From: Ken Moffitt <KenMoffitt@scsenate.gov>
To: Patel, SwatiSwatiPatel@gov.sc.gov
CC: Mottel, HaleyHaleyMottel@gov.sc.gov
Veldran, KatherineKatherineVeldran@gov.sc.gov
Date: 5/27/2014 4:58:13 PM
Subject: RE: H. 3102 - DSS transparency

Looks like a scrivener's error to me. I'll get that done.

From: Patel, Swati [mailto:SwatiPatel@gov.sc.gov]
Sent: Tuesday, May 27, 2014 4:52 PM
To: Ken Moffitt
Cc: Mottel, Haley; Veldran, Katherine
Subject: H. 3102 - DSS transparency
Importance: High

Ken,

There is one technical correction that should hopefully not be a problem. In (H)(1)(c) it should say "or" not "of" which is consistent with federal policy guidelines (see highlighted language below) and would allow DSS to also provide "previous reports" of child abuse or neglect, not just "investigations" of child abuse or neglect. It appears that the Senate inadvertently changed that term.

SECTION 3. Section 63-7-1990(H) of the 1976 Code is amended to read:
"(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.(1) In cases of child abuse or neglect resulting in a child fatality or near fatality of a child, the department, upon request, shall make public a report containing the following information:
(a) the age of the child;
(b) the gender of the child;
(c) information describing all previous reports of or child abuse or neglect investigations by the department or any third party contracted with the department relating to the child;
(d) all services provided by the department or any third party contracted with the department to the child regarding child abuse or neglect; and
(e) all actions taken by the department or any third party contracted with the department relating to the child regarding child abuse or neglect.
(2) For purposes of subsection (H), 'near fatality' is defined as an act that, as certified by a physician, places the child in serious or critical condition.
(3) The director or his designee may choose not to make a public report pursuant to subsection (H) in the following circumstances:
(a) the report would endanger the child, the child's parent or guardian, or member of the child's family;
(b) the report would interfere in a criminal investigation; or
(c) the report would disclose the identity of a person who made a report of child abuse or neglect regarding the child."

The federal policy manual excerpt is below.

8. Question: Section 106(b)(2)(B)(x) of CAPTA requires states to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. Under this provision, is there information that a state must disclose to the public?

Answer: Yes. States must develop procedures for the release of information including, but not limited to: the cause of

and circumstances regarding the fatality or near fatality; the age and gender of the child; information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality; the result of any such investigations; and the services provided by and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.
State policies must ensure compliance with any other relevant federal confidentiality laws, including the confidentiality requirements applicable to titles IV-B and IV-E of the Social Security Act. States may allow exceptions to the release of information in order to ensure the safety and well-being of the child, parents and family or when releasing the information would jeopardize a criminal investigation, interfere with the protection of those who report child abuse or neglect or harm the child or the child's family.

I will call you to follow up, unless you think this isn't a problem.

Thanks,
Swati

Swati S. Patel
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DD 803.734.5095

From: Ken Moffitt [mailto:KenMoffitt@scsenate.gov]
Sent: Thursday, May 08, 2014 4:42 PM
To: Patel, Swati
Cc: 'Shane Massey'; 'Tom Young, Jr.'; Mottel, Haley; Edward Bender
Subject: RE: 3124 Draft Amendment

Swati:

I have spoken to Sens. Young and Massey. They agree that the intent expressed within the proposed language is for the current immunity statute (63-7-400) to apply to 63-7-940 as amended.

Ken

From: Patel, Swati [mailto:SwatiPatel@gov.sc.gov]
Sent: Thursday, May 08, 2014 4:25 PM
To: Ken Moffitt
Cc: 'Shane Massey'; 'Tom Young, Jr.'; Mottel, Haley; Edward Bender
Subject: RE: 3124 Draft Amendment

Senators and Ken,

Here are the final comments from DSS:

(1) They will accept the definition of "party in interest" as is. The reason is because DSS can still speak publicly about an unfounded case (i.e. Messenger case) in a legislative hearing if information about that case was already put in the public domain pursuant to 940(A)(9)(a)(ii). For example, the Messenger case could be discussed in open session of a legislative committee because it has already been put forth in the public domain (Note: the attorney that made the information public is not a "party in interest").

(2) Thank for adding the reference. That will clearly allow DSS to speak about the Messenger case per the above explanation.

(3) Can we get clarification that the Senate does intend that the current immunity statute (63-7-400) also applies to 63-7-940 as amended? Assuming so, the amendment is good to go.

Thanks,
Swati

Swati S. Patel
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From: Ken Moffitt [mailto:KenMoffitt@scsenate.gov]
Sent: Wednesday, May 07, 2014 5:36 PM
To: Patel, Swati
Cc: 'Shane Massey'; 'Tom Young, Jr.'; Mottel, Haley; Edward Bender
Subject: RE: 3124 Draft Amendment

Edward Bender and I have reviewed the suggested changes.

(1) The definition of "party in interest" already includes the attorney for the child. (See below) So, we do not think that is necessary. However, adding the reference to the attorney for the alleged perpetrator seems appropriate.
(2) I believe that is the intent, we recommend making the reference to the definition in 1990(G).
(3) We disagree with that analysis. 940 is essentially an exception to 400. Putting in that reference would confuse matters and basically eliminate it as an exception. We do not recommend making that change.

Section 63-7-20(15) "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.

From: Patel, Swati [mailto:SwatiPatel@gov.sc.gov]
Sent: Wednesday, May 07, 2014 4:58 PM
To: Ken Moffitt
Cc: 'Shane Massey'; 'Tom Young, Jr.'; Mottel, Haley
Subject: RE: 3124 Draft Amendment

Senators and Ken,

Here are 3 comments to the amendment from DSS:

(1) Can we add to Section 63-7-940(A)(9)(a)(i) "…made public by the alleged perpetrator or the party in interest, or the attorney representing the alleged perpetrator or the party in interest, to the case;"

(2) Is it your intent that "public domain" in Section 63-7-940(A)(9)(a)(ii) means the same thing in Section 63-7-1990(G)(1)? If so, can we add the definition (reference to the definition) in 940 too?

(3) Can we make a reference in Section 63-7-940(B) which is the statute creating the criminal and civil liability to the current immunity language in Section 63-7-400 as follows: "Section 63-7-400 shall apply in any civil or

criminal action brought pursuant to this subsection." The reason is because 63-7-400 was enacted before the action statute, 63-1-940(B), was enacted; therefore a litigant could make a good argument that the General Assembly did not intend to give immunity for civil liability in cases that could arise through actions taken under this bill.

Thanks,
Swati

From: Ken Moffitt [mailto:KenMoffitt@scsenate.gov]
Sent: Wednesday, May 07, 2014 1:39 PM
To: Patel, Swati
Cc: 'Shane Massey'; 'Tom Young, Jr.'
Subject: 3124 Draft Amendment

Attached is the recommended language that we have discussed.