

SENATE AMENDMENT

AMENDMENT NO. _____

Riley/Landau
January 24, 2018

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ADOPTED

TABLED

CARRIED OVER

FAILED

RECONSIDERED

R

Clerk of the Senate

ADOPTION NO. _____

BILL NO: S. 805

(Reference is to Printer's Date 12/6/17-S.)

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Senator _____ proposed the following amendment (not yet finalized):

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/SECTION 1. Chapter 11, Title 63 of the 1976 Code is amended by adding:

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“ARTICLE 22

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Department of Children's Advocacy

Section 63-11-2210. There is created the Department of Children's Advocacy. The department shall be headed by the State Child Advocate, who is the director of the department and who shall be appointed by the Governor upon the advice and consent of the Senate. The State Child Advocate is subject to removal by the Governor pursuant to the provisions of Section 1-3-240(C).

Section 63-11-2215. The Department of Administration shall provide administrative support to the Department of Children's Advocacy for the performance of their duties, including, but not limited to, financial accounting support, human

resources administrative support, information technology shared services support, procurement services, and logistical support.

D Section 63-11-2220. The department shall be comprised of deputy child advocates, investigators, and other staff to be employed as necessary by the State Child Advocate to carry out the duties of the department as authorized by law. The deputy child advocates serve at will and may be removed by the State Child Advocate. The State Child Advocate shall fix the salaries of all staff subject to the funds authorized in the annual general appropriations act.

R Section 63-11-2230. For purposes of this article:

A (1) ‘Critical incident’ means the fatality, near fatality, or serious bodily or emotional injury of a child who is in the custody of or receiving services from a state agency, or circumstances that result in a reasonable belief that a state agency failed in its duty to protect a child, resulting in the imminent risk or suffering of serious bodily or emotional injury, or death, of a child.

F (2) ‘State agency’ means an agency as provided in Section 63-11-2240(A).

T Section 63-11-2240. (A) The State Child Advocate is responsible for ensuring that children receive adequate protection and care from services or programs offered by the Department of Social Services, the Department of Mental Health, the Department of Health and Human Services, the Department of Juvenile Justice, the Department of Health and Environmental Control, the Department of Disabilities and Special Needs, the John de la Howe School, the Wil Lou Gray Opportunity School, and the School for the Deaf and Blind.

(B) The Governor shall appoint the State Child Advocate with the advice and consent of the Senate for a term of six years. The Governor may reappoint the State Child Advocate for additional terms. The State Child Advocate's compensation must not be reduced during the State Child Advocate's uninterrupted, continued tenure in office.

(C) The State Child Advocate must not have been the director or deputy director of a state agency for a period of four years preceding his appointment. This subsection does not apply to deputy directors employed by the Department of Children’s Advocacy.

(D) The State Child Advocate must be selected without regard to political affiliation and on the basis of integrity and a capability for strong leadership and must possess the following minimum qualifications:

(a) a baccalaureate degree from an accredited college or university; and

(b) at least ten years of experience in family or children's law, children's social work, or children's health and welfare.

Section 63-11-2250. Any and all information and records acquired by the Department of Children's Advocacy in the exercise of the office's purpose and duties under this chapter shall be confidential and exempt from public disclosure under Chapter 4, Title 30.

Section 63-11-2260. The State Child Advocate shall receive an annual salary as may be provided by the General Assembly.

Section 63-11-2270. The Department of Children's Advocacy shall:

(1) ensure that children under the care of a state agency, particularly children served by the child welfare or juvenile justice systems, receive timely, safe, and effective services and shall safeguard the health, safety, and well-being of all children receiving services;

(2) examine, on a system-wide basis, the care and services that state agencies provide children and shall provide recommendations to improve the quality of those services in order to give each child the opportunity to live a full and productive life;

(3) develop and promote a broad vision for reform, driven by the values and goals of child-serving agencies, to make South Carolina's child welfare system more effective for children, youth, families, and communities;

