster Care.

S.C. Jur. Children and Families Section 51.5, Murder or Assault of Another Child by Parent.

S.C. Jur. Children and Families Section 56.5, Abandonment.

NOTES OF DECISIONS

In general 1

1. In general

Opportunity interest of unwed father in developing relationship with child is constitutionally protected only to the extent that the biological father who claims protection wants to make the commitments and perform the responsibilities that give rise to a developed relationship, because it is only the combination of biology and custodial responsibility that the constitution ultimately protects. Doe v. Queen (S.C. 2001) 347 S.C. 4, 552 S.E.2d 761, rehearing denied. Parent And Child 115

**SECTION 63‑7‑1720.** Clerk of court and court administration progress reports.

(A) Beginning on January 1, 2000, or on the date of compliance with subsection (D), whichever is later, and on the first day of each month thereafter, each county clerk of court must make a report to Court Administration concerning each child protection case pending in family court in which a permanency planning order has not been filed. The report must include the case caption, the filing date, and, if applicable, the date of the permanency planning hearing and the permanency planning order. The clerk is not required to make a report concerning a case after a permanency planning order has been filed in the case.

(B) Court Administration must provide the administrative judge of the family court of each circuit with the information reported concerning cases pending in the circuit.

(C) On August fifteenth of each year, the Director of Court Administration must file with the Chief Justice of the South Carolina Supreme Court, with copies to the Department of Social Services and the Governor, a written report summarizing the information reported by the clerks of court pursuant to this section. The report shall contain, at a minimum, the following information summarized by county, by circuit, and by state:

(1) the number of new cases brought by the department during the preceding twelve months; and

(2) the number of cases filed more than twelve months in which a permanency planning order has not been filed.

The annual report must contain an analysis of the progress of these cases through the family court, identify impediments to complying with statutory mandates, and make recommendations for improving compliance.

(D) No later than January 1, 2000, Court Administration must institute the use of a separate code to identify child protection cases in its data systems. However, if the Chief Justice, upon recommendation of Court Administration, determines that there is a compelling reason why it is not feasible to institute the use of a separate code by January 1, 2000, compliance with this subsection may be deferred for up to twelve months, as necessary, for making adjustments in the data systems. The date of compliance and the compelling reason for any delay beyond January 1, 2000, shall be included in the report required by subsection (E).

(E) Court Administration shall conduct a study of the feasibility of collecting additional data necessary to monitor and ensure compliance with statutory time frames for conducting hearings in department cases, and no later than July 1, 2000, shall submit a report to the Chief Justice, with copies to the Department of Social Services and the Governor, containing recommendations for instituting the necessary data collection system.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Clerks of Courts 69.

Courts 47.

Westlaw Topic Nos. 79, 106.

C.J.S. Courts Sections 1, 341.

Subarticle 13

Central Registry of Child Abuse and Neglect

Showing the sections in former Chapter 7, Title 20 from which the sections in this subarticle were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑7‑1910 | 20‑7‑680(A) |
| 63‑7‑1920 | 20‑7‑680(B),(D) |
| 63‑7‑1930 | 20‑7‑650(N),(O) |
| 63‑7‑1940 | 20‑7‑650(L),(M) |
| 63‑7‑1950 | 20‑7‑650(Q) |
| 63‑7‑1960 | 20‑7‑680(E) |
| 63‑7‑1970 | 20‑7‑680(F) |
| 63‑7‑1980 | 20‑7‑680(G),(H) |
| 63‑7‑1990 | 20‑7‑690 |
| 63‑7‑2000 | 20‑7‑695 |
| 63‑7‑2010 | 20‑7‑680(C) |

**SECTION 63‑7‑1910.** Purpose.

The purpose of this subarticle is to establish a system for the identification of abused and neglected children and those who are responsible for their welfare, to provide a system for the coordination of reports concerning abused and neglected children, and to provide data for determining the incidence and prevalence of child abuse and neglect in this State. To further these purposes, the department must maintain one or more statewide data systems concerning cases reported to it pursuant to this article.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Child protective services, hearings, review, and final decisions, see S. C. Code of Regulations R. 114‑170.

Immediate entry of names of persons determined to have abused child in institution, see Section 63‑7‑1230.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

**SECTION 63‑7‑1920.** Department to maintain Central Registry.

(A) The Department of Social Services must maintain a Central Registry of Child Abuse and Neglect within the department’s child protective services unit in accordance with this subarticle and Subarticles 5 and 7 and Section 17‑25‑135. Perpetrators of child abuse and neglect must be entered in the registry only by order of a court as provided for in this subarticle and Section 17‑25‑135, or as provided for in Section 63‑7‑1230. Each entry in the registry must be accompanied by information further identifying the person including, but not limited to, the person’s date of birth, address, and any other identifying characteristics, and describing the abuse or neglect committed by the person.

(B) The Central Registry of Child Abuse and Neglect must not contain information from reports classified as unfounded. Other department records and databases must treat unfounded cases as provided for in Section 63‑7‑930.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Child protective services, hearings, review, and final decisions, see S. C. Code of Regulations R. 114‑170.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

**SECTION 63‑7‑1930.** Petition for placement in Central Registry.

(A) At any time following receipt of a report, the department may petition the family court for an order directing that the person named as perpetrator be entered in the Central Registry of Child Abuse and Neglect. The petition must have attached a written case summary stating facts sufficient to establish by a preponderance of evidence that the person named as perpetrator abused or neglected the child and that the nature and circumstances of the abuse indicate that the person named as perpetrator would present a significant risk of committing physical or sexual abuse or wilful or reckless neglect if placed in a position or setting outside of the person’s home that involves care of or substantial contact with children. The department must serve a copy of the petition and summary on the person named as perpetrator. The petition must include a statement that the judge must rule based on the facts stated in the petition unless the clerk of court or the clerk’s designee receives a written request for a hearing from the person named as perpetrator within five days after service of the petition. The name, address, and telephone number of the clerk of court or the clerk’s designee must be stated in the petition. If the person named as perpetrator requests a hearing, the court must schedule a hearing on the merits of the allegations in the petition and summary to be held no later than five working days following the request.

(B) The department must seek an order placing a person in the Central Registry pursuant to subsection (A) in all cases in which the department concludes that there is a preponderance of evidence that the person committed sexual abuse.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Department of Child Fatalities to be given information concerning child whose death is under investigation, including strictly confidential information under this section, see Section 63‑11‑1960.

Immediate entry of names of persons determined to have abused child in institution, see Section 63‑7‑1230.

Provision establishing the county Department of Social Services in each county as the child protective services agency, see Section 63‑7‑910.

Provisions relating to review by Family Court and approval of treatment plan, review hearings and termination of protective services, see Section 63‑7‑1670.

Removal of child upon investigation of report received under this section, see Sections 63‑7‑1610, 63‑7‑1660.

State Department of Social Services, generally, see Sections 43‑1‑10 et seq.

Transfer of reports of child abuse or neglect to local child protective services, see Section 63‑7‑310.

Transmission of data by local child protective agencies to the Department of Social Services subject to limitations on identifying characteristics contained in this section, see Sections 63‑7‑1970, 63‑7‑1990.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 37, Duty of the State Department of Social Services to Provide Services.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Known out‑of‑state abuse or neglect determinations or criminal records could be considered as coming within prohibition of “substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Term “foster care” as used in H.3669 could be construed as including foster family home care, child caring facilities and residential group homes. 1993 Op. Atty Gen No. 93‑47.

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. 1993 Op. Atty Gen No. 93‑79.

**SECTION 63‑7‑1940.** Court order for placement in Central Registry of Child Abuse and Neglect.

(A) At a hearing pursuant to Section 63‑7‑1650 or 63‑7‑1660, at which the court orders that a child be taken or retained in custody or finds that the child was abused or neglected, the court:

(1) shall order, without possibility of waiver by the department, that a person’s name be entered in the Central Registry of Child Abuse and Neglect if the court finds that there is a preponderance of evidence that the person:

(a) physically abused the child; however, if the only form of physical abuse that is found by the court is excessive corporal punishment, the court only may order that the person’s name be entered in the central registry if item (2) applies;

(b) sexually abused the child;

(c) wilfully or recklessly neglected the child; or

(d) gave birth to the infant and the infant tested positive for the presence of any amount of controlled substance, prescription drugs not prescribed to the mother, metabolite of a controlled substance, or the infant has a medical diagnosis of neonatal abstinence syndrome, unless the presence of the substance or metabolite is the result of a medical treatment administered to the mother of the infant during birth or to the infant;

(2) may, except as provided for in item (1), order that the person’s name be entered in the central registry if the court finds by a preponderance of evidence that:

(a) the person abused or neglected the child in any manner, including the use of excessive corporal punishment; and

(b) the nature and circumstances of the abuse indicate that the person would present a significant risk of committing physical or sexual abuse or wilful or reckless neglect if the person were in a position or setting outside of the person’s home that involves care of or substantial contact with children.

(B) At the probable cause hearing, the court may order that the person be entered in the central registry if there is sufficient evidence to support the findings required by subsection (A).

HISTORY: 2008 Act No. 361, Section 2; 2014 Act No. 281 (H.3102), Section 7, eff June 10, 2014.

Effect of Amendment

2014 Act No. 281, Section 7, rewrote subsection (A)(1); and made other nonsubstantive changes.

CROSS REFERENCES

Department of Child Fatalities to be given information concerning child whose death is under investigation, including strictly confidential information under this section, see Section 63‑11‑1960.

Provision establishing the county Department of Social Services in each county as the child protective services agency, see Section 63‑7‑910.

Provisions relating to review by Family Court and approval of treatment plan, review hearings and termination of protective services, see Section 63‑7‑1670.

Removal of child upon investigation of report received under this section, see Sections 63‑7‑1610, 63‑7‑1660.

State Department of Social Services, generally, see Sections 43‑1‑10 et seq.

Transfer of reports of child abuse or neglect to local child protective services, see Section 63‑7‑310.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

RESEARCH REFERENCES

ALR Library

25 ALR 7th 1 , Challenges to Placement on State Child Abuse Registries on Other Than Constitutional Bases.

Encyclopedias

S.C. Jur. Children and Families Section 39, Removal Hearings.

S.C. Jur. Estoppel and Waiver Section 3, Estoppel by Written Instrument.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Known out‑of‑state abuse or neglect determinations or criminal records could be considered as coming within prohibition of “substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Term “foster care” as used in H.3669 could be construed as including foster family home care, child caring facilities and residential group homes. 1993 Op. Atty Gen No. 93‑47.

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. 1993 Op. Atty Gen No. 93‑79.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

Evidence of indictment of mother’s friend for common law assault and battery of high and aggravated nature, and of friend’s guilty plea to simple assault and battery, was not sufficient in itself to support trial court’s finding in removal proceedings that child was abused, within meaning of statute defining “child abuse” as occurring when person responsible for child’s welfare inflicts injury on child, where indictment at issue did not allege that mother violated child abuse statute and did not describe friend as person responsible for child’s welfare. South Carolina Dept. of Social Services v. C.H. (S.C.App. 2009) 386 S.C. 58, 685 S.E.2d 835. Infants 1817; Infants 1962

Mother’s friend did not waive her right to challenge sufficiency of guilty plea to charge of common law assault and battery of child to prove child abuse, in action by Department of Social Services to remove children on ground of child abuse, by failing to object to admission of plea into evidence, as her failure to object did not constitute admission that plea was conclusive evidence of child abuse, but rather acknowledged that plea was authentic and relevant to family court action. South Carolina Dept. of Social Services v. C.H. (S.C.App. 2009) 386 S.C. 58, 685 S.E.2d 835. Infants 2381

Mother’s friend was not estopped from denying liability for child abuse, in action by Department of Social Services to remove children on ground of child abuse, where friend pled guilty in independent criminal action to assault and battery, not child abuse, and guilty plea did not establish that friend was person responsible for child’s welfare, for purposes of statute defining “child abuse” as occurring when person responsible for child’s welfare inflicts injury on child. South Carolina Dept. of Social Services v. C.H. (S.C.App. 2009) 386 S.C. 58, 685 S.E.2d 835. Estoppel 68(2)

2. Review

Mother’s friend, subject of proceeding for removal of children for child abuse, preserved for appellate review issue of whether she was responsible for child’s welfare, for purposes of statute defining “child abuse” as occurring when person responsible for child’s welfare inflicts injury on child, even though friend did not deny allegation of relationship between friend and child pled in Department’s complaint, where family court ruled on issue by making finding of child abuse against friend, and friend challenged sufficiency of her guilty pleas for assault and battery as conclusive evidence of violation of child abuse statute. South Carolina Dept. of Social Services v. C.H. (S.C.App. 2009) 386 S.C. 58, 685 S.E.2d 835. Infants 2380

**SECTION 63‑7‑1950.** Updated records requested.

In cases where a person has been placed in the Central Registry of Child Abuse and Neglect, the outcome of any further proceedings must be entered immediately by the department into the Central Registry of Child Abuse and Neglect. If it is determined that a report is unfounded, the department must immediately purge information identifying that person as a perpetrator from the registry and from department records as provided in Sections 63‑7‑1920 and 63‑7‑1960.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Department of Child Fatalities to be given information concerning child whose death is under investigation, including strictly confidential information under this section, see Section 63‑11‑1960.

Provision establishing the county Department of Social Services in each county as the child protective services agency, see Section 63‑7‑910.

Provisions relating to review by Family Court and approval of treatment plan, review hearings and termination of protective services, see Section 63‑7‑1670.

Removal of child upon investigation of report received under this section, see Sections 63‑7‑1610, 63‑7‑1660.

State Department of Social Services, generally, see Sections 43‑1‑10 et seq.

Transfer of reports of child abuse or neglect to local child protective services, see Section 63‑7‑310.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Known out‑of‑state abuse or neglect determinations or criminal records could be considered as coming within prohibition of “substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

Term “foster care” as used in H.3669 could be construed as including foster family home care, child caring facilities and residential group homes. 1993 Op. Atty Gen No. 93‑47.

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. 1993 Op. Atty Gen No. 93‑79.

**SECTION 63‑7‑1960.** Destruction of certain records.

The names, addresses, birth dates, identifying characteristics, and other information unnecessary for auditing and statistical purposes of persons named in department records of indicated cases other than the Central Registry of Child Abuse and Neglect must be destroyed seven years from the date services are terminated. This section does not prohibit the department from maintaining an “indicated case” which contains identifying information on the child who is the subject of the indicated report and those responsible for the child’s welfare without identifying a person as perpetrator, and it does not prohibit the department from providing child protective services to the child who is the subject of an indicated report and those responsible for the child’s welfare.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Child protective services, hearings, review, and final decisions, see S. C. Code of Regulations R. 114‑170.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

**SECTION 63‑7‑1970.** Release of information.

Information in the central registry and other department records may be released only as authorized in Section 63‑7‑1990 or as otherwise specifically authorized by statute. Information in records of the department other than the Central Registry of Child Abuse and Neglect must not be used for screening potential employees or volunteers of any public or private entity, except as specifically provided by Section 63‑7‑1990 or as otherwise provided by statute. However, nothing in this section prevents the department from using other information in its records when making decisions associated with administration or delivery of the department’s programs and services.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Child protective services, hearings, review, and final decisions, see S. C. Code of Regulations R. 114‑170.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

**SECTION 63‑7‑1980.** Screening against the Central Registry.

(A) When a statute or regulation makes determination of a person’s history of child abuse or neglect a condition for employment or volunteer service in a facility or other entity regulated by the department, the person must be screened against the Central Registry of Child Abuse and Neglect before employment or service in the volunteer role. The person must be screened each time the license, registration, or other operating approval of the facility or other entity is renewed.

(B) When a statute or regulation makes determination of an applicant’s history of child abuse or neglect, a condition for issuance of a license, registration, or other operating approval by the department, the applicant must be screened against the Central Registry of Child Abuse and Neglect before issuance of the initial license, registration, or other approval and each time the license, registration, or other operating approval is renewed.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Child protective services, hearings, review, and final decisions, see S. C. Code of Regulations R. 114‑170.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

**SECTION 63‑7‑1990.** Confidentiality and release of records and information.

(A) All reports made and information collected pursuant to this article maintained by the Department of Social Services and the Central Registry of Child Abuse and Neglect are confidential. A person who disseminates or permits the dissemination of these records and the information contained in these records except as authorized in this section, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand five hundred dollars or imprisoned not more than one year, or both.

(B) The department is authorized to grant access to the records of indicated cases to the following persons, agencies, or entities:

(1) the ombudsman of the office of the Governor or the Governor’s designee;

(2) a person appointed as the child’s guardian ad litem, the attorney for the child’s guardian ad litem, or the child’s attorney;

(3) appropriate staff of the department;

(4) a law enforcement agency investigating or prosecuting known or suspected abuse or neglect of a child or any other crime against a child, attempting to locate a missing child, investigating or prosecuting the death of a child, or investigating or prosecuting any other crime established in or associated with activities authorized under this article;

(5) a person who is named in a report or investigation pursuant to this article as having abused or neglected a child, that person’s attorney, and that person’s guardian ad litem;

(6) a child fourteen years of age or older who is named in a report as a victim of child abuse or neglect, except in regard to information that the department may determine to be detrimental to the emotional well‑being of the child;

(7) the parents or guardians of a child who is named in a report as a victim of child abuse or neglect;

(8) county medical examiners or coroners who are investigating the death of a child;

(9) the State Child Fatality Advisory Committee and the Department of Child Fatalities in accordance with the exercise of their purposes or duties pursuant to Article 19, Chapter 11;

(10) family courts conducting proceedings pursuant to this article;

(11) the parties to a court proceeding in which information in the records is legally relevant and necessary for the determination of an issue before the court, if before the disclosure the judge has reviewed the records in camera, has determined the relevancy and necessity of the disclosure, and has limited disclosure to legally relevant information under a protective order;

(12) a grand jury by subpoena upon its determination that access to the record is necessary in the conduct of its official business;

(13) authorities in other states conducting child abuse and neglect investigations or providing child welfare services;

(14) courts in other states conducting child abuse and neglect proceedings or child custody proceedings;

(15) the director or chief executive officer of a childcare facility, child placing agency, or child caring facility when the records concern the investigation of an incident of child abuse or neglect that allegedly was perpetrated by an employee or volunteer of the facility or agency against a child served by the facility or agency;

(16) a person or agency with authorization to care for, diagnose, supervise, or treat the child, the child’s family, or the person alleged to have abused or neglected the child;

(17) any person engaged in bona fide research with the written permission of the state director or the director’s designee, subject to limitations the state director may impose;

(18) multidisciplinary teams impaneled by the department or impaneled pursuant to statute;

(19) circuit solicitors and their agents investigating or prosecuting known or suspected abuse or neglect of a child or any other crime against a child, attempting to locate a missing child, investigating or prosecuting the death of a child, or investigating or prosecuting any other crime established in or associated with activities authorized under this article;

(20) prospective adoptive or foster parents before placement;

(21) the Division for the Review of the Foster Care of Children, Office of the Governor, for purposes of certifying in accordance with Section 63‑11‑730 that no potential employee or no nominee to and no member of the state or a local foster care review board is a subject of an indicated report or affirmative determination;

(22) employees of the Division for the Review of the Foster Care of Children, Office of the Governor and members of local boards when carrying out their duties pursuant to Article 7 of Chapter 11; the department and the division shall limit by written agreement or regulation, or both, the documents and information to be furnished to the local boards;

(23) the Division of Guardian ad Litem, Office of the Governor, for purposes of certifying that no potential employee or volunteer is the subject of an indicated report or an affirmative determination;

(24) the designated authorities at the military installation where the active duty service member, who is the sponsor of the alleged abused or neglected child, is assigned. The authorities are designated in the memorandum of understanding or agreement between county protective services and the military installation’s command authority; and

(25) a South Carolina Children’s Advocacy Medical Response System child abuse health care provider or his designee for the evaluation of a child for suspected abuse or neglect.

(C) The department may limit the information disclosed to individuals and entities named in subsection (B)(13), (14), (15), (16), (17), (18), and (20) to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed. Nothing in this subsection gives to these entities or persons the right to review or copy the complete case record.

