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To: Shane Massey <asmlaw30@bellsouth.net>
CC: Veldran, Katherine <KatherineVeldran@gov.sc.gov>
Date: 4/11/2014 11:15:55 AM
Subject: Follow up

Sen. Massey,

I wanted to follow up with you regarding the federal law issue that was raised in our meeting with the Governor. I have provided the statutes below from DSS General Counsel but will also summarize for you what the actual law is.

Federal law (highlighted below) does require DSS to make reasonable efforts to prevent removal of a child from their parents' home in the first court proceeding following initial removal of a child either by law enforcement or court order. However, I believe the relevant law that is at issue is state law (also provided below) regarding Emergency Protective Custody. There is a very high standard of harm that must be shown to initially take a child from the home without the parent's consent. An EPC can only be ordered by law enforcement or by ex parte court order brought by DSS.

This is what she meant in our meeting.

Call/email anytime if you have further questions. We will follow up with you soon about the DSS hearing next Wednesday.

Swati

From: Williamson, Virginia [mailto:Virginia.Williamson@dss.sc.gov]
Sent: Friday, April 11, 2014 10:46 AM
To: Patel, Swati
Subject: emergency protective custody

Here are the main provisions related to emergency protective custody

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.

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.

As far as federal law goes, Title IV-E funding requires that in the first court proceeding following removal of the child, the court must make a finding that DSS made reasonable efforts to prevent removal (or reasonable efforts were not possible) and that remaining in the home would be contrary to the welfare of the child. Below is how the requirement is implemented in state law at the probable cause hearing. A findings of reasonable efforts to prevent removal also is required at the hearing on the merits of removal (Section 63-7-1660) . At the permanency planning hearing (Section 63-7-1700), there must be a finding whether DSS has made reasonable efforts to implement a permanency plan for the child.

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) 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.

Please let me know if you have any questions.

Ginny

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