(4) receive and investigate complaints related to the provision of services to children by a state agency, shall review and monitor the complaints that reasonably cause the department to believe that a child may be in need of assistance, and shall ensure that the complaints are resolved. If a complaint is not resolved by the relevant state agency within a reasonable period of time in light of the circumstances, if the resolution is determined to be unsatisfactory to the State Child Advocate, or if the complaint reasonably causes the State Child Advocate to believe that a child may be in need of immediate assistance, then the State Child Advocate may conduct an investigation of the complaint;

(5) receive and investigate complaints from children in the care of the State, shall assist such children in resolving problems and concerns associated with their placement and plans for lifelong adult connections and independent living, shall ensure that relevant state agencies have been alerted to the complaints, and shall facilitate intra-agency cooperation, if appropriate;

(6) undertake activities designed to educate the public regarding the services of the department and the mission of state agencies in providing services to children and families;

(7) annually submit a report to the Governor, President Pro Tempore of the Senate, Speaker of the House of Representatives, and the Joint Citizens and Legislative Committee on Children detailing the State Child Advocate's activities; and

(8) have access at any and all reasonable times to any facility, residence, program, or portion thereof that is operated, licensed, or funded by a state agency and shall have unrestricted access to all electronic information systems records, reports, materials, and employees in order to better understand the needs of children in the custody of the State or children who are receiving services from a state agency. The Department of Children's Advocacy shall also have access to relevant records held by the clerks of the family courts and the clerks of the probate courts, including the right to inspect and copy such records, without cost.

Section 63-11-2280. (A) A state agency shall inform the Department of Children's Advocacy within twenty-four hours of a critical incident.

(B)(1) The State Child Advocate may perform an independent investigation of a critical incident, or the State Child Advocate may review a completed critical incident investigation performed by a state agency. If the State Child Advocate conducts his own investigation, then he shall investigate:

(a) the factual circumstances surrounding the critical incident;

(b) whether an agency's activities or services provided to a child and his family were adequate and appropriate and in accordance with agency policies and state and federal law; and

(c) whether the agency's policies, regulations, training, or delivery of services or state law can be improved.

(C) As part of an investigation, the State Child Advocate may:

(1) administer oaths;

- (2) examine witnesses under oath;
- (3) issue subpoenas and subpoenas duces tecum; and
- (4) examine the records, reports, audits, reviews, papers, books, recommendations, contracts, correspondence, or any other documents maintained by an agency.

(D) The State Child Advocate may apply to a circuit court for an order holding an individual in contempt of court if the individual refuses to give sworn testimony under a subpoena issued by the State Child Advocate or otherwise disobeys a subpoena or subpoena duces tecum issued by the State Child Advocate.

(E) In addition to the reporting requirements in subsection (A), if the State Child Advocate has reasonable cause to believe that a crime has occurred or is occurring, then he shall immediately report the matter to the appropriate state or federal law enforcement agencies and prosecuting authorities with jurisdiction over the matter.

Section 63-11-2290. (A) The Department of Children’s Advocacy shall establish a toll-free public telephone number for the purpose of receiving complaints relative to the provision of services to children by a state agency.

(B) The following agencies must post the toll-free public telephone number for the purpose of receiving complaints relative to the provision of services to children by a state agency prominently in clear view of all employees and the public and in a conspicuous location on the agency’s website:

- (1) Department of Social Services;
- (2) Department of Mental Health;
- (3) Department of Juvenile Justice;
- (4) Department of Health and Environmental Control;
- (5) Department of Health and Human Services;
- (6) Department of Disabilities and Special Needs;
- (7) John de la Howe School;
- (8) School for the Deaf and Blind; and
- (9) Wil Lou Gray Opportunity School.”

SECTION 2. Section 1-3-240(C)(1) of the 1976 Code is amended by adding an appropriately lettered subitem to read:

“() State Child Advocate of the Department of Children’s Advocacy;”

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SECTION 3. Section 63-7-360 of the 1976 Code is amended to read:

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“Section 63-7-360. 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, the circuit solicitor's office, the county department of social services, the Department of Children’s Advocacy, and, if the institution making a report is a hospital, ~~to~~ the hospital.”