(D) When a request for access to the record comes from an individual identified in subsection (B)(5), (6), or (7) or that person’s attorney, the department shall review any reports from medical care providers and mental health care providers to determine whether the report contains information that does not pertain to the case decision, to the treatment needs of the family as a whole, or to the care of the child. If the department determines that these conditions exist, before releasing the document, the department shall provide a written notice identifying the report to the requesting party and to the person whose treatment or assessment was the subject of the report. The notice may be mailed to the parties involved or to their attorneys or it may be delivered in person. The notice shall state that the department will release the report after ten days from the date notice was mailed to all parties and that any party objecting to release may apply to the court of competent jurisdiction for relief. When a medical or mental health provider or agency furnishes copies of reports or records to the department and designates in writing that those reports or records are not to be further disclosed, the department must not disclose those documents to persons identified in subsection (B)(5), (6), or (7) or that person’s attorney. The department shall identify to the requesting party the records or reports withheld pursuant to this subsection and shall advise the requesting party that he may contact the medical or mental health provider or agency about release of the records or reports.

(E) A disclosure pursuant to this section shall protect the identity of the person who reported the suspected child abuse or neglect. The department also may protect the identity of any other person identified in the record if the department finds that disclosure of the information would be likely to endanger the life or safety of the person. Nothing in this subsection prohibits the department from subpoenaing the reporter or other persons to court for the purpose of testimony if the department determines the individual’s testimony is necessary to protect the child; the fact that the reporter made the report must not be disclosed.

(F) The department is authorized to summarize the outcome of an investigation to the person who reported the suspected child abuse or neglect if the person requests the information at the time the report is made. The department has the discretion to limit the information disclosed to the reporter based on whether the reporter has an ongoing professional or other relationship with the child or the family.

(G)(1) The state director of the department or the director’s designee may disclose to the media information contained in child protective services records if the disclosure is limited to discussion of the department’s activities in handling the case including information placed in the public domain by other public officials, a criminal prosecution, the alleged perpetrator or the attorney for the alleged perpetrator, the party in interest, or other public judicial proceedings. For purposes of this subsection, information is considered “placed in the public domain” when it has been reported in the news media, is contained in public records of a criminal justice agency, is contained in public records of a court of law, or has been the subject of testimony in a public judicial proceeding.

(2) The director or his designee shall disclose information in records required to be kept confidential pursuant to subsection (A) to respond to an allegation made by the alleged perpetrator, the attorney for the alleged perpetrator, the party in interest, or other public officials in public testimony before a committee or subcommittee of the Senate or the House of Representatives or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department. The department’s response is limited to discussion of the department’s activities in handling the case relating to the allegation made in public testimony.

(3) For all other information not subject to disclosure pursuant to subsection (G)(2), the director or his designee shall disclose information in records required to be kept confidential pursuant to subsection (A) to respond to an inquiry from a committee or subcommittee of the Senate or the House of Representatives or a joint committee of the General Assembly, which is engaged in oversight or investigating the activities of the department. The information must be reviewed in a closed session and kept confidential. Notwithstanding the provisions of Chapter 4, Title 30, meetings to review information disclosed pursuant to this item must be held in closed session and any documents or other materials provided or reviewed during the closed session are not subject to public disclosure.

(H) The state director or the director’s designee is authorized to prepare and release reports of the results of the department’s investigations into the deaths of children in its custody or receiving child welfare services at the time of death.

(I) The department is authorized to disclose information concerning an individual named in the Central Registry of Child Abuse and Neglect as a perpetrator when screening of an individual’s background is required by statute or regulation for employment, licensing, or any other purposes, or a request is made in writing by the person being screened. Nothing in this section prevents the department from using other information in department records when making decisions concerning licensing, employment, or placement, or performing other duties required by this act. The department also is authorized to consult any department records in providing information to persons conducting preplacement investigations of prospective adoptive parents in accordance with Section 63‑9‑520.

(J) The department is authorized to maintain in its childcare regulatory records information about investigations of suspected child abuse or neglect occurring in childcare facilities.

(1) The department must enter child abuse or neglect investigation information in its regulatory record from the beginning of the investigation and must add updated information as it becomes available. Information in the regulatory records must include at least the date of the report, the nature of the alleged abuse or neglect, the outcome of the investigation, any corrective action required, and the outcome of the corrective action plan.

(2) The department’s regulatory records must not contain the identity of the reporter or of the victim child.

(3) The identity of the perpetrator must not appear in the record unless the family court has confirmed the department’s determination or a criminal prosecution has resulted in conviction of the perpetrator.

(4) Nothing in this subsection may be construed to limit the department’s authority to use information from investigations of suspected child abuse or neglect occurring in childcare facilities to pursue an action to enjoin operation of a facility as provided in Chapter 13.

(5) Record retention provisions applicable to the department’s child protective services case records are not applicable to information contained in regulatory records concerning investigations of suspected child abuse or neglect occurring in childcare facilities.

(K) All reports made available to persons pursuant to this section must indicate whether or not an appeal is pending on the report pursuant to Subarticle 9.

(L) The department may disclose to participants in a family group conference relevant information concerning the child or family or other relevant information to the extent that the department determines that the disclosure is necessary to accomplish the purpose of the family group conference. Participants in the family group conference must be instructed to maintain the confidentiality of information disclosed by the agency.

(M) Nothing in this section may be construed to waive the confidential nature of the case record, to waive any statutory or common law privileges attaching to the department’s internal reports or to information in case records, to create a right to access under the Freedom of Information Act, or to require the department to search records or generate reports for purposes of the Freedom of Information Act.

(N) The department is authorized to provide a summary of referrals and the outcome of the referrals made to a contracted service agency or program addressing identified risks affecting the stability of the family to a South Carolina Children’s Advocacy Medical Response System child abuse health care provider or his designee.

(O) The department shall notify and share information relating to the outcome of an indicated investigation or other contracted services and programs addressing identified risks affecting the stability of the family with the physicians involved in the ongoing primary or specialty health care of the child.

HISTORY: 2008 Act No. 361, Section 2; 2014 Act No. 291 (H.3124), Section 3, eff June 23, 2014; 2015 Act No. 62 (H.3548), Section 3, eff June 4, 2015; 2015 Act No. 75 (S.250), Sections 2, 3, eff June 8, 2015.

Code Commissioner’s Note

At the direction of the Code Commissioner, the paragraph additions to (B) made by 2015 Act No. 62 and 2015 Act No. 75 were read together.

Effect of Amendment

2014 Act No. 291, Section 3, in subsection(G), added the paragraph designator (1); in subsection (G)(1), inserted “the party in interest,”; and added subsections (G)(2) and (G)(3).

2015 Act No. 62, Section 3, added (B)(24).

2015 Act No. 75, Section 2, added (B)(25).

2015 Act No. 75, Section 3, added (N) and (O).

CROSS REFERENCES

Application by unemancipated minor for beginner’s permit or driver’s license, see Section 56‑1‑100.

Application of this section to the confidentiality requirements of all reports and information collected and maintained under the guardian ad litem program, see Section 63‑11‑550.

Child placing agencies and their personnel subject to this section, see S.C. Code of Regulations R. 114‑4950.

Child protective services appeals process, see Sections 63‑7‑1410 et seq.

Confidentiality of family court records concerning juveniles, see Section 63‑3‑20.

Department of Social Services regulations pertaining to child placing agencies, see S.C. Code of Regulations R. 114‑4910 et seq.

Identifying information disclosed by person leaving infant at hospital, see Section 63‑7‑40.

Prohibition against disclosure of information about children, their relatives and other persons, see Section 63‑11‑80.

Provisions of this section controlling transmittal from central registry of information from indicated reports of child abuse or neglect, see Sections 63‑7‑1970.

Requirement that all reports made and information collected as described in this section be made available to the guardian ad litem, see Section 63‑11‑540.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Death and Right to Die Section 21, Disabled Infants.

**SECTION 63‑7‑2000.** Retention and disclosure of records of unfounded cases.

(A) Notwithstanding other provisions of the law affecting confidentiality of child protective services records and use and disclosure of records of unfounded cases, records concerning unfounded reports must be retained and disclosed as provided in this section.

(B) The alleged perpetrator in an unfounded report who has reason to believe that the report was made maliciously or in bad faith has the right to request in writing that records of the report be retained by the department for up to two years from the date of the case decision. The written request must be received by the department within thirty days of the person’s receiving notice of the case decision. A person exercising this right may request a copy of the record of the unfounded case and the department shall provide a copy of the record, subject to subsection (C).

(C) The department shall disclose to persons exercising the rights afforded them under this section whether the report was made anonymously. However, the identity of a reporter must not be made available to the person except by order of the family court.

(D) An alleged perpetrator in an unfounded case who believes the report was made maliciously or in bad faith may petition the family court to determine whether there is probable cause to believe that the reporter acted maliciously or in bad faith. The court shall determine probable cause based on an in camera review of the case record and oral or written argument, or both. If the court finds probable cause, the identity of the reporter must be disclosed to the moving party.

(E) Notwithstanding other provisions of the law affecting confidentiality of child protective services records and use and disclosure of records of unfounded cases, a court conducting civil or criminal proceedings resulting from disclosures authorized by this section may order the department to release the record to any party to the case or the law enforcement.

(F) The department is authorized to release a summary of the allegations and outcome of an investigation for unfounded cases regarding a child and family to a South Carolina Children’s Advocacy Medical Response System child abuse health care provider or his designee for evaluation of the child for suspected abuse or neglect.

HISTORY: 2008 Act No. 361, Section 2; 2015 Act No. 75 (S.250), Section 4, eff June 8, 2015.

Effect of Amendment

2015 Act No. 75, Section 4, added (F).

CROSS REFERENCES

Civil action created for wrongful termination based on employee having reported child abuse or neglect, see Section 63‑7‑315.

Library References

Infants 133.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

**SECTION 63‑7‑2010.** Annual reports.

The Department of Social Services must furnish annually to the Governor and the General Assembly a report on the incidence and prevalence of child abuse and neglect in South Carolina, the effectiveness of services provided throughout the State to protect children from this harm, and any other data considered instructive.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Child protective services, hearings, review, and final decisions, see S. C. Code of Regulations R. 114‑170.

Library References

Infants 17, 133.

States 121.

Westlaw Topic Nos. 211, 360.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 43, 71 to 95.

C.J.S. States Sections 322 to 323, 372.

Attorney General’s Opinions

In construing phrase “a substantiated history of child abuse or neglect” reference may be made to provisions of Section 20‑7‑650 which provide for “affirmative determinations” of child abuse or neglect and which provide for establishment of Central Registry of Child Abuse and Neglect. If separate criminal conviction was obtained, such could be noted and would probably disqualify individual as having “a substantiated history of child abuse or neglect.” 1993 Op. Atty Gen No. 93‑47.

ARTICLE 5

Foster Care

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

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| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑7‑2310 | 20‑7‑767 |
| 63‑7‑2320 | 20‑7‑2275 |
| 63‑7‑2330 | 20‑7‑1630 |
| 63‑7‑2340 | 20‑7‑1642 |
| 63‑7‑2350 | 20‑7‑1640 |
| 63‑7‑2360 | 20‑7‑1635 |
| 63‑7‑2370 | 20‑7‑775 |
| 63‑7‑2380 | 20‑7‑1643 |
| 63‑7‑2390 | 20‑7‑1645 |

**SECTION 63‑7‑2310.** Protecting and nurturing children in foster care.

(A) To protect and nurture children in foster care, the Department of Social Services and its employees shall:

(1) use its best efforts to normalize the lives of children in foster care by allowing a caregiver, without the department’s prior approval, to make decisions similar to those a parent would be entitled to make regarding a child’s participation in age or developmentally appropriate activities. In determining whether to allow a child in foster care to participate in an activity, a caregiver must exercise the reasonable and prudent parent standard pursuant to Section 63‑7‑20 and Section 63‑7‑25;

(2) adhere strictly to the prescribed number of personal contacts, pursuant to Section 63‑7‑1680(B)(3). These contacts must be personal, face‑to‑face visits between the caseworker or member of the casework team and the foster child. These visits may be conducted in the foster home and in the presence of other persons who reside in the foster home; however, if the caseworker suspects that the child has been abused or neglected during the placement with the foster parent, the caseworker must observe and interview the child outside the presence of other persons who reside in the foster home;

(3) ensure that a caseworker interviews the foster parent, either in person or by telephone, at least once each month. No less frequently than once every two months, ensure that a caseworker or member of the casework team interviews the foster parent face‑to‑face during a visit in the foster home;

(4) ensure that a caseworker interviews other adults residing in the foster home, as defined in Section 63‑1‑40, face‑to‑face at least once each quarter. A foster parent must notify the department if another adult moves into the home, and the caseworker must interview the adult face‑to‑face within one month after receiving notice. Interviews of foster parents pursuant to item (3) and of other adults residing in the home pursuant to this item may be conducted together or separately at the discretion of the department;

(5) ensure that its staff visit in the foster home and interview the foster parent or other adults in the home more frequently when conditions in the home, circumstances of the foster children, or other reasons defined in policy and procedure suggest that increased oversight or casework support is appropriate. When more than one caseworker is responsible for a child in the foster home, the department may assign one caseworker to conduct the required face‑to‑face interview with the other adults residing in the foster home;

(6) provide to the foster child, if age appropriate, a printed card containing a telephone number the child may use to contact a designated unit or individual within the Department of Social Services and further provide an explanation to the child that the number is to be used if problems occur which the child believes his or her caseworker cannot or will not resolve;

(7) provide to the foster child, if age appropriate, a document describing the rights of the child regarding education, health, visitation, court participation, and the right to stay safe and avoid exploitation and obtain a signed acknowledgement from the child upon receipt of the document;

(8) strongly encourage by letter of invitation, provided at least three weeks in advance, the attendance of foster parents to all Foster Care Review Board proceedings held for children in their care. If the foster parents are unable to attend the proceedings, they must submit a progress report to the Foster Care Review Board, at least three days prior to the proceeding. Failure of a foster parent to attend the Foster Care Review Board proceeding or failure to submit a progress report to the Foster Care Review Board does not require the board to delay the proceeding. The letter of invitation and the progress report form must be supplied by the agency;

(9) be placed under the full authority of sanctions and enforcement by the family court pursuant to Section 63‑3‑530(30) and Section 63‑3‑530(36) for failure to adhere to the requirements of this subsection.

(B) If the department places a child in foster care in a county which does not have jurisdiction of the case, the department may designate a caseworker in the county of placement to make the visits required by subsection (A).

(C) In fulfilling the requirements of subsection (A), the Department of Social Services shall reasonably perform its tasks in a manner which is least intrusive and disruptive to the lives of the foster children and their foster families.

(D) The Department of Social Services, in executing its duties under subsection (A)(5), must provide a toll free telephone number which must operate twenty‑four hours a day.

(E) Any public employee in this State who has actual knowledge that a person has violated any of the provisions of subsection (A) must report those violations to the state office of the Department of Social Services; however, the Foster Care Review Board must report violations of subsection (A)(5) in their regular submissions of advisory decisions and recommendations which are submitted to the family court and the department. Any employee who knowingly fails to report a violation of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(F) Foster parents have a duty to make themselves reasonably available for the interviews required by subsection (A)(3) and to take reasonable steps to facilitate caseworkers’ interviews with other adults who reside in the home as required by subsection (A)(4). Failure to comply with either the duties in this subsection or those in subsection (A)(4) constitutes grounds for revocation of a foster parent’s license or other form of approval to provide care to children in the custody of the department. Revocation would depend on the number of instances of noncompliance, the foster parents’ wilfulness in noncompliance, or other circumstances indicating that noncompliance by the foster parents significantly and unreasonably interferes with the department’s ability to carry out its protective functions under this section.

(G) The department shall adopt and implement any policies consistent with this section that are necessary to promote a caregiver’s ability to make decisions described by subsection (A)(1). The department shall make efforts to identify and review any department policy or procedure that may impede a caregiver’s ability to make such decisions.

(H) The department shall incorporate into its training for caregivers, as defined in Section 63‑7‑20(4), and agency personnel the importance of a child’s participation in age or developmentally appropriate activities, the benefits of such activities to a child’s well‑being, and decision‑making under the reasonable and prudent parent standard pursuant to Section 63‑7‑20 and Section 63‑7‑25.

HISTORY: 2008 Act No. 361, Section 2; 2016 Act No. 238 (H.4546), Section 4, eff June 5, 2016.

Effect of Amendment

2016 Act No. 238, Section 4, rewrote the section, requiring the department to make efforts to normalize the lives of children in foster care by enabling participation in age or developmentally appropriate activities.

Library References

Infants 226.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 43, 73 to 92.

**SECTION 63‑7‑2320.** Kinship Foster Care Program.

(A) As used in this section, unless the context otherwise requires:

(1) “Department” means the Department of Social Services; and

(2) “Foster parent” means any person with whom a child in the care, custody, or guardianship of the department is placed for temporary or long‑term care.

(B) There is established a “Kinship Foster Care Program” in the State Department of Social Services.

(C) When a child has been removed from his home and is in the care, custody, or guardianship of the department, the department shall attempt to identify a relative who would be appropriate for placement of the child in accordance with the preliminary investigation requirements of Subarticle 3, Article 3 and in accordance with Section 63‑7‑1680(B)(6). If the department determines that it is in the best interest of a child requiring out‑of‑home placement that the child be placed with a relative for foster care, or if a relative advises the department that the relative is interested in providing placement for a child requiring foster care, and the relative is not already licensed to provide foster care, the department shall inform the relative of the procedures for being licensed as a kinship foster parent, assist the foster parent with the licensing process, and inform the relative of availability of payments and other services to kinship foster parents. If the relative is licensed by the department to provide kinship foster care services, in accordance with rules and regulations adopted by the department regarding kinship foster care, and a placement with the relative is made, the relative may receive payment for the full foster care rate for the care of the child and any other benefits that might be available to foster parents, whether in money or in services.

(D) The department shall establish, in accordance with this section and the rules and regulations promulgated hereunder, eligibility standards for becoming a kinship foster parent.

(1) Relatives within the first, second, or third degree to the parent or stepparent of a child who may be related through blood, marriage, or adoption may be eligible for licensing as a kinship foster parent.

(2) The kinship foster parent must be twenty‑one years of age or older, except that if the spouse or partner of the relative is twenty‑one years of age or older and living in the home, and the relative is between eighteen and twenty‑one years of age, the department may waive the age requirement.

(3)(a) A person may become a kinship foster parent only upon the completion of a full kinship foster care licensing study performed in accordance with rules and regulations promulgated pursuant to this section. Residents of the household who are age eighteen years of age or older must undergo the state and federal fingerprint review procedures as provided for in Section 63‑7‑2340. The department shall apply the screening criteria in Section 63‑7‑2350 to the results of the fingerprint reviews and the licensing study.

(b) The department shall maintain the confidentiality of the results of fingerprint reviews as provided for in state and federal regulations.

(4) The department shall determine, after a thorough review of information obtained in the kinship foster care licensing process, whether the person is able to care effectively for the foster child.

(E)(1) The department shall involve the kinship foster parents in development of the child’s permanent plan pursuant to Section 63‑7‑1700 and other plans for services to the child and the kinship foster home. The department shall give notice of proceedings and information to the kinship foster parent as provided for elsewhere in this chapter for other foster parents. If planning for the child includes the use of childcare, the department shall pay for childcare arrangements, according to established criteria for payment of these services for foster children. If the permanent plan for the child involves requesting the court to grant custody or guardianship of the child to the kinship foster parent, the department must ensure that it has informed the kinship foster parent about adoption, including services and financial benefits that might be available.

(2) The kinship foster parent shall cooperate with any activities specified in the case plan for the foster child, such as counseling, therapy or court sessions, or visits with the foster child’s parents or other family members. Kinship foster parents and placements made in kinship foster care homes are subject to the requirements of Section 63‑7‑2310.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 226.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 43, 73 to 92.

**SECTION 63‑7‑2330.** Placement with relatives.

(A) When the Department of Social Services has custody of a child and places that child with a relative who is licensed to provide foster care, the agency must provide the same services and financial benefits as provided to other licensed foster homes. Children placed pursuant to this section are subject to the permanency planning requirements in Section 63‑7‑1700.

(B) If the department has determined that it is in the best interest of a child requiring foster care that the child be placed with a relative, and the relative is not licensed to provide foster care, or if a relative advises the department that the relative is interested in providing placement for a child requiring foster care, the department shall inform the relative of the procedures for obtaining licensure and the benefits of licensure. The department also shall provide information and reasonable assistance to a relative seeking a foster care license to the same extent that it provides this information and assistance to other persons contacting the department about foster care licensing.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 226.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 43, 73 to 92.

**SECTION 63‑7‑2340.** Fingerprint review.

(A) A person applying for licensure as a foster parent or for approval for adoption placement and a person eighteen years of age or older, residing in a home in which a person has applied to be licensed as a foster parent or an approved adoption placement, must undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprinting review to be conducted by the Federal Bureau of Investigation to determine any other criminal history.

(B) Any fee charged by the Federal Bureau of Investigation for the fingerprint review must be paid by the individual.

HISTORY: 2008 Act No. 361, Section 2; 2012 Act No. 238, Section 1, eff June 18, 2012.

Effect of Amendment

The 2012 amendment inserted “or for approval for adoption placement” and “or an approved adoption placement” in subsection (A).

CROSS REFERENCES

Abused child defined, see Section 63‑7‑20.

Homicide by child abuse, see Section 16‑3‑85.

Library References

Infants 226.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 43, 73 to 92.

United States Supreme Court Annotations

Status and rights of foster children and foster parents under Federal Constitution. 53 L Ed 2d 1116.

**SECTION 63‑7‑2345.** Payment of costs of Federal Bureau of Investigation fingerprint reviews.

Notwithstanding the provisions of Section 63‑7‑2350, the department is authorized to pay from funds appropriated for foster care the costs of Federal Bureau of Investigation fingerprint reviews for foster care families recruited and selected as potential adoption and foster care providers for children in the custody of the department.

HISTORY: 2008 Act No. 353, Section 2, Pt 24.D.1; 2012 Act No. 238, Section 2, eff June 18, 2012.

Effect of Amendment

The 2012 amendment substituted “recruited and selected as potential adoption and foster care providers for children in the custody of” for “recruited, selected, and licensed by”.

Library References

Infants 17, 226.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Sections 10 to 14, 41.

C.J.S. Infants Sections 6, 8 to 9, 43, 73 to 92.

**SECTION 63‑7‑2350.** Restrictions on foster care or adoption placements.

(A) No child in the custody of the Department of Social Services may be placed in foster care or for adoption with a person if the person or anyone eighteen years of age or older residing in the home:

(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) This section does not prevent foster care placement or adoption placement 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.

HISTORY: 2008 Act No. 361, Section 2; 2012 Act No. 238, Section 3, eff June 18, 2012.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

Effect of Amendment

The 2012 amendment rewrote subsection (A); and, inserted “or adoption placement” in subsection (C).

CROSS REFERENCES

Payment of costs of Federal Bureau of Investigation fingerprint reviews, see Section 63‑7‑2345.

Library References

Infants 226.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 43, 73 to 92.

**SECTION 63‑7‑2360.** Placement of minor sex offenders.

(A) No agency may place a minor in a foster home if the agency has actual knowledge that the minor has been adjudicated delinquent for, or has pled guilty or nolo contendere to, or has been convicted of a sex offense, unless the placement is in a therapeutic foster home or unless the minor is the only child in the foster home at the time of placement and for the length of that minor’s placement in the foster home. Notwithstanding this provision, the placing agency may petition the court for an order allowing the minor to be placed in a foster home, other than a therapeutic home, if good cause is shown. Good cause shall include, but not be limited to, the fact that the minor is being placed in a home with his siblings.

(B) The placing agency must inform the foster parent in whose home the minor is placed of that minor’s prior history of a sex offense. For purposes of this section the term “sex offense” means:

(1) criminal sexual conduct in the first degree, as provided in Section 16‑3‑652;

(2) criminal sexual conduct in the second degree, as provided in Section 16‑3‑653;

(3) criminal sexual conduct in the third degree, as provided in Section 16‑3‑654;

(4) criminal sexual conduct with minors in the first degree, as provided in Section 16‑3‑655(A);

(5) criminal sexual conduct with minors in the second degree, as provided in Section 16‑3‑655(B);

(6) criminal sexual conduct with minors in the third degree, as provided in Section 16‑3‑655(C);

(7) engaging a child for a sexual performance, as provided in Section 16‑3‑810;

(8) producing, directing, or promoting sexual performance by a child, as provided in Section 16‑3‑820;

(9) assault with intent to commit criminal sexual conduct, as provided in Section 16‑3‑656;

(10) incest, as provided in Section 16‑15‑20;

(11) buggery, as provided in Section 16‑15‑120;

(12) violations of Article 3, Chapter 15 of Title 16 involving a child when the violations are felonies;

(13) accessory before the fact to commit an offense enumerated in this item and as provided for in Section 16‑1‑40;

(14) attempt to commit any of the offenses enumerated herein; or

(15) any offense for which the judge makes a specific finding on the record that based on the circumstances of the case, the minor’s offense should be considered a sex offense.

HISTORY: 2008 Act No. 361, Section 2; 2012 Act No. 255, Section 13, eff June 18, 2012.

Effect of Amendment

The 2012 amendment rewrote subsection (B) to remove references to committing or attempting lewd act upon a child under 16, and add references to criminal sexual conduct with minors in the third degree; and made other nonsubstantive changes.

Library References

Infants 226.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 43, 73 to 92.

**SECTION 63‑7‑2370.** Disclosure of information to foster parents.

The department shall disclose to the foster parent at the time the department places the child in the home all information known by the person making the placement or reasonably accessible to the person making the placement which could affect either the ability of the foster parent to care for the child or the health and safety of the child or the foster family. This information includes, but is not limited to, medical and mental health conditions and history of the child, the nature of abuse or neglect to which the child has been subjected, behavioral problems, and matters related to educational needs. If a person lacking this necessary information made the placement, a member of the child’s casework team or the child’s caseworker shall contact the foster parent and provide the information during the first working day following the placement. The child’s caseworker shall research the child’s record and shall supplement the information provided to the foster parent no later than the end of the first week of placement if additional information is found. When the child’s caseworker acquires new information which could affect either the ability of the foster parent to care for the child or the health and safety of the child or the foster family, the department shall disclose that information to the foster parent. The obligation to provide this information continues until the placement ends.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 226.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 43, 73 to 92.

**SECTION 63‑7‑2380.** Foster parent training.

The Department of Social Services shall establish standards for foster parent training so as to ensure uniform preparedness for foster parents who care for abused or neglected children in the custody of the State. These standards shall specifically prohibit the viewing of standard television programs or reading of articles from popular magazines or daily newspapers as complying with the completion of pre‑service or annual foster parent training requirements.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 226.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 43, 73 to 92.

United States Supreme Court Annotations

Status and rights of foster children and foster parents under Federal Constitution. 53 L Ed 2d 1116.

**SECTION 63‑7‑2390.** Loss for uninsured damages.

A state agency which places a child in a foster home may compensate a foster family, who has made its private residence available as a foster home, for the uninsured loss it incurs when its personal or real property is damaged, destroyed, or stolen by a child placed in its home, if the loss is found by the director of the placing state agency, or his designee, to have occurred, to have been caused solely or primarily by the acts of the child placed with the foster family, and if the acts of the foster family have not in any way caused or contributed to the loss. Compensation may not be in excess of the actual cost of repair or replacement of the damaged or destroyed property but in no case may compensation exceed five hundred dollars for each occurrence.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 226, 228(1).

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 24 to 25, 41, 43, 46 to 48, 71 to 95.

**SECTION 63‑7‑2400.** Number of foster children who may be placed in a foster home.

(A) A foster home may not provide full‑time care for more than five foster children, with the total number of children residing in the household not to exceed eight, including the foster parent’s own children, children of other household members, and other children residing in the household, except:

(1) to keep a sibling group together;

(2) to keep a child in the child’s home community;

(3) to return a child to a home in which the child was previously placed;

(4) to comply with an order of the court; or

(5) if it is in the best interest of the children as determined by the court.

(B) No more than two of the five foster children referenced in subsection (A) may be classified as therapeutic foster care placements unless one of the exceptions in subsection (A) applies. If one of the exceptions applies, no more than three of the five foster children may be classified as therapeutic foster care placements.

HISTORY: 2016 Act No. 187 (H.4510), Section 1, eff May 25, 2016.

Editor’s Note

2016 Act No. 187, Section 2, provides as follows:

“SECTION 2. This act takes effect upon approval by the Governor. Section 63‑7‑2400(B) does not apply to foster children placed before the effective date of this act.”

ARTICLE 7

Termination of Parental Rights

Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

|  |  |
| --- | --- |
|  |  |
| New  Section | Former  Section |
| 63‑7‑2510 | 20‑7‑1560 |
| 63‑7‑2520 | 20‑7‑1562 |
| 63‑7‑2530 | 20‑7‑1564 |
| 63‑7‑2540 | 20‑7‑1566 |
| 63‑7‑2550 | 20‑7‑1568 |
| 63‑7‑2560 | 20‑7‑1570 |
| 63‑7‑2570 | 20‑7‑1572 |
| 63‑7‑2580 | 20‑7‑1574 |
| 63‑7‑2590 | 20‑7‑1576 |
| 63‑7‑2600 | 20‑7‑1580 |
| 63‑7‑2610 | 20‑7‑1582 |
| 63‑7‑2620 | 20‑7‑1578 |

**SECTION 63‑7‑2510.** Purpose.

The purpose of this article is to establish procedures for the reasonable and compassionate termination of parental rights where children are abused, neglected, or abandoned in order to protect the health and welfare of these children and make them eligible for adoption by persons who will provide a suitable home environment and the love and care necessary for a happy, healthful, and productive life.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Adoption. 22 SC L Rev 546.

Definition of abused or neglected child for purposes of Article 7, see Section 63‑7‑20.

Provision that no consent or relinquishment for the purpose of adoption is required from a parent whose rights with reference to the adoptee have been terminated pursuant to this subarticle, see Section 63‑9‑320.

Library References

Infants 132, 155, 191.

Westlaw Topic No. 211.

C.J.S. Infants Sections 12 to 13, 20 to 28, 40 to 42, 44 to 48, 58 to 59.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 11, Necessary Parties to Adoption Proceeding.

S.C. Jur. Children and Families Section 43, Statutory Authority.

S.C. Jur. Children and Families Section 44, Purpose.

S.C. Jur. Children and Families Section 58, Paramount Consideration.

LAW REVIEW AND JOURNAL COMMENTARIES

Parent and Child. 25 S.C. L. Rev. 374.

Attorney General’s Opinions

Natural mother’s husband’s consent to adoption is not necessary when the child is illegitimate, when the abandonment statute is used or where the mother’s husband is a party to the proceeding and defaults. 1964‑65 Op. Atty Gen, No. 1786, p 19, decided under repealed Code 1962 Section 31‑51.1.

The juvenile and domestic relations court of Greenville County did not have jurisdiction to terminate parental rights under repealed Code 1962 Section 31‑51.4. 1966‑67 Op. Atty Gen, No. 2249, p 56.

NOTES OF DECISIONS

In general 1

Best interests of child 2

1. In general

Sections 20‑7‑1560 through 20‑7‑1582 do not impose an administrative duty on the Department of Social Services to commence an action for a determination that a child has been abused or abandoned. In Interest of Lyde (S.C. 1985) 284 S.C. 419, 327 S.E.2d 70.

A stepmother had standing to prosecute an action pursuant to former Section 15‑45‑10, recodified as Section 20‑7‑1560, to terminate the natural mother’s parental rights, notwithstanding the natural mother’s contention that former Section 20‑11‑30, recodified as Section 20‑7‑1580, permitted only a statutorily mandated child protection agency to petition the court for a determination of abandonment. Donahue v. Lawrence (S.C.App. 1984) 280 S.C. 382, 312 S.E.2d 594. Adoption 11

2. Best interests of child

Termination of mother’s parental rights was not in child’s best interest, even though mother had not adequately treated her mental conditions, where adoption was not viable option given that father retained parental rights, child would not achieve permanency and stability through termination, child’s behavioral problems prevented immediate adoptive placement, Department of Social Services (DSS) did not have a potential adoptive family, DSS was not actively pursuing adoption, child had meaningful bond with mother and siblings, child wanted to return to mother, child’s biological family brought joy to child, and child was making progress in current therapeutic foster home. South Carolina Dept. of Social Services v. Williams (S.C.App. 2015) 412 S.C. 458, 772 S.E.2d 279. Infants 1890; Infants 1895; Infants 2043

Termination of parental rights of father, as to child born out of wedlock, was not in the child’s best interest; there was no indication that terminating father’s rights would ensure future stability for child or that keeping father’s parental rights intact would disrupt child’s current living situation, but keeping father’s parental rights intact would allow father to establish a relationship with child and to provide emotional and financial support, which father was willing and capable of providing. Doe v. Roe (S.C.App. 2008) 379 S.C. 291, 665 S.E.2d 182, rehearing denied, certiorari granted, reversed 386 S.C. 624, 690 S.E.2d 573. Infants 1890

Best interest factors set forth in Moore v. Moore did not apply to determine whether termination of mother’s parental rights was in child’s best interests, as Moore factors applied where a natural parent who has voluntarily relinquished custody of his child sought to reclaim custody from a third party, and termination of parental rights was governed by statute. Charleston County Dept. of Social Services v. King (S.C. 2006) 369 S.C. 96, 631 S.E.2d 239, rehearing denied. Infants 1886

**SECTION 63‑7‑2520.** Jurisdiction.

The family court has exclusive jurisdiction over all proceedings held pursuant to this article. For purposes of this article jurisdiction may continue until the child becomes eighteen years of age, unless emancipated earlier.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 196.

Westlaw Topic No. 211.

C.J.S. Infants Sections 24 to 25, 41, 46 to 48.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 45, Jurisdiction.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

Family court had jurisdiction to hear termination of parental rights case, despite parent’s contention that no finding of abuse or neglect was ever made and children were improperly removed from home, as family court has exclusive jurisdiction over all termination proceedings and there is no statutory provision divesting court of jurisdiction based on alleged improper removal of child, and, even if there were, parent acquiesced in placement of her children in care of Department of Social Services. South Carolina Dept. of Social Services v. Smith (S.C.App. 2000) 343 S.C. 129, 538 S.E.2d 285, rehearing denied. Infants 2065

2. Review

It is unnecessary for a parent to file a petition for writ of certiorari with the Supreme Court after the Court of Appeals has affirmed the termination of parental rights pursuant to Cauthen, as the filing of a Cauthen appeal ensures that the trial transcript will be reviewed for any possible issues of arguable merit. South Carolina Dept. of Social Services v. Hickson (S.C. 2002) 350 S.C. 213, 565 S.E.2d 763. Infants 2361

**SECTION 63‑7‑2530.** Filing procedures.

(A) A petition seeking termination of parental rights may be filed by the Department of Social Services or any interested party.

(B) The department may file an action for termination of parental rights without first seeking the court’s approval of a change in the permanency plan pursuant to Section 63‑7‑1680 and without first seeking an amendment of the placement plan pursuant to Section 63‑7‑1700.

(C) The hearing on the petition to terminate parental rights must be held within one hundred twenty days of the date the termination of parental rights petition is filed. A party may request a continuance that would result in the hearing being held more than one hundred twenty days after the petition was filed, and the court may grant a continuance in its discretion. If a continuance is granted, the court must issue a written order scheduling the case for trial on a date and time certain.

HISTORY: 2008 Act No. 361, Section 2; 2009 Act No. 41, Section 3, eff July 1, 2009.

Effect of Amendment

The 2009 amendment added subsection (C) relating to the time for hearing a petition to terminate parental rights.

Library References

Infants 200, 231.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 24 to 25, 41, 43, 46 to 48, 71 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 46, Petition.

S.C. Jur. Children and Families Section 47, Parties.

NOTES OF DECISIONS

In general 1

Foster parents 3

Standard of proof 2

1. In general

An action to terminate parental rights need not be initiated by the Department of Social Services. Greenville County Dept. of Social Services v. Bowes (S.C. 1993) 313 S.C. 188, 437 S.E.2d 107, rehearing denied. Infants 2068

2. Standard of proof

In a removal action, as opposed to a termination proceeding, abuse need only be shown by a preponderance of the evidence; consequently, a finding of abuse in a removal order was an insufficient finding of harm to support termination under the clear and convincing standard. Greenville County Dept. of Social Services v. Bowes (S.C. 1993) 313 S.C. 188, 437 S.E.2d 107, rehearing denied. Infants 2108; Infants 2159

3. Foster parents

Foster parents have standing to bring an action to terminate parental rights. Greenville County Dept. of Social Services v. Bowes (S.C. 1993) 313 S.C. 188, 437 S.E.2d 107, rehearing denied. Infants 2069

The family court did not abuse its discretion in allowing foster parents’ intervention in a proceeding to terminate parental rights since foster parents have standing to seek termination and the statutory scheme allows removal and termination to be considered together. Greenville County Dept. of Social Services v. Bowes (S.C. 1993) 313 S.C. 188, 437 S.E.2d 107, rehearing denied.

A foster parent has standing as an interested party under Section 20‑7‑1564 to petition for termination of parental rights. Department of Social Services v. Pritchett (S.C.App. 1988) 296 S.C. 517, 374 S.E.2d 500, certiorari denied 298 S.C. 313, 380 S.E.2d 430.

**SECTION 63‑7‑2540.** Content of petition.

A petition for the termination of parental rights must set forth the:

(1) basis of the court’s jurisdiction;

(2) name, sex, date, and place of birth of the child, if known;

(3) name and address of the petitioner and the petitioner’s relationship to the child;

(4) names, dates of birth, and addresses of the parents, if known;

(5) names and addresses of a:

(a) legal guardian of the child; or

(b) person or agency having legal custody of the child; and

(6) grounds on which termination of parental rights are sought and the underlying factual circumstances.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 197.

Westlaw Topic No. 211.

C.J.S. Infants Section 42.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 46, Petition.

**SECTION 63‑7‑2550.** Service of petition.

(A) A summons and petition for termination of parental rights must be filed with the court and served on:

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

(2) the child’s guardian ad litem, appointed pursuant to Section 63‑7‑2560(B), if the child is under fourteen years of age;

(3) the parents of the child; and

(4) an agency with placement or custody of the child.

(B) The right of an unmarried biological father, as defined in Section 63‑9‑820, to receive notice of a termination of parental rights action must be governed by the notice provisions of Section 63‑9‑730(B)(1), (3), (4), (5), and (6), and Subarticle 8, Chapter 9.

HISTORY: 2008 Act No. 361, Section 2; 2009 Act No. 41, Section 4, eff July 1, 2009.

Editor’s Note

2009 Act No. 41 Section 6 provides as follows:

“This act takes effect July 1, 2009, except that those provisions of Section 1 of this act pertaining to the establishment of the Responsible Father Registry and the receipt of claims of paternity by the registry take effect January 1, 2010, and those provisions of Section 1 of this act and Section 63‑9‑730 of the 1976 Code, as amended by Section 2 of this act, affecting an unmarried biological father’s right to receive notice in a termination of parental rights or an adoption action by filing a claim of paternity and Section 63‑7‑2550(B) of the 1976 Code, as added by Section 4 of this act, apply to termination of parental rights actions and adoption actions filed on or after July 1, 2010.”

Effect of Amendment

The 2009 amendment designated subsection (A) and in subparagraph (1), added “, if the child is fourteen years of age or older”, added subparagraph (2) relating to notice to the guardian ad litem of a child under fourteen, and redesignated subparagraphs (2) and (3) as subparagraphs (3) and (4); and added subsection (B) relating to notice to unmarried biological fathers.

CROSS REFERENCES

Requirements relating to the contents of this notice, see Section 63‑7‑1630.

Library References

Infants 198.

Westlaw Topic No. 211.

C.J.S. Infants Sections 49 to 50.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 40, Hearings in General.

S.C. Jur. Children and Families Section 48, Service of the Pleadings.

**SECTION 63‑7‑2560.** Representation by counsel; guardian ad litem.

(A) Parents, guardians, or other persons subject to a termination of parental rights action are entitled to legal counsel. Those persons unable to afford legal representation must be appointed counsel by the family court, unless the defendant is in default.