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SECTION 4. Section 63-11-500(A) of the 1976 Code is amended to read:

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“Section 63-11-500. (A) There is created the Cass Elias McCarter Guardian ad Litem Program in South Carolina. The program shall serve as a statewide system to provide training and supervision to volunteers who serve as court-appointed special advocates for children in abuse and neglect proceedings within the family court, pursuant to Section 63-7-1620. This program must be administered by the ~~Department of Administration~~ Department of Children’s Advocacy.”

SECTION 5. Section 63-11-700(A) of the 1976 Code is amended to read:

“Section 63-11-700. (A) There is created, within the ~~Department of Administration~~ Department of Children’s Advocacy, the Division for Review of the Foster Care of Children. The division must be supported by a board consisting of ~~eight~~ seven members, all of whom must be past or present members of local review boards. There must be one member from each congressional district, all appointed by the Governor with the advice and consent of the Senate.”

SECTION 6. Section 63-11-730(A) of the 1976 Code is amended to read:

“Section 63-11-730. (A) No person may be employed by the ~~Division for Review of the Foster Care of Children, within the Department of Administration~~ Department of Children’s Advocacy; or may serve on the state or a local foster care review board if the person:

(1) is the subject of an indicated report or affirmative determination of abuse or neglect as maintained by the Department of Social Services in the Central Registry of Child Abuse and Neglect pursuant to Subarticle 13, Article 3, Chapter 7;

(2) has been convicted of or pled guilty or nolo contendere to:

- (a) an ‘offense against the person’ as provided for in Title 16, Chapter 3;
- (b) an ‘offense against morality or decency’ as provided for in Title 16, Chapter 15; or
- (c) contributing to the delinquency of a minor, as provided for in Section 16-17-490.”

SECTION 7. Section 63-11-1310 of the 1976 Code is amended to read:

“Section 63-11-1310. It is the purpose of this article to develop and enhance the delivery of services to severely emotionally disturbed children and youth and to ensure that the special needs of this population are met appropriately to the extent possible within this State. To achieve this objective, the Continuum of Care for Emotionally Disturbed Children Division is established as a division of the ~~Department of Administration~~ Department of Children’s Advocacy. This article supplements and does not supplant existing services provided to this population.”

SECTION 8. Section 63-11-1340 of the 1976 Code is amended to read:

“Section 63-11-1340. The ~~Governor~~ State Child Advocate may appoint a Director of the Continuum of Care to serve at his pleasure ~~who is subject to removal pursuant to the provisions of Section 1-3-240~~. The director shall employ staff necessary to carry out the provisions of this article. The funds for the division director, staff, and other purposes of the Continuum of Care Division must be provided in the annual general appropriations act. The department, upon the

recommendation of the division director, may promulgate regulations in accordance with this article and the provisions of the Administrative Procedures Act and formulate necessary policies and procedures of administration and operation to carry out effectively the objectives of this article.”

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SECTION 9. Section 63-11-1360 of the 1976 Code is amended to read:

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“Section 63-11-1360. The Continuum of Care Division shall submit an annual report to the ~~Department of Administration~~ Governor and General Assembly on its activities and recommendations for changes and improvements in the delivery of services by public agencies serving children.”

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SECTION 10. Section 63-11-1510 of the 1976 Code is amended to read:

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“Section 63-11-1510. There is established the Interagency System for Caring for Emotionally Disturbed Children, an integrated system of care to be developed by the Continuum of Care for Emotionally Disturbed Children in the ~~Department of Administration~~ Department of Children’s Advocacy, the Department of Disabilities and Special Needs, the ~~State Department of Health and Human Services~~ Finance Commission, the Department of Mental Health, and the Department of Social Services to be implemented by November 1, 1994. The goal of the system is to implement South Carolina's Families First Policy and to support children in a manner that enables them to function in a community setting. The system shall provide assessment and evaluation procedures to insure a proper service plan and placement for each child. This system must have as a key component the clear identification of the agency accountable for monitoring on a regular basis each child's care plan and procedures to evaluate and certify the programs offered by providers.”