(B) A child subject to any judicial proceeding under this article must be appointed a guardian ad litem by the family court. If a guardian ad litem who is not an attorney finds that appointment of counsel is necessary to protect the rights and interests of the child, an attorney must be appointed. If the guardian ad litem is an attorney, the judge must determine on a case‑by‑case basis whether counsel is required for the guardian ad litem. However, counsel must be appointed for a guardian ad litem who is not an attorney in any case that is contested.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 205.

Westlaw Topic No. 211.

C.J.S. Infants Sections 40, 44 to 45, 58 to 59, 62, 66, 69 to 70, 334.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 48, Service of the Pleadings.

S.C. Jur. Children and Families Section 49, Legal Representation.

S.C. Jur. Children and Families Section 115, Abuse and Neglect Cases.

LAW REVIEW AND JOURNAL COMMENTARIES

Bringing “equal justice under law” to South Carolina: Addressing the civil justice gap and confronting the legal ultimatum. Whitney Kamerzel, 68 S.C. L. Rev. 861 (Spring 2017).

No harm, no foul? Why harmless error analysis should not be used to review wrongful denials of counsel to parents in child welfare cases. Vivek S. Sankaran, 63 S.C. L. Rev. 13 (Autumn 2011).

NOTES OF DECISIONS

In general 1

Counsel 2

Expert testimony 3

1. In general

Mother’s due process rights were not violated with respect to appointment of counsel in proceeding to terminate parental rights (TPR); trial court instructed mother to apply for appointment of counsel, court noted mother’s disabilities, which included dependent personality disorder and mild mental retardation, and declined to terminate mother’s rights at first TPR hearing, and mother was represented by counsel and guardian ad litem (GAL) at both TPR hearings. South Carolina Dept. of Social Services v. Mother ex rel. Minor Child (S.C.App. 2007) 375 S.C. 276, 651 S.E.2d 622. Constitutional Law 4403.5; Infants 2335

Guardian ad litem was not disqualified, and thus appointment of another guardian ad litem for purposes of termination of parental rights (TPR) proceedings was not necessary, even though TPR petition was filed by guardian, where guardian did not have personal stake in proceedings, and guardian’s only stake was child’s best interest. Joiner ex rel. Rivas v. Rivas (S.C. 2000) 342 S.C. 102, 536 S.E.2d 372. Infants 2102

Appointment of an additional guardian ad litem when the child’s appointed guardian ad litem brings a termination of parental rights (TPR) action is not required, when the guardian does not have a personal stake in the outcome of the TPR action, such as a desire to adopt the child herself, in light of fact that TPR statutes should be liberally construed to promptly effectuate their purposes, and fact that a natural parent subject to a TPR action brought by the child’s guardian can always move for the appointment of a new guardian. Joiner ex rel. Rivas v. Rivas (S.C. 2000) 342 S.C. 102, 536 S.E.2d 372. Infants 2102

Orders removing child from custody of parent and terminating parental rights will not be reversed or vacated on appeal, notwithstanding failure to appoint counsel, where Department of Social Services has acted in what it considers to be best interests of child and placed child with prospective adoptive family pending remand to family court for rehearing, both adjudicatory and dispositional, on issues of whether child should be removed from parental custody and parental rights terminated. South Carolina Dept. of Social Services v. Vanderhorst (S.C. 1986) 287 S.C. 554, 340 S.E.2d 149.

2. Counsel

The trial court’s failure to appoint counsel for mother during the critical stages of termination of parental rights proceeding did not prejudice mother; even had counsel been present, the statutory grounds for termination would have been satisfied and it would have been in child’s best interest for mother’s parental rights to be terminated. Broom v. Jennifer J. (S.C. 2013) 403 S.C. 96, 742 S.E.2d 382. Infants 2434

The trial court erred when it failed to appoint counsel for mother at critical stages in termination of parental rights proceeding; statute provided that an indigent parent must be appointed counsel in a termination of parental rights proceeding. Broom v. Jennifer J. (S.C. 2013) 403 S.C. 96, 742 S.E.2d 382. Infants 2338

Due process does not require appointment of counsel for indigent persons in all termination of parental rights cases; rather, in accordance with Section 20‑7‑1570, family court is required to make case by case analysis; however, cases in which appointment of counsel is not required should be exception; parent whose erratic behavior evidences mental instability and whose attempt at pro se representation significantly compromises position is entitled to appointment of counsel. South Carolina Dept. of Social Services v. Vanderhorst (S.C. 1986) 287 S.C. 554, 340 S.E.2d 149. Constitutional Law 4403.5

3. Expert testimony

While the appointment of a guardian ad litem is required in termination of parental rights (TPR) cases, there is no such requirement for expert testimony. Stinecipher v. Ballington (S.C.App. 2005) 366 S.C. 92, 620 S.E.2d 93. Infants 2102; Infants 2172

**SECTION 63‑7‑2570.** Grounds.

The family court may order the termination of parental rights upon a finding of one or more of the following grounds and a finding that termination is in the best interest of the child:

(1) The child or another child while residing in the parent’s domicile has been harmed as defined in Section 63‑7‑20, and because of the severity or repetition of the abuse or neglect, it is not reasonably likely that the home can be made safe within twelve months. In determining the likelihood that the home can be made safe, the parent’s previous abuse or neglect of the child or another child may be considered.

(2) The child has been removed from the parent pursuant to subarticle 3 or Section 63‑7‑1660 and has been out of the home for a period of six months following the adoption of a placement plan by court order or by agreement between the department and the parent and the parent has not remedied the conditions which caused the removal.

(3) The child has lived outside the home of either parent for a period of six months, and during that time the parent has wilfully failed to visit the child. The court may attach little or no weight to incidental visitations, but it must be shown that the parent was not prevented from visiting by the party having custody or by court order. The distance of the child’s placement from the parent’s home must be taken into consideration when determining the ability to visit.

(4) The child has lived outside the home of either parent for a period of six months, and during that time the parent has wilfully failed to support the child. Failure to support means that the parent has failed to make a material contribution to the child’s care. A material contribution consists of either financial contributions according to the parent’s means or contributions of food, clothing, shelter, or other necessities for the care of the child according to the parent’s means. The court may consider all relevant circumstances in determining whether or not the parent has wilfully failed to support the child, including requests for support by the custodian and the ability of the parent to provide support.

(5) The presumptive legal father is not the biological father of the child, and the welfare of the child can best be served by termination of the parental rights of the presumptive legal father.

(6)(a) The following circumstances exist, subject to the requirements set forth in Section 63‑21‑20:

(i) the parent has a diagnosable condition unlikely to change within a reasonable time including, but not limited to, addiction to alcohol or illegal drugs or prescription medication abuse; and

(ii) the condition makes the parent unlikely to provide minimally acceptable care of the child.

(b) It is presumed that the parent’s condition is unlikely to change within a reasonable time upon proof that the parent has been required by the department or the family court to participate in a treatment program for alcohol or drug addiction, and the parent has failed two or more times to complete the program successfully or has refused at two or more separate meetings with the department to participate in a treatment program.

(c) The department, and any other covered entity, must not terminate the rights of a parent or legal guardian with a disability solely on the basis of the disability.

(7) The child has been abandoned as defined in Section 63‑7‑20.

(8) The child has been in foster care under the responsibility of the State for fifteen of the most recent twenty‑two months.

(9) The physical abuse of a child of the parent resulted in the death or admission to the hospital for in‑patient care of that child and the abuse is the act for which the parent has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting an offense against the person as provided for in Chapter 3, Title 16, criminal domestic violence as defined in Section 16‑25‑20, criminal domestic violence of a high and aggravated nature as defined in Section 16‑25‑65, or an assault and battery offense as provided in Article 7, Chapter 3, Title 16.

(10) A parent of the child pleads guilty or nolo contendere to or is convicted of the murder of the child’s other parent.

(11) Conception of a child as a result of the criminal sexual conduct of a biological parent, as found by a court of competent jurisdiction, is grounds for terminating the rights of that biological parent, unless the sentencing court makes specific findings on the record that the conviction resulted from consensual sexual conduct when neither the victim nor the actor were younger than fourteen years of age nor older than eighteen years of age at the time of the offense.

(12) The parent of the child pleads guilty or nolo contendere to or is convicted of murder, voluntary manslaughter, or homicide by child abuse, of another child of the parent.

HISTORY: 2008 Act No. 361, Section 2; 2010 Act No. 160, Sections 5, 6, 7, eff May 12, 2010; 2014 Act No. 281 (H.3102), Section 8, eff June 10, 2014; 2017 Act No. 36 (H.3538), Section 5, eff May 10, 2017.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

Effect of Amendment

The 2010 amendment in subsection (1) substituted “while residing in the parent’s domicile” for “in the home” in the first sentence, and deleted “in the home” preceding “may be considered” at the end of the second sentence; in subsection (6) added “unable or” following “and the condition makes the parent” in the first sentence; and in subsection (9) deleted “of the parent” following “The physical abuse of a child” at the beginning.

2014 Act No. 281, Section 8, in paragraph (2), inserted “and” following “63‑7‑1660”; in paragraph (6), substituted “addiction to alcohol or illegal drugs, prescription medication abuse, mental deficiency, mental illness, or extreme physical incapacity, and the condition makes the parent unlikely” for “alcohol or drug addiction, mental deficiency, mental illness, or extreme physical incapacity, and the condition makes the parent unable or unlikely”; in paragraph (9), inserted “of the parent” after “physical abuse of a child”, and substituted “an assault and battery offense as provided in Article 7, Chapter 3, Title 16” for “the common law offense of assault and battery of a high and aggravated nature”; and made other nonsubstantive changes.

2017 Act No. 36, Section 5, rewrote (6), prohibiting the termination of parental rights solely on the basis of a disability.

Cross References

As to criminal domestic violence, see Section 16‑25‑10 et seq.

Library References

Infants 155 to 159.

Westlaw Topic No. 211.

C.J.S. Infants Sections 17 to 22, 26 to 28, 40, 42, 44 to 45, 58 to 59.

RESEARCH REFERENCES

ALR Library

79 ALR 3rd 417 , Parent’s Involuntary Confinement, or Failure to Care for Child as Result Thereof, as Evincing Neglect, Unfitness, or the Like in Dependency or Divestiture Proceeding.

Encyclopedias

S.C. Jur. Adoption Section 13, Abandonment Defined.

S.C. Jur. Children and Families Section 50, Standard of Proof.

S.C. Jur. Children and Families Section 51, Pattern or Severity of Abuse or Neglect.

S.C. Jur. Children and Families Section 52, Failure to Remedy the Conditions Causing the Child’s Removal.

S.C. Jur. Children and Families Section 53, Willful Failure to Visit.

S.C. Jur. Children and Families Section 54, Willful Failure to Support.

S.C. Jur. Children and Families Section 55, Legal Father.

S.C. Jur. Children and Families Section 56, The Diagnosable Condition of the Parent.

S.C. Jur. Children and Families Section 58, Paramount Consideration.

S.C. Jur. Children and Families Section 63, Appeals and Procedures for Court‑Appointed Attorneys.

S.C. Jur. Children and Families Section 51.3, Child in Foster Care.

S.C. Jur. Children and Families Section 51.5, Murder or Assault of Another Child by Parent.

S.C. Jur. Children and Families Section 56.5, Abandonment.

S.C. Jur. Children and Families Section 56.70, Conception of Child Resulting from Biological Parent’s Criminal Sexual Conduct.

S.C. Jur. Homicide Section 29, Other Offenses Involving Killing.

Treatises and Practice Aids

53 Causes of Action 2d 523, Cause of Action for Termination of Parental Rights Based on Abuse or Neglect.

United States Supreme Court Annotations

Child welfare, Indian Child Welfare Act did not bar termination of noncustodial biological father’s parental rights, see Adoptive Couple v. Baby Girl (U.S.S.C. 2013) 133 S.Ct. 2552, 186 L.Ed.2d 729, on remand 404 S.C. 483, 746 S.E.2d 51. Indians 134(1), 134(2)

NOTES OF DECISIONS

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1. In general

The family court may order the termination of parental rights upon a finding that one or more of the nine statutory grounds is met and a finding that termination is in the best interest of the child. South Carolina Dept. of Social Services v. Roe (S.C.App. 2006) 371 S.C. 450, 639 S.E.2d 165. Infants 1881; Infants 1886

Termination of parental rights statutes must be liberally construed in order to ensure prompt judicial procedures for freeing minor children from the custody and control of their parents by terminating the parent‑child relationship. South Carolina Dept. of Social Services v. Parker (S.C.App. 1999) 336 S.C. 248, 519 S.E.2d 351, rehearing denied. Infants 2064

1.9. Due process

The statute authorizing termination of parental rights upon findings that termination is in the best interest of the child and that because of the “severity or repetition” of the abuse or neglect it is not reasonably likely that the home can be made safe within twelve months was not unconstitutionally vague under due process clause in failing to define the word “severity,” as applied to a mother who had sexual intercourse with her son and daughter and who was present while her husband raped her daughter. South Carolina Dept. of Social Services v. Michelle G. (S.C. 2014) 407 S.C. 499, 757 S.E.2d 388. Constitutional Law 4403.5; Infants 1006(13); Infants 1964; Infants 1969

Because parents have a fundamental liberty interest in the care, custody, and management of their children, statutes terminating parental rights must comport with basic due process requirements guaranteed by the Fourteenth Amendment. South Carolina Dept. of Social Services v. Michelle G. (S.C. 2014) 407 S.C. 499, 757 S.E.2d 388. Constitutional Law 4391; Constitutional Law 4403.5

Statute, which provided for the termination of parental rights (TPR) after finding that termination was in the best interests of the child and that the child had been in foster care under the responsibility of the State for 15 of the most recent 22 months, provided the requisite level of due process to preserve a parent’s fundamental rights in a TPR proceeding while at the same time recognizing the State’s compelling interest in providing for the health and welfare of children who face abuse, neglect, or abandonment and, thus, was facially constitutional, though not immunized thereby from challenge under as‑applied theory; under the statute, the court could not terminate parental rights just because the child had been in custody for 15 of the past 22 months, rather, the court had to find that severance of parental rights was in the best interests of the child, and that the delay in reunification of the family unit was attributable not to mistakes by the government, but to the parent’s inability to provide an environment where the child will be nourished and protected. South Carolina Dept. of Social Services v. Sarah W. (S.C. 2013) 402 S.C. 324, 741 S.E.2d 739, rehearing denied, certiorari denied, certiorari denied 134 S.Ct. 313, 187 L.Ed.2d 221. Constitutional Law 4403.5; Infants 1006(13)

2. Standard of proof

Department of Social Services (DSS) must prove grounds for termination of parental rights by clear and convincing evidence. South Carolina Dept. of Social Services v. Cochran (S.C. 2003) 356 S.C. 413, 589 S.E.2d 753. Infants 2157

Grounds for termination of parental rights must be proven by clear and convincing evidence. South Carolina Dept. of Social Services v. Robin Headden (S.C. 2003) 354 S.C. 602, 582 S.E.2d 419. Infants 2157

Parental rights may be terminated only upon clear and convincing evidence. Hopkins v. South Carolina Dept. of Social Services (S.C. 1993) 313 S.C. 322, 437 S.E.2d 542, rehearing denied. Infants 2157

A ground for termination of parental rights must be proved by clear and convincing evidence. Greenville County Dept. of Social Services v. Bowes (S.C. 1993) 313 S.C. 188, 437 S.E.2d 107, rehearing denied. Infants 2157

3. Burden of proof

The statutory grounds for termination of parental rights must be proven by clear and convincing evidence. Broom v. Jennifer J. (S.C. 2013) 403 S.C. 96, 742 S.E.2d 382. Infants 2157

When reunification of parents and children is not possible or appropriate and a party moves to terminate the parents’ rights, that party must prove a ground for termination of parental rights by clear and convincing evidence. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 2157

The burden of proving, by the greater weight or preponderance of the evidence, that adoption is the proper course of action rests upon the party who wishes to adopt a child. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Adoption 7.8(1); Adoption 13

4. Best interests of child

Evidence was insufficient to establish that termination of mother’s parental rights was in the best interests of the children; the guardian ad litem did not testify or file a report, and although Department of Social Services (DSS) caseworker testified that he believed termination of parental rights was in the best interest of the children, he did not elaborate on their current condition or their relationship with mother. South Carolina Department of Social Services v. Nelson (S.C.App. 2016) 419 S.C. 142, 795 S.E.2d 871. Infants 2169(1)

Termination of mother’s parental rights was not in child’s best interest, even though mother had not adequately treated her mental conditions, where adoption was not viable option given that father retained parental rights, child would not achieve permanency and stability through termination, child’s behavioral problems prevented immediate adoptive placement, Department of Social Services (DSS) did not have a potential adoptive family, DSS was not actively pursuing adoption, child had meaningful bond with mother and siblings, child wanted to return to mother, child’s biological family brought joy to child, and child was making progress in current therapeutic foster home. South Carolina Dept. of Social Services v. Williams (S.C.App. 2015) 412 S.C. 458, 772 S.E.2d 279. Infants 1890; Infants 1895; Infants 2043

Termination of parental rights of mother and father was in best interest of child; mother had extensive 17‑year history with Department of Social Services (DSS) stemming from her recurring drug abuse, and mother exhibited apparent indifference to obtaining gainful employment and lacked bond with child. South Carolina Dept. of Social Services v. M.R.C.L. (S.C. 2011) 393 S.C. 387, 712 S.E.2d 452, rehearing denied. Infants 1890; Infants 1917

Termination of father’s parental rights was in daughter’s best interest, where father did not even attempt to fulfill his parental duties of support and visitation until he sought paternity testing and custody or visitation nine months after daughter was born, father’s work history and criminal record evinced a high level of instability and immaturity inherently contrary to daughter’s best interest, father was consciously indifferent to daughter’s rights and emotional needs, mother and her fiance had established a solid relationship with daughter and fiance wished to adopt daughter, and mother had consistently and appropriately fostered stability for daughter since her birth. Doe v. Roe (S.C. 2010) 386 S.C. 624, 690 S.E.2d 573. Infants 1902; Infants 1911; Infants 2009; Infants 2011

Decision to terminate father’s parental rights to 19‑month‑old daughter was not premature, where statutory requirements for grounds had been met, guardian ad litem had been appointed, extensive discovery had been done, a full adversarial hearing was held, and the record was sufficient for a best interest of the child determination. Doe v. Roe (S.C. 2010) 386 S.C. 624, 690 S.E.2d 573. Infants 2061

If the family court finds that a statutory ground for termination of parental rights has been proven, it must then find that the best interests of the child would be served by termination of parental rights. South Carolina Dept. of Social Services v. Janice C. (S.C.App. 2009) 383 S.C. 221, 678 S.E.2d 463. Infants 2108

Evidence did not support finding that termination of mother’s parental rights was in children’s best interest; mother was making progress toward completing her treatment plan, she loved her children, there was no harm in allowing children to remain in their current placement, which would enable visitation between mother and children to continue, record was devoid of any evidence that suitable adoptive parents were identified, termination would not provide future stability for children, and termination was premature based on record before court. South Carolina Dept. of Social Services v. Janice C. (S.C.App. 2009) 383 S.C. 221, 678 S.E.2d 463. Infants 1902

Termination of parental rights of father, as to child born out of wedlock, was not in the child’s best interest; there was no indication that terminating father’s rights would ensure future stability for child or that keeping father’s parental rights intact would disrupt child’s current living situation, but keeping father’s parental rights intact would allow father to establish a relationship with child and to provide emotional and financial support, which father was willing and capable to provide. Doe v. Roe (S.C.App. 2008) 379 S.C. 291, 665 S.E.2d 182, rehearing denied, certiorari granted, reversed 386 S.C. 624, 690 S.E.2d 573. Infants 1890

In a termination of parental rights action, the best interest of the child is the paramount consideration. South Carolina Dept. of Social Services v. Roe (S.C.App. 2006) 371 S.C. 450, 639 S.E.2d 165. Infants 1886

Termination of father’s parental rights was not in child’s best interests; child currently resided in a therapeutic foster home with his sister, there was no assurance children would remain together or even at same foster home, child’s foster parents had not expressed an interest in adopting him and thus terminating father’s parental rights would not ensure future stability for child, keeping father’s parental rights intact would not disrupt child’s current living situation, and father’s efforts to maintain a relationship with child had been extraordinary. Charleston County Dept. of Social Services v. Jackson (S.C.App. 2006) 368 S.C. 87, 627 S.E.2d 765. Infants 1890; Infants 1891; Infants 1894

It is the child’s perspective, and not the parent’s, with which courts are concerned when determining whether statutory ground for termination of parental rights has been met requiring that child has been in foster care for fifteen of the last twenty‑two months. Charleston County Dept. of Social Services v. Jackson (S.C.App. 2006) 368 S.C. 87, 627 S.E.2d 765. Infants 1881

In a termination of parental rights case, the best interests of the children are the paramount consideration. South Carolina Dept. of Social Services v. Parker (S.C.App. 1999) 336 S.C. 248, 519 S.E.2d 351, rehearing denied. Infants 1886

Evidence supported finding that adoption by foster parents after termination of mother’s parental rights was in children’s best interests; children had lived with foster parents for seven years, foster parents had provided stable, caring home for children, and mental health professionals who evaluated mother, her husband, and children, believed adoption by foster parents was best choice for children, as did children’s guardian ad litem. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 2221

5. Remedying conditions leading to removal

Termination of parental rights on ground that the child has been removed from the parent, has been out of the home for a period of six months, and parent has not remedied conditions that led to removal, does not suggest that an attempt to remedy alone is adequate to preserve parental rights; rather the attempt must have, in fact, remedied the conditions. Department of Social Services v. Phillips (S.C.App. 2005) 365 S.C. 572, 618 S.E.2d 922, rehearing denied. Infants 2021

Clear and convincing evidence supported order terminating mother’s parental rights based on physical neglect and the unlikelihood that mother’s home could be made safe within 12 months; children were removed due to mother’s failure to provide them with adequate shelter, mother lived in seven residences since removal of the children, the Department of Social Services presented evidence that three of mother’s residences, including the residence where mother resided at the time of the termination hearing, were inadequate for children, and the children had been out of mother’s care for over two years. South Carolina Dept. of Social Services v. Sims (S.C.App. 2004) 359 S.C. 601, 598 S.E.2d 303. Infants 1946; Infants 2045

Evidence that mother admitted using cocaine shortly before child’s birth, tested positive for cocaine three times after child’s birth, refused or did not make herself available for drug testing seven other times, and enrolled in five drug abuse counseling courses but failed to complete one was sufficient to support finding that mother failed to correct the conditions that warranted the initial removal of the child, in proceeding to terminate her parental rights. South Carolina Dept. of Social Services v. Cummings (S.C.App. 2001) 345 S.C. 288, 547 S.E.2d 506, rehearing denied. Infants 2169(8)

In order for the Department of Social Services (DSS) to successfully pursue a termination of parental rights action based upon a parent’s failure to remedy the conditions that caused the children’s removal, those reasons for removal must have been found to be viable. South Carolina Dept. of Social Services v. Lail (S.C.App. 1999) 335 S.C. 284, 516 S.E.2d 463. Infants 2045

Mother’s parental rights to her twin daughters could not be terminated based on her alleged failure to remedy conditions that caused their removal, where children were removed from home based on unfounded charges of sexual abuse and neglect and dismissed charges of abandonment of their sister. South Carolina Dept. of Social Services v. Lail (S.C.App. 1999) 335 S.C. 284, 516 S.E.2d 463. Infants 2045; Infants 2092

Evidence supported termination of mother’s parental rights on ground that children had been out of home for six months and mother had not remedied conditions which caused their removal; Department of Social Services (DSS) developed at least 12 treatment plans, and its primary goal for some two years was to reunite family, but mother repeatedly refused to sign treatment plans, attend counseling to address her personality disorder, pay support, or even sign release forms for DSS to obtain information from mental health professionals who examined her. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 2032; Infants 2038; Infants 2041

Clear and convincing evidence supported the finding of the trial court, in an action to terminate parental rights, that a mother failed to remedy the conditions which caused the removal of the child where (1) the child was originally removed from the home due to the mother’s mental condition, and (2) efforts to provide appropriate rehabilitative services to the mother were reasonable and meaningful but the mother failed to comply with the treatment plan, resulting in periodic hospital confinements; thus, the mother had shown that she could not provide a suitable environment or minimally acceptable care for the child. South Carolina Dept. of Social Services v. Broome (S.C. 1992) 307 S.C. 48, 413 S.E.2d 835.

Under Section 20‑7‑1572(2), the Department of Social Services (DSS), has essentially 3 responsibilities. First, DSS must identify the condition that led to the removal of the child. Second, DSS must identify appropriate rehabilitative services, and third, DSS must make a meaningful offer of those services. However, DSS is not responsible for insuring successful outcomes. McCutcheon v. Charleston County Dept. of Social Services (S.C.App. 1990) 302 S.C. 338, 396 S.E.2d 115.

Under Section 20‑7‑1572, an attempt to remedy conditions which caused the removal of a child from a parent is not adequate to preserve parental rights. Rather, the attempt must have in fact remedied the conditions. Department of Social Services v. Pritchett (S.C.App. 1988) 296 S.C. 517, 374 S.E.2d 500, certiorari denied 298 S.C. 313, 380 S.E.2d 430.

Family Court properly terminated parental rights of mother under evidence showing that the conditions which caused her children’s removal had not been remedied and further that she could not provide them with minimally acceptable care. South Carolina Dept. of Social Services v. O’Banner (S.C.App. 1987) 291 S.C. 253, 353 S.E.2d 151.

6. Treatment plan

Department of Social Services (DSS) was not required to offer father treatment plan prior to parental rights termination; father never had custody of child and always maintained that he could not provide home for child, father did not begin visiting and supporting child until she was in foster care, and offering father treatment plan to reunite father with child would have been futile because father told DSS he was unable to accept custody of child because he did not have his own home. South Carolina Dept. of Social Services v. Janice C. (S.C.App. 2009) 383 S.C. 221, 678 S.E.2d 463. Infants 2030

Existence of the Americans with Disabilities Act (ADA) does not prevent termination of parental rights (TPR) when it is in the child’s best interest and Department of Social Services (DSS) makes reasonable efforts to remedy any conditions leading to the child’s removal. South Carolina Dept. of Social Services v. Mother ex rel. Minor Child (S.C.App. 2007) 375 S.C. 276, 651 S.E.2d 622. Civil Rights 1057; Infants 1911

Satisfaction of statutory elements for termination of mother’s parental rights did not arise from alleged failure of Department of Social Services (DSS) to listen to its experts; reasons for termination of parental rights were interconnected and stemmed from mother’s dependency problems and mild mental retardation, mother failed to address mental disorders despite availability of counseling through DSS, mother failed to make appointments for treatment, and mother failed to take medications that were suggested by doctor. South Carolina Dept. of Social Services v. Mother ex rel. Minor Child (S.C.App. 2007) 375 S.C. 276, 651 S.E.2d 622. Infants 2024

Failure to comply with Department of Social Services (DSS) treatment plans is not one of the statutory grounds for termination of parental rights. South Carolina Dept. of Social Services v. Lail (S.C.App. 1999) 335 S.C. 284, 516 S.E.2d 463. Infants 2038

Evidence supported termination of mother’s parental rights on ground that children had been out of home for six months and mother had not remedied conditions which caused their removal; Department of Social Services (DSS) developed at least 12 treatment plans, and its primary goal for some two years was to reunite family, but mother repeatedly refused to sign treatment plans, attend counseling to address her personality disorder, pay support, or even sign release forms for DSS to obtain information from mental health professionals who examined her. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 2032; Infants 2038; Infants 2041

7. Abuse and injury

Repeatedly dunking seven‑year‑old child in icy bath water constitutes “physical injury” within meaning of child abuse statutes because it temporarily impairs child’s ability to breathe and, if it continued, would drown child. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 1963

Evidence supported termination of mother’s parental rights on ground of severe and repetitious abuse; law enforcement officers found one child frightened, dripping wet, and bruised when they were called to mother’s home, officer testified that mother admitted she had dunked child in icy bath water to “punish” him, three clinical psychologists, psychiatrist, and professional counselor testified they believed children had been physically abused, children were extremely anxious about life generally, they were frightened and angry when mother visited them, and they did not want to return home. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 1963

Evidence supported family court’s finding that child’s hearsay statements to psychologist about sexual abuse were sufficiently trustworthy and credible to be admissible in proceedings to terminate mother’s parental rights for abuse and neglect; family court found that psychologist was credible witness, that statements attributable to child were not coached, that child’s description of sexual abuse represented graphic, detailed account beyond a child of his age, knowledge and experience, and that description demonstrated personal knowledge of abuse. Richland County Dept. of Social Services v. Earles (S.C. 1998) 330 S.C. 24, 496 S.E.2d 864. Infants 2146(8)

The plaintiffs failed to prove by clear and convincing evidence that the severity or repetition of abuse or neglect made it reasonably unlikely the home could be made safe within 12 months where no independent evidence was introduced to show that the alleged bruising of the child was a result of physical abuse. Greenville County Dept. of Social Services v. Bowes (S.C. 1993) 313 S.C. 188, 437 S.E.2d 107, rehearing denied.

8. Determining wilfulness

Conduct of a parent which evinces a settled purpose to forego parental duties may fairly be characterized as “willful,” within meaning of statute governing termination of parental rights, because it manifests a conscious indifference to the rights of the child to receive support and consortium from the parent. South Carolina Dept. of Social Services v. M.R.C.L. (S.C. 2011) 393 S.C. 387, 712 S.E.2d 452, rehearing denied. Infants 2003; Infants 2014

While the trial judge is given wide discretion in making a determination in a parental rights termination proceeding as to whether parent’s failure to visit or support children was willful, the element of willfulness must be established by clear and convincing evidence. South Carolina Dept. of Social Services v. M.R.C.L. (S.C. 2011) 393 S.C. 387, 712 S.E.2d 452, rehearing denied. Infants 2011; Infants 2161

Whether parent’s failure to visit or support a child is “willful” within meaning of statute governing termination of parental rights is question of intent to be determined in each case from all facts and circumstances, and trial judge is given wide discretion in making determination. South Carolina Dept. of Social Services v. M.R.C.L. (S.C. 2011) 393 S.C. 387, 712 S.E.2d 452, rehearing denied. Infants 2011; Infants 2014; Infants 2106

Evidence in termination of parental rights action clearly and convincingly supported finding that father willfully failed to visit and support daughter for over six months, where father was on notice from DNA testing of mother’s fiance that he was daughter’s biological father, yet failed to take legal action until nine months later, father’s brief and few contacts in the interim were with mother only, and father never requested visitation with daughter and never sent any financial support. Doe v. Roe (S.C. 2010) 386 S.C. 624, 690 S.E.2d 573. Infants 2009; Infants 2011

The mere fact that father was unable to find a suitable adoptive resource did not necessarily mean that father wilfully failed to visit or support child so as to warrant termination of his parental rights. Charleston County Dept. of Social Services v. Jackson (S.C.App. 2006) 368 S.C. 87, 627 S.E.2d 765. Infants 2011; Infants 2014

Whether a parent has wilfully failed to visit or support his or her child, so as to warrant termination of parental rights, is a question of intent to be determined from the facts and circumstances of each individual case, and family court has wide discretion to make this determination, but the element of wilfulness must be established by clear and convincing evidence. Charleston County Dept. of Social Services v. Jackson (S.C.App. 2006) 368 S.C. 87, 627 S.E.2d 765. Infants 2001; Infants 2106; Infants 2161

“Wilful conduct” is conduct that evinces a settled purpose to forego parental duties because it manifests a conscious indifference to the rights of the child to receive support and consortium from the parent, for purposes of statute providing that family court can terminate parental rights when termination is in the best interest of the child and the child has lived outside the home of either parent for a period of six months and during that time the parent has either “wilfully” failed to visit the child or “wilfully” failed to support the child. Charleston County Dept. of Social Services v. Jackson (S.C.App. 2006) 368 S.C. 87, 627 S.E.2d 765. Infants 2011; Infants 2014

Conduct of a parent which evinces a settled purpose to forego parental duties may fairly be characterized as “wilful” within meaning of statute governing termination of parental rights because it manifests a conscious indifference to the rights of the child to receive support and consortium from the parent. South Carolina Dept. of Social Services v. Seegars (S.C. 2006) 367 S.C. 623, 627 S.E.2d 718, rehearing denied. Infants 2006

Parental conduct which evinces a settled purpose to forego parental duties may be characterized as “wilful” because it manifests a conscious indifference to the rights of the child to receive support and consortium from the parent. South Carolina Dept. of Social Services v. Robin Headden (S.C. 2003) 354 S.C. 602, 582 S.E.2d 419. Infants 2001

Whether a parent’s failure to visit or support a child is “wilful” within the meaning of termination of parental rights statute is a question of intent to be determined from all the facts and circumstances in each case. South Carolina Dept. of Social Services v. Smith (S.C.App. 2000) 343 S.C. 129, 538 S.E.2d 285, rehearing denied. Infants 2106

Whether parent’s failure to visit or support child is “wilful,” within meaning of termination of parental rights statute, is a question of intent to be determined from all the facts and circumstances in each case, and trial judge is given wide discretion in making this determination. South Carolina Dept. of Social Services v. Parker (S.C.App. 1999) 336 S.C. 248, 519 S.E.2d 351, rehearing denied. Infants 2011; Infants 2014

Element of wilfulness must be established by clear and convincing evidence for purposes of statute providing for termination of parental rights where parent has wilfully failed to visit or support the child. South Carolina Dept. of Social Services v. Parker (S.C.App. 1999) 336 S.C. 248, 519 S.E.2d 351, rehearing denied. Infants 2161

Parent’s conduct which evinces a settled purpose to forego parental duties may fairly be characterized as “wilful,” for purposes of termination of parental rights statute, because it manifests a conscious indifference to the rights of the child to receive support and consortium from the parent. South Carolina Dept. of Social Services v. Parker (S.C.App. 1999) 336 S.C. 248, 519 S.E.2d 351, rehearing denied. Infants 2133; Infants 2169(13)

Whether a parent’s failure to visit or support a child is “wilful,” so as to warrant termination of parental rights, is a question of intent to be determined in each case from all the facts and circumstances. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 2011; Infants 2014

In a parental rights termination case based upon the parent’s failure to visit or support a child, the family court is given wide discretion in determining whether there is clear and convincing evidence that such failure is “wilful.” Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 2410

Before parental rights may be severed, the wilful failure to support a child after being requested to do so by the child’s guardian must be established by clear and convincing evidence. Boyer v. Boyer (S.C.App. 1987) 291 S.C. 183, 352 S.E.2d 514. Infants 2014; Infants 2157

9. Wilful failure to support

Foster parents did not prove, by clear and convincing evidence, that father willfully failed to support child, which would have been ground for terminating his parental rights; father told grandmother to stop sending $50 per month to his prison account and instead use it to support child, father effectively spent $40‑50 per month to support child for over one year, and these actions by father and grandmother showed a strong desire by father to support child and, at a minimum, refuted any assertion that father’s conduct evinced a settled purpose to forego his parental duties, and this conduct was sufficient to cure any earlier willful failure to support by father, and father was not under a court order to provide support, and the foster parents never requested any support from father. South Carolina Department of Social Services v. Smith (S.C.App. 2017) 419 S.C. 301, 797 S.E.2d 740. Infants 2011

Father did not willfully fail to support minor child so as to support termination of father’s parental rights; father testified that he had no income while incarcerated, had no job for some time when released, and that he tried to support the child once he did have gainful employment but was unaware of the location of the child or even how to pay any support to the county department of social services (DSS), and, once a court order was in place for father to pay support for the child, he immediately paid on time and was never in arrears. Charleston County Dept. of Social Services v. Marccuci (S.C. 2011) 396 S.C. 218, 721 S.E.2d 768. Infants 2014; Infants 2042; Infants 2049

Department of Social Services (DSS) established by clear and convincing evidence that mother willfully failed to support child, as would justify termination of parental rights; mother’s failure to increase her chances of finding employment by taking advantage of vocational rehabilitation program or undertaking an effort to earn her high school degree manifested her indifference to child and her intention to forego parental responsibilities, and there was evidence mother had means to provide child with some financial support, but chose to spend that money on other items. South Carolina Dept. of Social Services v. M.R.C.L. (S.C. 2011) 393 S.C. 387, 712 S.E.2d 452, rehearing denied. Infants 2014

Evidence was insufficient to establish that mother willfully failed to support child, in termination of parental rights proceeding; mother had no income of her own, as her family’s income came from father’s social security disability benefits, and yet she provided child with some necessities during her visits. South Carolina Dept. of Social Services v. M.R.C.L. (S.C.App. 2010) 390 S.C. 329, 701 S.E.2d 757, rehearing denied, reversed 393 S.C. 387, 712 S.E.2d 452. Infants 2014

Evidence in termination of parental rights action did not support trial court’s finding that father wilfully failed to visit or support child; Department of Social Services conducted case as if father did not exist, Department took more than two years to file a complaint seeking to terminate father’s parental rights to child, and, during this interim, father discovered, after four years of searching, that Department had custody of child, father contacted Department as result of his extraordinary efforts to locate child, and father could not communicate with child because Department would not allow him to contact child. Charleston County Dept. of Social Services v. Jackson (S.C.App. 2006) 368 S.C. 87, 627 S.E.2d 765. Infants 2011; Infants 2014

Clear and convincing evidence supported trial court’s finding that mother wilfully failed to support children or make any material contribution to their care for a period in excess of six months, as would support termination of her parental rights; in 11 months, mother made two partial child support payments totaling $70.00, mother owed $3,054.80 in child support on date of hearing, and mother’s failure to pay court‑ordered child support or give reasonable excuse for her failure to pay manifested conscious indifference to rights of children to receive support. South Carolina Dept. of Social Services v. Seegars (S.C. 2006) 367 S.C. 623, 627 S.E.2d 718, rehearing denied. Infants 2014

Whether a parent’s failure to support a child is “wilful” within the meaning of statute governing termination of parental rights is a question of intent to be determined in each case from all the facts and circumstances. South Carolina Dept. of Social Services v. Seegars (S.C. 2006) 367 S.C. 623, 627 S.E.2d 718, rehearing denied. Infants 2014

Evidence that child’s custodians controlled money from rents in which child’s incarcerated father had interest, that child’s custodians never sought support from child’s father, and that child had estate valued at $500,000 did not demonstrate that father’s failure to support child was other than wilful, within scope of “failure to support” section of termination of parental rights (TPR) statute, where custodians’ use of rent money was limited to maintenance of rental properties, child’s estate was not accessible, father’s child support obligation could not be satisfied from estate funds, father had access to other funds while incarcerated, and custodians were not required to seek support. Stinecipher v. Ballington (S.C.App. 2005) 366 S.C. 92, 620 S.E.2d 93. Infants 2014

Clear and convincing evidence supported the family court’s finding of mother’s wilful failure to support child, for purposes of determining whether termination of parental rights was proper; record indicated mother made some child support payments after she was initially ordered to do so, then inexplicably quit for a period of 16 months, and, although she had caught up with her payments by time of termination of parental rights (TPR) hearing, family court was able to look beyond months immediately preceding TPR action at mother’s overall conduct. South Carolina Dept. of Social Services v. Robin Headden (S.C. 2003) 354 S.C. 602, 582 S.E.2d 419. Infants 2014

Father’s failure to pay child support in addition to children’s social security benefits during six month span following separation with mother did not amount to wilful failure to support children, as to determine whether father made material contribution to children’s care for purpose of terminating his parental rights; father was in process of applying for his social security benefits and was disabled during that period, children’s social security benefits totalled $424 per month, only $60 short of amount of father’s support obligation under child support guidelines, and even though father could be ordered to contribute to child support in excess of children’s social security benefits, family court did not address issue. Hardy v. Gunter (S.C.App. 2003) 353 S.C. 128, 577 S.E.2d 231. Infants 2014

Evidence that mother made only one child support payment of $15 during 14 months was sufficient to support family court’s finding that mother wilfully failed to support child, despite evidence that mother paid the majority of the child support arrearages the day of the termination of parental rights hearing. South Carolina Dept. of Social Services v. Cummings (S.C.App. 2001) 345 S.C. 288, 547 S.E.2d 506, rehearing denied. Infants 2169(13)

Evidence supported finding, in termination of parental rights proceeding, that parent wilfully failed to support children, despite parent’s contention that she was unable to obtain employment because of increased epileptic seizure activity, as parent continued to drink alcohol despite its contraindication for her seizure medicine and failed to show that she was unable to obtain employment outside food service industry. South Carolina Dept. of Social Services v. Smith (S.C.App. 2000) 343 S.C. 129, 538 S.E.2d 285, rehearing denied. Infants 2169(13)

Termination of parental rights statute does not require parent to be “notified” of his duty to support or visit child before failure to discharge those duties may serve as grounds for termination. South Carolina Dept. of Social Services v. Parker (S.C.App. 1999) 336 S.C. 248, 519 S.E.2d 351, rehearing denied. Infants 2011; Infants 2014

Mother’s parental rights to her twin daughters could not be terminated based on her wilful failure to pay child support, where mother gave spending money directly to children prior to request for support made by the Department of Social Services (DSS), mother paid support faithfully after being formally ordered to pay a set amount of support, and mother paid at least $100 to DSS for support in advance of being ordered to do so. South Carolina Dept. of Social Services v. Lail (S.C.App. 1999) 335 S.C. 284, 516 S.E.2d 463. Infants 2014

Although the request for support need not assume a particular form, before parental rights may be severed, the wilful failure to support after being requested to do so by the child’s custodian must be established by clear and convincing evidence. South Carolina Dept. of Social Services v. Lail (S.C.App. 1999) 335 S.C. 284, 516 S.E.2d 463. Infants 2014; Infants 2157

Evidence supported termination of mother’s parental rights on ground that she failed to pay child support or materially contribute to children’s care for multiple six‑month periods during five years they were in foster care; mother admitted that she knew she was required to pay $174 per month in child support, she could have worked and paid child support, or, if she could not pay $174 per month, she could have asked court to reduce that amount or at least materially contributed in some way to her children’s support, but instead, she did nothing. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 2014

Clear and convincing evidence supported the finding of the trial court, in an action to terminate parental rights, that a mother’s failure to pay child support was wilful, where the Social Security Administration forwarded a portion of the mother’s benefits for the child support and the mother testified that she believed these payments comprised her share, but less than half of the child support obligation was actually paid and the mother attended only 35 of her 94 scheduled visits with her child. South Carolina Dept. of Social Services v. Broome (S.C. 1992) 307 S.C. 48, 413 S.E.2d 835.