SECTION 11. Section 63-11-1930(A) is amended by adding an appropriately numbered item to read:

“() the State Child Advocate;”

SECTION 12. Section 59-36-20 of the 1976 Code is amended to read:

“Section 59-36-20. (A) The State Board of Education and the State Department of Education are responsible for establishing a comprehensive system of special education and related services and for ensuring that the requirements of the Federal Individuals with Disabilities Education Act are carried out. Other state agencies which provide services for children with disabilities are directed to cooperate in the establishment and support of the system. Agencies with responsibilities under this chapter include: the Department of Mental Retardation, the School for the Deaf and the Blind, the Commission for the Blind, the Department of Health and Environmental Control, the Department of Mental Health, the State Department of Social Services, Continuum of Care, and the State Department of Education.

(B) All public education programs for children with disabilities within the State, including all programs administered by any other state or local agency, are under the general supervision of the persons responsible for education programs for children with disabilities in the State Department of Education and must meet the standards of the State Board of Education.

(C) No provision of this section or of this chapter may be construed to limit the responsibilities of agencies other than the Department of Education from providing or paying for some or all of the cost of services to be provided the state's children with disabilities and the level of service must, at a minimum, be similar to that provided individuals with similar needs. ~~If agencies are unable to agree on responsibilities for a particular child, the issue must be decided by the Children's Case Resolution System, Article 11, Chapter 11, Title 63.”~~

SECTION 13. Items (1), (21), (22), and (23) of Section 63-7-1990(B) are amended to read:

“(1) ~~the ombudsman of the office of the Governor or the Governor’s designee~~ Department of Children’s Advocacy;

(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;”

D SECTION 14. Article 1, Chapter 3, Title 1 of the 1976 Code is amended by adding:

R “Section 1-3-60. The Governor shall designate, by executive order, the appropriate agency to administer the South Carolina Developmental Disabilities Council in accordance with the Federal Developmental Disabilities Act of 2000, Pub. Law 106-402. The Department of Administration shall provide such administrative support to the Developmental Disabilities Council as it may request and require in the performance of its duties, including, but not limited to, financial accounting support, human resources administrative support, information technology shared services support, procurement services, and logistical support.”

A SECTION 15. Section 1-11-10(A)(5) of the 1976 Code is deleted.

F SECTION 16. Article 11, Chapter 11, Title 63 of the 1976 Code is repealed.

T SECTION 17. Section 1-11-10(A)(8) of the 1976 Code is deleted.

SECTION 18. The General Assembly finds that the sections presented in this act constitute one subject as required by Article III, Section 17 of the South Carolina Constitution, in particular finding that each change and each topic relates directly to or in conjunction with other sections on the subject of establishing the Department of Children’s Advocacy as clearly enumerated in the title.

The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

SECTION 19. A. Where the provisions of this act transfer duties, programs, or services of the Department of Administration to the Department of Children's Advocacy, the employees, authorized appropriations, and assets and liabilities of these divisions, services, and programs also are transferred to and become part of the Department of Children's Advocacy. All classified or unclassified personnel employed by the divisions, programs, services, or initiatives transferred from the Department of Administration, either by contract or by employment at will, become on July 1, 2019 employees of the Department of Children's Advocacy, with the same compensation, classification, and grade level, as applicable. Before the transfer of the applicable divisions, programs, services, or initiatives of the Department of Administration pursuant to this act, these agencies and organizations shall cause all necessary actions to be taken to accomplish this transfer in accordance with state and federal laws and regulations.

B. Applicable regulations promulgated by the Department of Administration are continued and are considered to be promulgated by the Department of Children's Advocacy. Applicable contracts entered into by the Department of Administration are continued and are considered to be devolved upon the Department of Children's Advocacy at the time of the transfer.

SECTION 20. The repeal or amendment by this act of any law, whether temporary, permanent, civil, or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 21. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any

one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

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SECTION 22. This act takes effect July 1, 2019. /

Renumber sections to conform.
Amend title to conform.

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