The request to the parent for support of the child by the child’s guardian need not assume a particular form to satisfy Section 20‑7‑1572(4)’s requirements. Boyer v. Boyer (S.C.App. 1987) 291 S.C. 183, 352 S.E.2d 514.

Father’s parental rights were properly terminated, where the record contained clear and convincing evidence that the father had wilfully failed to support his children for over 6 months after having been requested by their guardian to support them. Boyer v. Boyer (S.C.App. 1987) 291 S.C. 183, 352 S.E.2d 514.

Failure to contribute to support of child was of little weight in establishing abandonment under record from which it was clearly inferable that ex‑wife and second husband did not want father to contribute to support of child or to have any contact with him. D’Augustine v. Bush (S.C. 1977) 269 S.C. 342, 237 S.E.2d 384.

10. Wilful failure to visit

Foster parents did not prove, by clear and convincing evidence, that father willfully failed to visit child, which would have been ground for terminating his parental rights; father voluntarily started his prison term early so he could complete the sentence as soon as possible, he sent a letter to caseworker expressing his desire to visit child, he asked for foster parents’ telephone number so he could call child, and he voluntarily signed an affidavit acknowledging paternity, and foster parents’ zealous pursuit of this litigation prevented, at least to some degree, father’s ability to visit and communicate with child. South Carolina Department of Social Services v. Smith (S.C.App. 2017) 419 S.C. 301, 797 S.E.2d 740. Infants 2001

Father’s lawless conduct was not highly probative of willfulness for purposes of statute authorizing termination of parental rights if parent willfully fails to visit child; father committed his criminal actions prior to mother becoming pregnant, and he surrendered after learning of the pregnancy so that he could begin his sentence immediately. South Carolina Department of Social Services v. Smith (S.C.App. 2017) 419 S.C. 301, 797 S.E.2d 740. Infants 1881; Infants 2157

Father did not willfully fail to visit minor child so as to support termination of father’s parental rights; mere fact that father did not seek to have rescinded an order that prevented any contact with the child did not demonstrate any willful failure to visit on his part, and father spent 18 months fighting for custody of the child. Charleston County Dept. of Social Services v. Marccuci (S.C. 2011) 396 S.C. 218, 721 S.E.2d 768. Infants 2011; Infants 2048

Evidence was insufficient to establish that mother willfully failed to visit child, in termination of parental rights proceeding; mother visited child an average of once per month, there was no evidence of how many visits were scheduled, how many scheduled visits mother missed, or how much time elapsed between visits, and there was no evidence of how long the visits lasted. South Carolina Dept. of Social Services v. M.R.C.L. (S.C.App. 2010) 390 S.C. 329, 701 S.E.2d 757, rehearing denied, reversed 393 S.C. 387, 712 S.E.2d 452. Infants 2011

Mother’s failure to visit child was wilful, for purposes of determining whether termination of parental rights was proper; record indicated that mother visited child only once in the four and one‑half years child was in custody of Department of Social Services (DSS), that mother sent only one letter in that time, that there was no indication that mother attempted to call or stay in touch with child, and that mother voluntarily moved to another state. South Carolina Dept. of Social Services v. Robin Headden (S.C. 2003) 354 S.C. 602, 582 S.E.2d 419. Infants 2011

The family court is not limited to considering the months immediately preceding termination of parental rights (TPR) in determining whether a parent has wilfully failed to visit; to the contrary, the family court may consider all relevant conduct by the parent. South Carolina Dept. of Social Services v. Robin Headden (S.C. 2003) 354 S.C. 602, 582 S.E.2d 419. Infants 2011

Father’s failure to visit children during six month span following separation with mother did not amount to wilful failure to visit children, for purpose of making termination of parental rights determination, given that father complied with family court’s order in initial divorce decree holding the issue of visitation in abeyance pending father obtaining psychological evaluation and guardian ad litem providing court with recommendation as to visitation; while it was alleged by mother and stepfather that father’s failure to request hearing on visitation following psychological evaluation constituted election not to visit children, guardian declined to make recommendation following evaluation, and thus father was effectively enjoined from visiting children. Hardy v. Gunter (S.C.App. 2003) 353 S.C. 128, 577 S.E.2d 231. Infants 2011

Termination of parental rights statute did not limit termination of parental rights for failure to support or visit the child to situations where child was out of parents’ home for reasons other than removal by Department of Social Services. South Carolina Dept. of Social Services v. Smith (S.C.App. 2000) 343 S.C. 129, 538 S.E.2d 285, rehearing denied. Infants 2011; Infants 2014

A father’s defiant refusal to meet reasonable conditions placed on his right to visit his child was tantamount to an election not to visit the child for purposes of terminating his parental rights pursuant to Section 20‑7‑1572(3). Matter of M. (S.C.App. 1993) 312 S.C. 248, 439 S.E.2d 857, rehearing denied.

A father’s parental rights could not be terminated on the grounds that he failed to visit his son within the last 6 months and therefore abandoned him where the father had not been permitted to see his son for 3 of those 6 months. Hopkins v. South Carolina Dept. of Social Services (S.C. 1993) 313 S.C. 322, 437 S.E.2d 542, rehearing denied.

The family court properly refused to terminate the parental rights of a father whose son was placed in a foster home where the father was not responsible for the son’s placement into a foster home and the father made admirable efforts to have contact with his son, even though the son and his foster parents had a strong bond. Hopkins v. South Carolina Dept. of Social Services (S.C. 1993) 313 S.C. 322, 437 S.E.2d 542, rehearing denied.

A father’s visitations within the 6‑month period relied on by the Family Court to terminate his parental rights pursuant to Section 20‑7‑1572 were not “incidental” where his visitation privileges were not dependent solely on his own desires, but were allowed only by coordination with the mother, and thus were limited by her whims. Horton v. Vaughn (S.C.App. 1992) 309 S.C. 383, 423 S.E.2d 543, rehearing denied, certiorari denied.

Although a mother’s poor financial circumstances might have partially explained her failure to visit her children even once in 5 years, her failure to visit was “wilful” within the meaning of Section 20‑7‑1572 where, after surrendering the children to her brother and his wife in 1980 due to her inability to support them, she never visited them, never mailed a card or letter to them, seldom telephoned, never attempted to provide even nominal amounts of money to help with the children’s support, and never requested visitation or custody until her brother and his wife petitioned to adopt the children. Leone v. Dilullo (S.C.App. 1988) 294 S.C. 410, 365 S.E.2d 39.

Order terminating mother’s parental rights and allowing step‑mother to adopt child was reversed where trial court’s finding that mother wilfully failed to visit child was not supported by clear and convincing evidence, and most that could be said was that mother simply despaired of exercising her visitation rights because of father’s conduct in placing strict limitations on her rights to visit daughter. Wilson v. Higgins (S.C.App. 1987) 294 S.C. 300, 363 S.E.2d 911.

Finding of wilful failure to visit child will not be predicated upon parental conduct that can be reasonably explained. Wilson v. Higgins (S.C.App. 1987) 294 S.C. 300, 363 S.E.2d 911. Infants 2011

Father’s consent was necessary for adoption of child by ex wife’s second husband where preponderance of testimony sustained conclusion that father did not wilfully fail to visit and support his child, that father was prevented from doing so by remarriage of mother and her removal of child to New Jersey and Pennsylvania and antagonistic attitudes of respondents made visitation inadvisable if not impossible. D’Augustine v. Bush (S.C. 1977) 269 S.C. 342, 237 S.E.2d 384.

11. Wilful abandonment

Foster parents did not prove, by clear and convincing evidence, that father willfully abandoned child, which would have been ground for terminating his parental rights; when father learned mother was pregnant with child, he had outstanding warrants, and he voluntarily surrendered to the police so he could begin his sentence and be released as soon after child’s birth as possible and avoid having outstanding warrants hanging over his head after child’s birth, and after child’s birth, father voluntarily signed a paternity acknowledgment, and father sent a letter to child’s guardian ad litem (GAL) stating his desire to have a relationship with child and visit with child. South Carolina Department of Social Services v. Smith (S.C.App. 2017) 419 S.C. 301, 797 S.E.2d 740. Infants 2157

Whether a parent’s failure to support a child is “wilful” within the meaning of the statute governing terminating of parental rights is a question of intent to be determined in each case from all the facts and circumstances; conduct of the parent which evinces a settled purpose to forego parental duties may fairly be characterized as “wilful” because it manifests a conscious indifference to the rights of the child to receive support and consortium from the parent. Proctor v. Spires (S.C.App. 2009) 381 S.C. 563, 673 S.E.2d 841, rehearing denied. Infants 2014

Unwed parents abandoned children by leaving children at grandparents’ house and by not returning to retrieve them, and parents’ actions provided ground for terminating their parental rights; mother knew grandparents could not provide for children for extended period of time and she promised to be back in 15 minutes and mother broke this promise by embarking on course of illegal behavior that took longer than 15 minutes, and when parents finally did call and were told children had been taken into emergency protective custody, neither made effort to regain custody, and instead, parents proceeded to spend the next two months living in hotel rooms and using crack cocaine. South Carolina Dept. of Social Services v. Truitt (S.C.App. 2004) 361 S.C. 272, 603 S.E.2d 867. Infants 2008; Infants 2009

Parental conduct which evinces a settled purpose to forego parental duties may fairly be characterized as “wilful,” within statute defining “abandonment” for terminating parental rights as when parent or guardian wilfully deserts or surrenders child without making adequate arrangements, because such conduct manifests a conscious indifference to the rights of the child to receive support and consortium from the parent. South Carolina Dept. of Social Services v. Truitt (S.C.App. 2004) 361 S.C. 272, 603 S.E.2d 867. Infants 2008

Sufficient evidence supported trial court’s finding that father effectively abandoned daughter, for purposes of determining whether termination of parental rights (TPR) was proper; father admitted he only attempted to locate his daughter one time and that his effort ended when prison officials were unhelpful, even after learning daughter was in custody of Department of Social Services (DSS), father made no attempt to inquire about her health and wellbeing, and did not make arrangements for his child’s care, and thus, father failed to take necessary steps to assure that there was continuing care for daughter while he was incarcerated. South Carolina Dept. of Social Services v. Ledford (S.C.App. 2004) 357 S.C. 371, 593 S.E.2d 175. Infants 2005; Infants 2015

Generally, a family court is given wide discretion in making determination of whether’s a parent’s abandonment of child is wilful, as required to terminate parental rights; however, the element of wilfulness must be established by clear and convincing evidence. South Carolina Dept. of Social Services v. Ledford (S.C.App. 2004) 357 S.C. 371, 593 S.E.2d 175. Infants 2001; Infants 2161

The evidence was sufficient to support a termination of parental rights where the child was originally removed from the parents’ custody because she was left, uninvited, with relatives for days or weeks at a time and the parents would not disclose their whereabouts during these periods, a court order pursuant to a hearing on the Department of Social Service’s petition for custody of the child required the parents to attend and successfully complete Parent Effectiveness Training (PET) classes and “find and maintain suitable living arrangements and employment,” and the parents failed to secure stable housing or employment though they did complete PET classes and counseling. McCutcheon v. Charleston County Dept. of Social Services (S.C.App. 1990) 302 S.C. 338, 396 S.E.2d 115.

The evidence was sufficient to support a finding that a mother, who sought to vacate an order terminating her parental rights and granting her child’s grandparents’ request for adoption of the child, had abandoned the child, even though the evidence was conflicting as to the mother’s attempt to make contact with the child, where the record reflected that the mother had lived with the grandparents in the past and therefore had sufficient knowledge of their residence to enable her to contact them if she chose, even though their telephone number was unlisted. Cooley v. Cooley (S.C.App. 1988) 296 S.C. 119, 370 S.E.2d 896. Adoption 16; Infants 2189

The evidence was sufficient to support a finding that a mother, who sought to vacate an order terminating her parental rights and granting her child’s grandparents’ request for adoption of the child, had abandoned the child, even though the evidence was conflicting as to the mother’s attempt to make contact with the child, where the record reflected that the mother had lived with the grandparents in the past and therefore had sufficient knowledge of their residence to enable her to contact them if she chose, even though their telephone number was unlisted. Cooley v. Cooley (S.C.App. 1988) 296 S.C. 119, 370 S.E.2d 896. Adoption 16; Infants 2189

If the court finds that abandonment for a period of 6 months has been shown by clear and convincing evidence, the court must then examine the parent’s subsequent conduct to determine whether the abandonment has been cured. Abercrombie v. LaBoon (S.C. 1986) 290 S.C. 35, 348 S.E.2d 170. Infants 2001

While a parent’s curative conduct after initiation of an action for termination of parental rights may be considered by the court on the issue of intent, it must be considered in light of the timeliness of which it occurred, and, rarely would this judicially‑motivated repentance, standing alone, warrant the finding that an abandonment has been cured. Abercrombie v. LaBoon (S.C. 1986) 290 S.C. 35, 348 S.E.2d 170. Infants 2001

Earlier conduct by parent which may have warranted a finding of abandonment may be cured by the parent’s subsequent repentant conduct. Abercrombie v. LaBoon (S.C. 1986) 290 S.C. 35, 348 S.E.2d 170. Infants 2001

Under the definition of “abandoned child” contained in former Section 20‑7‑1570(1), as “a child whose parents have wilfully failed to visit or have wilfully failed to support or make payments toward his support for six consecutive months,” there was sufficient evidence of a wilful failure to support or visit to meet the “clear and convincing” evidence standard required for termination of parental rights where it was undisputed that the biological father failed to visit the child during the six month period prior to the action, and it was also undisputed that he failed to make support payments during that period, despite the fact that he was making monthly payments of $169 on a new truck and on several occasions was approximately two and one‑half hours from his daughter, but made no attempt to see her. Berry v. Ianuario (S.C.App. 1985) 286 S.C. 522, 335 S.E.2d 250.

Under former Section 20‑7‑1570(1), defining “abandoned child,” and former Section 20‑7‑1590, which provided that the court could forever terminate parental rights to an abandoned child, the wilful failure to provide even minimum support was alone sufficient to satisfy the definition of “abandoned child” and to justify the adoption of such a child. Although clear and convincing evidence is necessary to accord a parent due process in terminating his parental rights, reversal is not necessarily required if the trial judge fails to apply this test, since the order of the trial judge may be affirmed where the appellate court can review the record and find clear and convincing evidence supporting termination. Jamison v. Jamison (S.C.App. 1985) 285 S.C. 603, 330 S.E.2d 671.

The description of an abandoned child for purposes of terminating parental rights is found in Section 20‑7‑1572, although the term “abandoned child” is not used in that section. Prior to 1984, the term “abandoned child” was defined in Section 20‑7‑1570. Mann v. Walker (S.C.App. 1985) 285 S.C. 194, 328 S.E.2d 659.

A mother’s parental rights to her minor daughters, aged 10 and 12, would be terminated based on her alleged abandonment of the children where the record indicated that the mother had left her children with a virtual stranger upon entering the military service, she made no effort to contact, support, or regain possession of her children during the statutory six month period and, even though she knew how to contact them, she failed to do so, without justification or excuse. Richberg v. Dawson (S.C. 1982) 278 S.C. 356, 296 S.E.2d 338.

Father who had failed to pay wife $30 per week in child support, pursuant to divorce order, was deemed to have abandoned his child where evidence disclosed that father had at least $4,000 in his checking account and over $3,000 in a savings account and the father made no overt attempt to locate his former wife and daughter. Ginn v. Ginn (S.C. 1982) 278 S.C. 217, 294 S.E.2d 42.

Father’s failure to contribute support payments or to visit child for 11 years meets statutory criteria of abandonment. S. C. Dept. of Social Services v. Parker (S.C. 1980) 275 S.C. 176, 268 S.E.2d 282.

Record supported trial judge determination that child had been abandoned by parents under statutory definition of abandonment, where parents had not achieved necessary degree of personal rehabilitation which would indicate they could either presently or prospectively provide suitable home for child. Richland County Dept. of Social Services v. Hills (S.C. 1977) 269 S.C. 568, 238 S.E.2d 685.

Preponderance of evidence indicated abandonment where mother of child, after executing document of surrender and being permitted to reassume care of child under agreement with children’s bureau allegedly nullifying document of surrender, acquiesced to removal of child from her custody and failed to visit or support child during period in excess of 6 months. Children’s Bureau of South Carolina v. Johnson (S.C. 1977) 269 S.C. 453, 237 S.E.2d 893.

Abandonment imports any conduct on the part of the parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child. It does not include an act or course of conduct which is done through force of circumstances or from dire necessity. Bevis v. Bevis (S.C. 1970) 254 S.C. 345, 175 S.E.2d 398.

12. Incarcerated parent

Failure of child’s custodians to seek support from child’s father, incarcerated for murder of child’s mother, did not relieve father of his duty to support child, for purposes of termination of parental rights (TPR) statute, where custodians were not statutorily required to seek support. Stinecipher v. Ballington (S.C.App. 2005) 366 S.C. 92, 620 S.E.2d 93. Infants 2014

Failure of child’s father, incarcerated for murder of child’s mother, to support child was “wilful,” within scope of “failure to support” section of termination of parental rights (TPR) statute, where father failed to send money to aid in child’s support and, by refusing to relinquish his rights in estate of child’s mother, prevented child from receiving any benefits from such estate. Stinecipher v. Ballington (S.C.App. 2005) 366 S.C. 92, 620 S.E.2d 93. Infants 2014

Incarceration alone is insufficient to justify termination of parental rights. South Carolina Dept. of Social Services v. Ledford (S.C.App. 2004) 357 S.C. 371, 593 S.E.2d 175. Infants 2015

Family court judge’s questioning of father in termination of parental rights (TPR) proceeding was within judge’s discretion; judge questioned father at length about his incarceration and whether he accepted responsibility for his daughter being in foster care, and, although form of judge’s questions was adversarial and number of questions was excessive, foremost danger of judicial questioning, which was tainting of jury, was not present since judge was fact‑finder at hearing, and questioning did not adversely affect outcome of proceedings. South Carolina Dept. of Social Services v. Ledford (S.C.App. 2004) 357 S.C. 371, 593 S.E.2d 175. Infants 2104

The voluntary pursuit of lawless behavior is one factor which may be considered when determining whether to terminate the parental rights of an incarcerated parent, but it generally is not determinative. South Carolina Dept. of Social Services v. Wilson (S.C.App. 2001) 344 S.C. 332, 543 S.E.2d 580. Infants 2015

In regard to the termination of parental rights of an incarcerated parent, the determination of whether the parent’s failure to support or visit during the time of incarceration evinces a settled purpose to forego parental responsibilities requires a comprehensive analysis of all of the facts and circumstances. South Carolina Dept. of Social Services v. Wilson (S.C.App. 2001) 344 S.C. 332, 543 S.E.2d 580. Infants 2015

Family court should not have terminated parental rights of incarcerated parent to his minor children on alleged ground of his wilful failure to visit his children for a period of six months, where parent repeatedly requested to visit his children, but the children were in custody of the South Carolina Department of Social Services (SCDSS) and it actively prevented visitation. South Carolina Dept. of Social Services v. Wilson (S.C.App. 2001) 344 S.C. 332, 543 S.E.2d 580. Infants 2011

Family court should not have terminated parental rights of incarcerated parent to his minor children on alleged ground of his wilful failure to support his children for a period of six months, where prison policies prevented him from earning any income while incarcerated and he had no other source of income. South Carolina Dept. of Social Services v. Wilson (S.C.App. 2001) 344 S.C. 332, 543 S.E.2d 580. Infants 2014; Infants 2015

In termination of parental rights proceeding, Family Court properly considered father’s criminal misconduct and incarceration in determining whether father had established a reasonable excuse for failing to visit or support child. South Carolina Dept. of Social Services v. Parker (S.C.App. 1999) 336 S.C. 248, 519 S.E.2d 351, rehearing denied. Infants 2015

Because incarcerated father had wilfully failed to visit or support child, termination of father’s parental rights was in child’s best interest; enduring relationship between father and child was not present. South Carolina Dept. of Social Services v. Parker (S.C.App. 1999) 336 S.C. 248, 519 S.E.2d 351, rehearing denied. Infants 2011; Infants 2014; Infants 2015

Father’s voluntary pursuit of lawless conduct, which resulted in his incarceration and limited ability to personally correspond with Department of Social Services (DSS) officials, was not a reasonable explanation for his failure to visit with and support child for purposes of determining whether his parental rights should be terminated. South Carolina Dept. of Social Services v. Parker (S.C.App. 1999) 336 S.C. 248, 519 S.E.2d 351, rehearing denied. Infants 2011; Infants 2014; Infants 2015

Evidence in termination of parental rights proceeding supported Family Court’s finding that incarcerated father wilfully failed to visit and support his child; while father made limited efforts to find child once he learned Department of Social Services (DSS) intended to pursue termination of his rights, there was no evidence that he attempted to visit child, and to extent he experienced difficulty in corresponding with DSS due to his status as inmate, this stemmed from his own actions. South Carolina Dept. of Social Services v. Parker (S.C.App. 1999) 336 S.C. 248, 519 S.E.2d 351, rehearing denied. Infants 2011; Infants 2014

There was sufficient evidence that a father wilfully failed to support his child, warranting termination of his parental rights pursuant to Section 20‑7‑1572, even though the father was incarcerated in a correctional institution, where the father earned from $12.75 to $24.25 every 2 weeks while he was incarcerated, and he agreed to pay $10.00 or $20.00 a month for child support but did not pay anything; the father’s incarceration did not relieve him of his duty to support his child. South Carolina Dept. of Social Services v. Phillips (S.C.App. 1990) 301 S.C. 308, 391 S.E.2d 584.

The termination of a father’s parental rights was in the best interests of the child where the father was imprisoned under a mandatory sentence of 25 to 50 years, the child and her 2 half‑brothers had been removed from the home of their mother and had been living in a foster home for approximately 4 years, and the foster parents wished to adopt the 3 children. South Carolina Dept. of Social Services v. Richardson (S.C.App. 1989) 298 S.C. 130, 378 S.E.2d 601.

A mother’s voluntary pursuit of a course of lawlessness resulting in imprisonment, coupled with her flagrant indifference toward her children during intervening periods of freedom, manifested an abandonment of her children and justified termination of her parental rights. Department of Social Services v. Henry (S.C. 1988) 296 S.C. 507, 374 S.E.2d 298.

13. Mental deficiency

Termination of mother’s parental rights was in best interest of child; mother’s mental deficiency was of such nature and degree that prevented her from effectively parenting child and exercising good judgment, and child had excelled in present placement. South Carolina Dept. of Social Services v. Roe (S.C.App. 2006) 371 S.C. 450, 639 S.E.2d 165. Infants 1894; Infants 1914

When the diagnosable condition alleged as grounds for terminating parental right is mental deficiency, there must be clear and convincing evidence that: (1) the parent has a diagnosed mental deficiency, and (2) this deficiency makes it unlikely that the parent will be able to provide minimally acceptable care of the child. South Carolina Dept. of Social Services v. Roe (S.C.App. 2006) 371 S.C. 450, 639 S.E.2d 165. Infants 1914; Infants 2158

Evidence supported determination that mother’s diagnosed mental deficiency was not likely to change within reasonable time, as grounds for terminating mother’s parental rights; psychiatric expert who initially evaluated mother opined that mother’s personality and behavioral disorders prevented her from functioning as effective parent, psychiatric evaluation conducted two years later by second expert indicated poor prognosis, and expert testified that probability of change and successful intervention was very low, and that mother was “totally lacking in judgment and insight.” South Carolina Dept. of Social Services v. Roe (S.C.App. 2006) 371 S.C. 450, 639 S.E.2d 165. Infants 2024; Infants 2169(15)

Clear and convincing evidence supported trial court’s finding that mother had diagnosable condition of schizotypal personality disorder that was unlikely to change within reasonable time and made it unlikely that she could provide minimally acceptable care for children, as would support termination of her parental rights; evidence showed mother denied severity of condition of child, who had medical problems, had difficulty dealing with practical matters, failed to maintain steady employment, failed to maintain stable home, and failed to establish she had reliable transportation. South Carolina Dept. of Social Services v. Seegars (S.C. 2006) 367 S.C. 623, 627 S.E.2d 718, rehearing denied. Infants 1914

The termination of the parental rights of mildly retarded parents was not supported by clear and convincing evidence where the parents had been accepted into a program for the education of the mentally retarded in parenting skills, family planning, and sexuality, and witnesses testified that the parents could benefit from such a program. South Carolina Dept. of Social Services v. Smith (S.C. 1993) 311 S.C. 426, 429 S.E.2d 807. Infants 2024; Infants 2042; Infants 2158

The trial court properly refused to grant a continuance in an action to terminate parental rights where (1) the mother, who suffered from a mental disorder, did not comply with the treatment plan to stabilize her mental condition and did not contact her court appointed attorney or respond to his attempts to communicate with her, (2) the attorney moved to be relieved as counsel but was denied, and then moved for a continuance on the ground that he had no opportunity to meet with his client and was not adequately prepared to proceed, and (3) the mother claimed that she failed to contact her attorney because she had no transportation or telephone. South Carolina Dept. of Social Services v. Broome (S.C. 1992) 307 S.C. 48, 413 S.E.2d 835.

The family court properly refused to terminate the parental rights of a mother who exhibited bizarre behavior and neglected her 6 month old infant where the child had spent the previous 4 months in a foster home, no clear and convincing evidence was shown of severe or repetitive abuse or neglect of the child which would make it unlikely the mother’s home could be made safe for the child, the mother’s behavior was the result of a situational crisis, and she had attempted to utilize rehabilitation services offered by the Department of Social Services. Shake v. Darlington County Dept. of Social Services (S.C.App. 1991) 306 S.C. 216, 410 S.E.2d 923.

Termination of a mother’s parental rights was supported by clear and convincing evidence where the mother’s mental status was low, she had difficulty caring for herself and was not likely to improve in the future, she was very immature, displayed poor impulse control, had a low frustration level, had difficulty responding to simple statements and directions, had not maintained a stable residence, and could not manage her own finances. Orangeburg County Dept. of Social Services v. Harley (S.C.App. 1990) 302 S.C. 64, 393 S.E.2d 597.

Section 20‑7‑1572(2), which requires an agency which removes a child who was abused or neglected to make a reasonable and meaningful effort to offer appropriate rehabilitative services before pursuing termination of parental rights, is irrelevant where the family court terminates parental rights pursuant to Section 20‑7‑1572(6). Orangeburg County Dept. of Social Services v. Harley (S.C.App. 1990) 302 S.C. 64, 393 S.E.2d 597. Infants 1914; Infants 2032

Notice of a hearing on the termination of a mother’s parental rights satisfied due process as it was reasonably calculated to give the mother knowledge of the proceeding and an opportunity to be heard, in spite of the mother’s argument that she did not receive adequate notice of the hearing considering her limited mental capacity, where the mother was personally served, and the mother’s attorney and a guardian ad litem representing the mother’s interest appeared at the hearing. Orangeburg County Dept. of Social Services v. Harley (S.C.App. 1990) 302 S.C. 64, 393 S.E.2d 597.

A mother was not required to be provided with adequate social and rehabilitative services by the Department of Social Services as required by Section 20‑7‑1572(2) where her parental rights were terminated pursuant to Section 20‑7‑1572(6), which provides that parental rights may be terminated upon a finding that the parent has a diagnosable mental deficiency and that this condition makes the parent unlikely to provide minimally acceptable care of the child. Additionally, the Rehabilitation Act of 1973, 29 USCA Sections 701‑796i, does not mandate that the Department of Social Services provide parental training for mentally deficient parents since the Act was intended to ensure that benefits are not denied based upon a handicap but was not designed to prevent the state from terminating parental rights in an appropriate case based upon mental deficiency of the parent. South Carolina Dept. of Social Services v. Humphreys (S.C.App. 1988) 297 S.C. 118, 374 S.E.2d 922.

14. Drug use

Clear and convincing evidence supported finding that mother failed to correct the conditions that warranted children’s removal from mother, as required to terminate her parental rights; evidence indicated that mother failed to meaningfully address her drug addiction problem over an extended period of time, and mother’s efforts at remaining in counseling and finding employment were spotty and ineffective. Department of Social Services v. Phillips (S.C.App. 2005) 365 S.C. 572, 618 S.E.2d 922, rehearing denied. Infants 2043; Infants 2044

Department of Social Services (DSS) established proper chain of custody for mother’s blood samples that were used for drug testing, as to render evidence admissible at parental rights termination proceeding for purpose of showing a diagnosable drug addiction, even though courier who transported sample from collection site was neither named, nor identified, where every other person who handled blood samples was identified, and DSS presented testimony indicating samples were secured at collection site and arrived at testing facility sealed and intact, and each person involved in actual testing procedure testified as to their handling. South Carolina Dept. of Social Services v. Cochran (S.C. 2005) 364 S.C. 621, 614 S.E.2d 642, rehearing denied. Infants 2152

Evidence was sufficient to establish that mother, with her continued use of cocaine and relationship with abusive husband, failed to remedy problems that warranted removal of her child from home by Department of Social Services (DSS), thus supporting termination of her parental rights; mother admitted that, prior to the termination of parental rights (TPR) hearing, she had been in and out of drug treatment programs on five different occasions and had not attended any drug counseling sessions or treatment programs since the TPR hearing, and mother continued to live with husband despite documented incidents of violence between the spouses and husband’s abuse of child. South Carolina Dept. of Social Services v. Cochran (S.C. 2005) 364 S.C. 621, 614 S.E.2d 642, rehearing denied. Infants 1973; Infants 2043; Infants 2045

Department of Social Services (DSS) failed to establish a proper chain of custody for mother’s blood samples that were used for drug testing, and thus drug test results obtained from samples were not admissible in termination of parental rights proceeding; while employee of laboratory that tested mother’s blood samples testified generally as to who would have handled the samples and how the testing of the samples would have occurred, employee also testified that he did not handle the samples, nor did he know which employee handled the samples. South Carolina Dept. of Social Services v. Cochran (S.C. 2003) 356 S.C. 413, 589 S.E.2d 753. Infants 2152

In an action to terminate parental rights, the trial judge erred in holding that a father’s failure to pay child support was excused by his depression and drug abuse and that the mother’s antagonistic attitude triggered the father’s depression and abuse, where the father’s abuse existed for 9 years prior to the mother’s threat to have him arrested, no evidence showed that he had overcome his abuse problems, the guardian ad litem recommended that his parental rights be terminated, and he claimed that his abuse was in response to the death of a parent; drug or alcohol abuse does not prevent one from formulating a wilful state of mind in failing to pay child support. Dorn v. Criddle (S.C.App. 1991) 306 S.C. 189, 410 S.E.2d 590.

15. Foster care

Valuable contributions of foster parents to the state did not weaken father’s fundamental right to raise child or allow appellate court to lessen foster parents’ burden of proving the existence of a statutory ground for termination of father’s parental rights by clear and convincing evidence. South Carolina Department of Social Services v. Smith (S.C.App. 2017) 419 S.C. 301, 797 S.E.2d 740. Infants 2011

The record established that parents were responsible for significant delays in child dependency case, rather than the Department of Social Services (DSS), and thus termination of parental rights could be based on the fact that the children had resided in foster care for 15 of the last 22 months; at a review hearing it was established that parents had failed to complete the requirements set forth in their placement plan, the plan was extended six months to investigate father’s prior stipulation to committing sexual abuse, after the extension mother had still failed to complete a drug treatment program and father had not obtained adequate housing or employment, and thus the actions of the DSS did not preclude parents from regaining custody of their children prior to the expiration of the 15‑month period. South Carolina Dept. of Social Services v. Sarah W. (S.C. 2013) 402 S.C. 324, 741 S.E.2d 739, rehearing denied, certiorari denied, certiorari denied 134 S.Ct. 313, 187 L.Ed.2d 221. Infants 2008

Much of the delay was attributable to others, and therefore father’s parental rights could not be terminated on ground that minor child had been in foster care for at least 15 out of the previous 22 months, where several continuances of the removal action were ordered, only one of which was requested by father through his guardian, father continued to contest his daughter being in the custody of the county department of social services (DSS) throughout the entire process, despite not being able to appear himself in many instances because he was incarcerated and subject to his probation, and DSS initiated the termination proceedings while the removal action, the very action that would determine whether the child was properly placed into foster care in the first place, was still pending and contested. Charleston County Dept. of Social Services v. Marccuci (S.C. 2011) 396 S.C. 218, 721 S.E.2d 768. Infants 2008; Infants 2047

Evidence was sufficient to support termination of father’s parental rights; child was in foster care for significant amount of time, child never lived with father, father lived with his girlfriend and admitted he could not bring child into that home, father did not maintain relationship with child, and although not outcome determinative, father failed to submit to paternity test. South Carolina Dept. of Social Services v. Janice C. (S.C.App. 2009) 383 S.C. 221, 678 S.E.2d 463. Infants 1902; Infants 2003; Infants 2004

Once child had resided in foster care for fifteen of the last twenty‑two months, regardless of father’s knowledge of child’s whereabouts, statutory ground for termination of parental rights was met. Charleston County Dept. of Social Services v. Jackson (S.C.App. 2006) 368 S.C. 87, 627 S.E.2d 765. Infants 1881

The purpose of the statutory ground allowing for termination if a child has been in foster care for fifteen of the last twenty‑two months is to ensure children do not languish in foster care when termination of parental rights would be in their best interests. Charleston County Dept. of Social Services v. Jackson (S.C.App. 2006) 368 S.C. 87, 627 S.E.2d 765. Infants 1884

Trial court finding that child had been in foster care for 15 months within the most recent 22 month period provided statutory grounds for termination of mother’s parental rights; statute focused on whether child had been in foster care for 15 months, rather than whether 22 months had passed, when finding grounds for termination of parental rights. Doe v. Baby Boy Roe (S.C.App. 2003) 353 S.C. 576, 578 S.E.2d 733, rehearing denied, certiorari denied. Infants 1881

Evidence supported finding that termination of mother’s parental rights was in child’s best interest; child was 29 months old, child had resided with foster mother since birth, behavioral pediatrician testified about the detrimental effect separating child from foster mother would have on child, and department of social services professionals testified about the bonds that child had formed with foster mother and the quality of home life that foster mother was able to provide to child. Doe v. Baby Boy Roe (S.C.App. 2003) 353 S.C. 576, 578 S.E.2d 733, rehearing denied, certiorari denied. Infants 1894

15.5. Sufficiency of evidence

Clear and convincing evidence supported the statutory ground for termination of mother’s parental rights based on the children having been in the State’s care for 15 of the most recent 22 months; the children had been in the custody of the Department of Social Services (DSS) for 22 months, and evidence did not show that the delay was caused by the department. South Carolina Department of Social Services v. Nelson (S.C.App. 2016) 419 S.C. 142, 795 S.E.2d 871. Infants 2008

In seeking to terminate parental rights, Department of Social Services (DSS) presented clear and convincing evidence to prove statutory ground that child had been removed from mother’s home and had been out of home for period of six months following adoption of placement plan, and parent had not remedied conditions that caused removal; evidence indicated that child was removed from mother’s home after child was bruised on hip, legs, and face as result of mother’s discipline, child had significant behavioral problems, mother had mood disorders requiring treatment, mother would not have been able to parent child effectively until mother’s mental conditions were treated, and mother failed to timely complete individual counseling. South Carolina Dept. of Social Services v. Williams (S.C.App. 2015) 412 S.C. 458, 772 S.E.2d 279. Infants 1914; Infants 1927; Infants 2043

Mother’s acts satisfied both the “severity” and “repetition” provisions of the statute authorizing termination of parental rights upon findings that termination is in the best interest of the child and that because of the “severity or repetition” of the abuse or neglect it is not reasonably likely that the home can be made safe within twelve months, and thus termination of parental rights was justified under either provision, where mother had sexual intercourse with her son and daughter, mother was present while her husband raped her daughter, and the abuse occurred multiple times. South Carolina Dept. of Social Services v. Michelle G. (S.C. 2014) 407 S.C. 499, 757 S.E.2d 388. Infants 1964; Infants 1969

Evidence supported finding that mother willfully failed to visit child, a statutory ground for termination of parental rights; mother failed to visit for eight consecutive months, and she visited only 34 times over the 50 months child was in foster care. Broom v. Jennifer J. (S.C. 2013) 403 S.C. 96, 742 S.E.2d 382. Infants 2011

Evidence supported finding that child had been in foster care under the responsibility of the State for 15 of the most recent 22 months, a statutory ground for termination of parental rights; child continuously remained in foster care for a period of four years. Broom v. Jennifer J. (S.C. 2013) 403 S.C. 96, 742 S.E.2d 382. Infants 2008

Clear and convincing evidence supported finding that termination of parental rights was in the best interests of the children; mother failed to make the necessary lifestyle changes to provide them with a safe and stable environment, father admitted that he could not maintain adequate housing or employment, father stipulated to the prior sexual abuse of a child, and mother continued to reside with father and failed to show that she could provide for the children without help from father. South Carolina Dept. of Social Services v. Sarah W. (S.C. 2013) 402 S.C. 324, 741 S.E.2d 739, rehearing denied, certiorari denied, certiorari denied 134 S.Ct. 313, 187 L.Ed.2d 221. Infants 1923; Infants 2044; Infants 2045

16. Review

The Supreme Court’s scope of review of a termination of parental rights does not require the Supreme Court to disregard the findings of the family court, which is in a better position to evaluate the credibility of the witnesses and assign weight to their testimony. South Carolina Dept. of Social Services v. Michelle G. (S.C. 2014) 407 S.C. 499, 757 S.E.2d 388. Infants 2415(1)

A state must prove a case for termination of parental rights by clear and convincing evidence, and, upon review, the Supreme Court is entitled to make its own determination whether the grounds for termination are supported by clear and convincing evidence. South Carolina Dept. of Social Services v. Michelle G. (S.C. 2014) 407 S.C. 499, 757 S.E.2d 388. Infants 2157; Infants 2407

On appeal, pursuant to its de novo standard of review, the Supreme Court can make its own determination from the record of whether the grounds for termination of parental rights are supported by clear and convincing evidence. Broom v. Jennifer J. (S.C. 2013) 403 S.C. 96, 742 S.E.2d 382. Infants 2407

Mother abandoned her appellate argument that the family court erred when it permitted foster parents’ bonding expert to testify during termination of parental rights hearing, where mother failed to support her argument in her appellate brief with any authority. Broom v. Jennifer J. (S.C. 2013) 403 S.C. 96, 742 S.E.2d 382. Infants 2395

Supreme Court, on petition for writ of certiorari after Court of Appeals reversed and remanded on mother’s appeal from termination of parental rights, would decline to address issue of whether Court of Appeals erred in holding Department of Social Services (DSS) did not meet its burden of proving mother willfully failed to visit child, as ground for termination, where rulings of Court of Appeals had not been challenged and were law of the case. South Carolina Dept. of Social Services v. M.R.C.L. (S.C. 2011) 393 S.C. 387, 712 S.E.2d 452, rehearing denied. Infants 2405; Infants 2415(1); Infants 2435

Upon review, the Supreme Court may make its own conclusion from the record as to whether clear and convincing evidence supports the termination of parental rights. South Carolina Dept. of Social Services v. M.R.C.L. (S.C. 2011) 393 S.C. 387, 712 S.E.2d 452, rehearing denied. Infants 2407

Because terminating the legal relationship between natural parents and a child is one of the most difficult issues an appellate court has to decide, great caution must be exercised in reviewing termination proceedings, and termination is proper only when the evidence clearly and convincingly mandates such a result. South Carolina Dept. of Social Services v. Roe (S.C.App. 2006) 371 S.C. 450, 639 S.E.2d 165. Infants 2405; Infants 2415(1)

In reviewing a termination of parental rights, an appellate court is not required to ignore the fact that the family court, who saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony. South Carolina Dept. of Social Services v. Seegars (S.C. 2006) 367 S.C. 623, 627 S.E.2d 718, rehearing denied. Infants 2415(1)

When reviewing the family court decision terminating parental rights, the Supreme Court may make its own conclusion as to whether Department of Social Services (DSS) proved by clear and convincing evidence that parental rights should be terminated. South Carolina Dept. of Social Services v. Seegars (S.C. 2006) 367 S.C. 623, 627 S.E.2d 718, rehearing denied. Infants 2407

When reviewing a family court’s decision to terminate parental rights, the Supreme Court may make its own conclusion as to whether Department of Social Services (DSS) proved by clear and convincing evidence that parental rights should be terminated. South Carolina Dept. of Social Services v. Cochran (S.C. 2003) 356 S.C. 413, 589 S.E.2d 753. Infants 2407

Upon review, the appellate court may make its own finding from the record as to whether clear and convincing evidence supports termination of parental rights. South Carolina Dept. of Social Services v. Robin Headden (S.C. 2003) 354 S.C. 602, 582 S.E.2d 419. Infants 2415(1)

Upon review of decision regarding termination of parental rights, the reviewing court is not required to ignore the fact that the family court, who saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony. South Carolina Dept. of Social Services v. Robin Headden (S.C. 2003) 354 S.C. 602, 582 S.E.2d 419. Infants 2415(1)

Family Court’s alleged error in failing to consider the best interests of the children in determining that father’s parental rights should not be terminated was not reversible error, in light of the fact that, along with requiring a finding as to best interests of children, statute required proof of one or more of the enumerated statutory grounds for termination, none of which were proven. Hardy v. Gunter (S.C.App. 2003) 353 S.C. 128, 577 S.E.2d 231. Infants 2428

It is unnecessary for a parent to file a petition for writ of certiorari with the Supreme Court after the Court of Appeals has affirmed the termination of parental rights pursuant to Cauthen, as the filing of a Cauthen appeal ensures that the trial transcript will be reviewed for any possible issues of arguable merit. South Carolina Dept. of Social Services v. Hickson (S.C. 2002) 350 S.C. 213, 565 S.E.2d 763. Infants 2361

In a termination of parental rights case, the appellate court has jurisdiction to review the entire record to determine the facts in accordance with its view of the evidence. South Carolina Dept. of Social Services v. Wilson (S.C.App. 2001) 344 S.C. 332, 543 S.E.2d 580. Infants 2405

On appeal of a termination of parental rights case, appellate court may review the record and make its own finding of whether clear and convincing evidence supports the termination. South Carolina Dept. of Social Services v. Lail (S.C.App. 1999) 335 S.C. 284, 516 S.E.2d 463. Infants 2415(1)

In reviewing a termination of parental rights, the appellate court has the authority to review the record and make its own findings of whether clear and convincing evidence supports the termination. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 2415(1)

In reviewing a termination of parental rights, the appellate court is not required to ignore the fact that the family court, who saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony. Hooper v. Rockwell (S.C. 1999) 334 S.C. 281, 513 S.E.2d 358, rehearing denied. Infants 2415(1)

On appeal from the Family Court on the issue of termination of parental rights, the Court of Appeals may review the record and make its own finding whether clear and convincing evidence supports termination. South Carolina Dept. of Social Services v. O’Banner (S.C.App. 1987) 291 S.C. 253, 353 S.E.2d 151. Infants 2415(1)

**SECTION 63‑7‑2580.** Permanency of order.

(A) If the court finds that a ground for termination, as provided for in Section 63‑7‑2570, exists, the court may issue an order forever terminating parental rights to the child. Where the petitioner is an authorized agency, the court shall place the child in the custody of the petitioner or other child‑placing agency for adoption and shall require the submission of a plan for permanent placement of the child within thirty days after the close of the proceedings to the court and to the child’s guardian ad litem. Within an additional sixty days the agency shall submit a report to the court and to the guardian ad litem on the implementation of the plan. The court, on its own motion, may schedule a hearing to review the progress of the implementation of the plan.

(B) If the court finds that no ground for termination exists and the child is in the custody of the Department of Social Services, the order denying termination must specify a new permanent plan for the child or order a hearing on a new permanent plan.

(C) If the court determines that an additional permanency hearing is not needed, the court may order:

(1) the child returned to the child’s parent if the parent has counterclaimed for custody and the court determines that the return of the child to the parent would not cause an unreasonable risk of harm to the child’s life, physical health or safety, or mental well‑being. The court may order a specified period of supervision and services not to exceed twelve months;

(2) a disposition provided for in Section 63‑7‑1700(E) if the court determines that the child should not be returned to a parent.

(D)(1) If the court determines that an additional permanency hearing is required, the court’s order shall schedule a permanency hearing to be held within fifteen days of the date the order is filed. The court’s order must be sufficient to continue jurisdiction over the parties without any need for filing or service of pleadings by the department. The permanency hearing must be held before the termination of parental rights trial if reasonably possible.

(2) At the hearing, the department shall present a proposed disposition and permanent plan in accordance with Section 63‑7‑1700. No supplemental report may be required. The hearing and any order issuing from the hearing shall conform to Section 63‑7‑1700.

(3) If the court approves retention of the child in foster care pursuant to Section 63‑7‑1700(E), any new plan for services and placement of the child must conform to the requirements of Section 63‑7‑1680. Section 63‑7‑1680 requires the plan to address conditions that necessitated removal of the child, but the plan approved pursuant to this subsection shall address conditions that necessitate retention of the child in foster care.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Effect of termination of parental rights under this section, for purposes of intestate succession under the South Carolina Probate Code, see Section 62‑2‑109.

Library References

Infants 203, 204, 222, 226, 231, 232.

Westlaw Topic No. 211.

C.J.S. Adoption of Persons Section 12.

C.J.S. Infants Sections 40, 43 to 45, 58 to 59, 62 to 63, 65 to 66, 69 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 60, Effect of Final Order.

S.C. Jur. Children and Families Section 61, Permanent Plan Report.

S.C. Jur. Children and Families Section 73, Rights Under the South Carolina Probate Code (SCPC).

S.C. Jur. Descent and Distribution Section 17, Termination of Parental Rights.

NOTES OF DECISIONS

In general 1

1. In general

Where the trial judge found that the biological father had abandoned his child, the court had authority to order adoption under Section 20‑7‑1590. Berry v. Ianuario (S.C.App. 1985) 286 S.C. 522, 335 S.E.2d 250.

Under former Section 20‑7‑1570(1), defining “abandoned child,” and former Section 20‑7‑1590, which provided that the court could forever terminate parental rights to an abandoned child, the willful failure to provide even minimum support was alone sufficient to satisfy the definition of “abandoned child” and to justify the adoption of such a child. Although clear and convincing evidence is necessary to accord a parent due process in terminating his parental rights, reversal is not necessarily required if the trial judge fails to apply this test, since the order of the trial judge may be affirmed where the appellate court can review the record and find clear and convincing evidence supporting termination. Jamison v. Jamison (S.C.App. 1985) 285 S.C. 603, 330 S.E.2d 671.

**SECTION 63‑7‑2590.** Effect of order.

(A) An order terminating the relationship between parent and child under this article divests the parent and the child of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except the right of the child to inherit from the parent. A right of inheritance is terminated only by a final order of adoption.

(B) The relationship between a parent and child may be terminated with respect to one parent without affecting the relationship between the child and the other parent.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 232.

Westlaw Topic No. 211.

C.J.S. Infants Sections 43, 71 to 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 60, Effect of Final Order.

S.C. Jur. Descent and Distribution Section 17, Termination of Parental Rights.

LAW REVIEW AND JOURNAL COMMENTARIES

Not perfect, but better than most: South Carolina’s TPR process and its surprisingly fair treatment of incarcerated parents. Stuart M. Jones, Jr., 62 S.C. L. Rev. 697 (Summer 2011).

NOTES OF DECISIONS

In general 1

1. In general

A father was entitled to receive half of the workers’ compensation benefits awarded for the death of his son although the father had minimal contact with his son while the son was living where no legal action was ever taken to formally establish that the father had abandoned his son nor had the father’s parental rights been terminated. Adkins v. Comcar Industries, Inc. (S.C.App. 1994) 316 S.C. 149, 447 S.E.2d 228, rehearing denied, certiorari granted, affirmed 323 S.C. 409, 475 S.E.2d 762. Workers’ Compensation 420.36

Evidence was more than adequate to support the trial court’s termination of parental rights pursuant to Sections 20‑7‑1570(1) and 20‑7‑1590, where the parents failed to support or make payments of $3 per month towards support of their children for six consecutive months immediately preceding the institution of the action, despite the fact that the father was employed, in that the wilful failure to provide even minimum support was sufficient to satisfy the definition of “abandoned child” provided by Section 20‑7‑1570(1). Chambers v. Anderson County Dept. of Social Services (S.C.App. 1984) 280 S.C. 209, 311 S.E.2d 746.

**SECTION 63‑7‑2600.** Confidentiality.

All papers and records pertaining to a termination of parental rights are confidential and all court records must be sealed and opened only upon order of the judge for good cause shown.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Applicability to Legislative Audit Council staff members of provisions relative to confidentiality of agency records, see Section 2‑15‑62.

Library References

Infants 133.

Records 32.

Westlaw Topic Nos. 211, 326.

C.J.S. Bankruptcy Sections 830 to 834.

C.J.S. Infants Sections 43, 71 to 95.

C.J.S. Records Sections 80, 82 to 88.

RESEARCH REFERENCES

ALR Library

163 ALR 1358 , Governmental Control of Actions or Speech of Public Officers or Employees in Respect of Matters Outside the Actual Performance of Their Duties.

Encyclopedias

22 Am. Jur. Proof of Facts 3d 203, Termination or Demotion of a Public Employee in Retaliation for Speaking Out as a Violation of Right of Free Speech.

77 Am. Jur. Trials 1, Representing Law Enforcement Officers in Personnel Disputes and Employment Litigation.

S.C. Jur. Children and Families Section 62, Confidentiality of Records.

Notes of Decisions

Constitutional issues 1

1. Constitutional issues

Deputy clerk of court who lost election to incumbent county clerk of court, her boss, was a public employee in a confidential, policymaking, or public contact role who spoke out as a private citizen on a matter of public concern but in a manner that communicated a lack of political loyalty to county clerk, which could have interfered with or undermined the operation of the clerk’s office, and therefore party affiliation or political allegiance was to be considered in analyzing deputy clerk’s Section 1983 claim that she was terminated for exercising her freedom of speech; county clerk appointed deputy clerk, and deputy clerk was a direct representative of county clerk in her role as supervisor within the family court division of clerk’s office. Lawson v. Gault, 2014, 63 F.Supp.3d 584, vacated and remanded 828 F.3d 239, as amended. Clerks of Courts 6; Constitutional Law 1947

**SECTION 63‑7‑2610.** Effect on adoption laws.

The provisions of this article do not, except as specifically provided, modify or supersede the general adoption laws of this State.

HISTORY: 2008 Act No. 361, Section 2.

CROSS REFERENCES

Adoption, generally, see Section 63‑9‑30 et seq.

Effect of adoption on parental rights, see Section 63‑9‑760.

Library References

Adoption 3.

Infants 132.

Westlaw Topic Nos. 17, 211.

C.J.S. Adoption of Persons Sections 4 to 5, 7 to 9, 48.

C.J.S. Infants Sections 12 to 13, 23, 26 to 28.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 11, Necessary Parties to Adoption Proceeding.

S.C. Jur. Children and Families Section 43, Statutory Authority.

**SECTION 63‑7‑2620.** Construction of law.

This article must be liberally construed in order to ensure prompt judicial procedures for freeing minor children from the custody and control of their parents by terminating the parent‑child relationship. The interests of the child shall prevail if the child’s interest and the parental rights conflict.

HISTORY: 2008 Act No. 361, Section 2.

Library References

Infants 132, 155, 193.

Westlaw Topic No. 211.

C.J.S. Infants Sections 12 to 13, 20 to 28, 39 to 42, 44 to 45, 58 to 59.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Children and Families Section 43, Statutory Authority.

S.C. Jur. Children and Families Section 59, Conflict of Rights.

NOTES OF DECISIONS

In general 1

Child’s best interest 2

1. In general

Termination of parental rights statutes must be liberally construed in order to ensure prompt judicial procedures for freeing minor children from the custody and control of their parents by terminating the parent‑child relationship. South Carolina Dept. of Social Services v. Roe (S.C.App. 2006) 371 S.C. 450, 639 S.E.2d 165. Infants 1811

Parental rights warrant vigilant protection under the law, and due process mandates a fundamentally fair procedure when the state seeks to terminate the parent‑child relationship; however, a child has a fundamental interest in terminating parental rights if the parent‑child relationship inhibits establishing secure, stable, and continuous relationships found in a home with proper parental care. South Carolina Dept. of Social Services v. Cochran (S.C. 2005) 364 S.C. 621, 614 S.E.2d 642, rehearing denied. Constitutional Law 4403.5; Infants 1881

Statutes providing for termination of parental rights (TPR) need not be strictly construed in favor of preserving the relationship of parent and child; overruling, Leone v. Dilullo, 294 S.C. 410, 365 S.E.2d 39, Wilson v. Higgins, 294 S.C. 300, 363 S.E.2d 911, Goff v. Benedict, 252 S.C. 83, 165 S.E.2d 269, Hopkins v. South Carolina Dept. of Social Services, 313 S.C. 322, 437 S.E.2d 542, Alley v. Boyd, 337 S.C. 60, 522 S.E.2d 146, South Carolina Dep’t of Social Services v. Lail, 335 S.C. 284, 516 S.E.2d 463, South Carolina Dep’t of Social Services v. Brown, 317 S.C. 332, 454 S.E.2d 335, Horton v. Vaughn, 309 S.C. 383, 423 S.E.2d 543, and South Carolina Dep’t of Social Services v. Harper, 284 S.C. 212, 325 S.E.2d 71. Joiner ex rel. Rivas v. Rivas (S.C. 2000) 342 S.C. 102, 536 S.E.2d 372. Infants 1817

2. Child’s best interest

Termination of mother’s parental rights was not in child’s best interest, even though mother had not adequately treated her mental conditions, where adoption was not viable option given that father retained parental rights, child would not achieve permanency and stability through termination, child’s behavioral problems prevented immediate adoptive placement, Department of Social Services (DSS) did not have a potential adoptive family, DSS was not actively pursuing adoption, child had meaningful bond with mother and siblings, child wanted to return to mother, child’s biological family brought joy to child, and child was making progress in current therapeutic foster home. South Carolina Dept. of Social Services v. Williams (S.C.App. 2015) 412 S.C. 458, 772 S.E.2d 279. Infants 1890; Infants 1895; Infants 2043

Evidence was insufficient to support finding that termination of mother’s parental rights was in child’s best interest; both of child’s guardians ad litem and child’s therapist stated that child had a significant bond with mother and missed mother, therapist testified that mother’s contact with child during visitation was appropriate, and evidence suggested that child was not a viable candidate for adoption. South Carolina Dept. of Social Services v. Cameron N.F.L. (S.C.App. 2013) 403 S.C. 323, 742 S.E.2d 697. Infants 2169(1)

Termination of parental rights of father, as to child born out of wedlock, was not in the child’s best interest; there was no indication that terminating father’s rights would ensure future stability for child or that keeping father’s parental rights intact would disrupt child’s current living situation, but keeping father’s parental rights intact would allow father to establish a relationship with child and to provide emotional and financial support, which father was willing and capable to provide. Doe v. Roe (S.C.App. 2008) 379 S.C. 291, 665 S.E.2d 182, rehearing denied, certiorari granted, reversed 386 S.C. 624, 690 S.E.2d 573. Infants 1890

In the context of proceedings addressing the termination of parental rights, the interests of the child shall prevail if the child’s interest and the parental rights conflict; however, the public policy of this state in child custody matters is to reunite parents and children. Doe v. Roe (S.C.App. 2008) 379 S.C. 291, 665 S.E.2d 182, rehearing denied, certiorari granted, reversed 386 S.C. 624, 690 S.E.2d 573. Infants 1881; Infants 1886; Infants 2021

Termination of mother’s parental rights was in child’s best interests; at the time of termination hearing child had been out of mother’s care for almost three‑and‑a‑half years and had been with pre‑adoptive parents for almost one‑and‑a‑half years, by the time mother had completed her treatment plan child was in a loving, stable environment with pre‑adoptive parents, child did not realize mother was his natural mother, he identified pre‑adoptive parents as his parents, and to remove child from pre‑adoptive parents’ home clearly would be very traumatic for him. Charleston County Dept. of Social Services v. King (S.C. 2006) 369 S.C. 96, 631 S.E.2d 239, rehearing denied. Infants 1902

In a proceeding for the termination of parental rights (TPR), if the child’s interests and the parent’s interests conflict, the interests of the child shall prevail. Stinecipher v. Ballington (S.C.App. 2005) 366 S.C. 92, 620 S.E.2d 93. Infants 1886

Termination of mother’s parental rights was in child’s best interest; child had been in protective custody for nearly seven years, child had had emotional and behavioral problems which caused placement challenges for her, child had expressed that she wanted mother’s rights to be terminated, and child’s therapist believed termination of mother’s rights was in child’s best interest. South Carolina Dept. of Social Services v. Robin Headden (S.C. 2003) 354 S.C. 602, 582 S.E.2d 419. Infants 1902

In termination of parental rights proceeding, interests of the child shall prevail if the child’s interest and the parents’ parental rights conflict. South Carolina Dept. of Social Services v. Parker (S.C.App. 1999) 336 S.C. 248, 519 S.E.2d 351, rehearing denied. Infants 1886

Because incarcerated father had wilfully failed to visit or support child, termination of father’s parental rights was in child’s best interest; enduring relationship between father and child was not present. South Carolina Dept. of Social Services v. Parker (S.C.App. 1999) 336 S.C. 248, 519 S.E.2d 351, rehearing denied. Infants 2011; Infants 2014; Infants 2015

Orders removing child from custody of parent and terminating parental rights will not be reversed or vacated on appeal, notwithstanding failure to appoint counsel, where Department of Social Services has acted in what it considers to be best interests of child and placed child with prospective adoptive family; however, proceeding will be remanded to family court for rehearing, both adjudicatory and dispositional, on issues of whether child should be removed from parental custody and parental rights terminated; on remand, best interests of child continue to be paramount consideration. South Carolina Dept. of Social Services v. Vanderhorst (S.C. 1986) 287 S.C. 554, 340 S.E.2d 149.