

# SCSL Digital Collections

## Children's legislation enacted in 2012

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# Children's Legislation Enacted in 2012

Prepared by the Children's Law Center

## I. Criminal and Juvenile Justice Legislation

### **H. 3667, R. 288, A. 255 – Criminal Sexual Misconduct**

Sponsor: Rep. Bannister

Status: June 18, 2012 Signed by Governor

Effective: June 18, 2012

#### **Change to S.C. Code § 16-3-655 (Criminal sexual conduct with minors)**

This act amends S.C Code §16-3-655 to create the offense of criminal sexual conduct with a minor in the third degree. The amendment eliminates the inconsistency with regard to the “Romeo and Juliet” exception between the criminal sexual conduct with a minor statute and the lewd acts statute. The amendment incorporates the provisions of the former lewd acts statute in the criminal sexual conduct with a minor statute and repeals the lewd acts statute (S.C. Code § 16-15-140). The incorporation provides a teenage sex exception for lewd acts consistent with the teenage sex exception provided in the current CSC with a minor statute. The act provides a number of conforming amendments to amend the code to include criminal sexual conduct with a minor in the third degree in other sections addressing sentencing, parole, probation, and providing some definitions related to the act of criminal sexual conduct with a minor in the third degree.

### **H. 3793, R. 158, A. 140 – Bath Salts, Synthetic Marijuana, and Schedule I Drugs**

Sponsor: Rep. Thayer

Status: April 2, 2012 Signed by Governor

Effective: April 2, 2012

#### **Change to S.C. Code § 44-53-160 (Manner in which changes in schedule of controlled substances shall be made) and to S.C. Code § 44-53-190 (Schedule I)**

S.C. Code §44-53-160 requires that the Department of Health and Environmental Control (DHEC) provide recommendations on changes to the schedules of controlled substances within thirty days of the start of each session of the General Assembly. The statute provides for DHEC to add, delete or reschedule a substance when the General Assembly is not in session. The act provides that the changes made by DHEC when the General Assembly is not in session have the full force and effect of law unless overturned by the legislature. The act has a similar provision for additions and deletions of a substance pursuant to federal law or regulation. The act provides for notice to listed legislative committees. Rescheduling a controlled substance does not require promulgation of rules. The act amends S.C. Code § 44-53-190 to add synthetic marijuana, “bath salts,” and related compounds to the list of Schedule I substances.

## **H. 3757, R. 292, A. 292 – Human Trafficking**

Sponsor: Rep. Hardwick

Status: June 18, 2012 Signed by Governor

Effective: One hundred eighty-days after approval by the governor. December 18, 2012

### **Addition of S.C. Code § 16-3-2010 and following (Human trafficking)**

The act adds § 16-3-2010 which provides definitions of numerous terms relating to human trafficking. It also adds § 16-3-2020 which describes the activities that will constitute human trafficking and the penalties for first, second, and subsequent offenders. In cases where a business provides support for human trafficking or the victim of trafficking dies or is found to be a minor, other penalties will be considered. Victims of human trafficking will be considered for benefits, rights, and compensation. Victims of human trafficking may use the experience of being trafficked as an affirmative defense if the crimes committed were directly related to or incidental to their experience as a victim of trafficking. A victim's sexual history and similar factors will not be considered defenses to prosecution of offenders and offenders may be prosecuted by the Grand Jury under § 14-7-1600 if the trafficking occurred in multiple counties within the State. Section 16-3-2040 provides for restitution to be paid to the victim or his legal beneficiary. Section 16-3-2050 provides that the Attorney General will establish an interagency task force to develop and implement a State Plan for the Prevention of Trafficking in Persons to meet quarterly and any relevant data collected will be published via their website. The task force will include, at a minimum, representatives from the Office of the Attorney General (who will chair the task force), the South Carolina Department of Labor, Licensing and Regulation, the South Carolina Police Chiefs Association, the South Carolina Sheriffs' Association, the State Law Enforcement Division, the Department of Health and Environmental Control Board, the United States Department of Labor, the State Office of Victim Assistance, the South Carolina Commission on Prosecution Coordination, the Department of Social Services, the Governor's office, the Employment Security Commission, two persons appointed by the Attorney General from nongovernmental organizations engaged in the prevention of trafficking in persons, representing persons affected by trafficking, child services, and academic researchers dedicated to the subject. Section 16-3-2060 provides victims of human trafficking the right to sue in civil court with the ability to collect actual, compensatory, and punitive damages from the offender and extends the statute of limitations. Section 16-3-2070 extends the Victims' Bill of Rights to victims of human trafficking and ensures privacy and discretion in the administration of any claims or benefits in conjunction with a victim of human trafficking. Section 16-3-2080 criminalizes malicious or criminally negligent conduct that may jeopardize the safety of any persons under the care of a domestic violence or human trafficking shelter. Section 16-3-2090 orders the forfeiture of any property or monies gained, exchanged, or otherwise used in conjunction with human trafficking, pursuant to petition by the office of the Attorney General, and approval by a judge. This section also provides instructions for the evaluation, maintenance, and disposition of forfeited property, including interaction with federal law enforcement agencies. This bill also repeals § 16-3-930 of the 1976 Code dealing with human trafficking in summary and provides for survival of any pending or adjudicated actions based on the previous code.

**H. 4473, R. 298, A. 238 – Prohibition of Certain Offenders For Custody or Foster Care Placement**

Sponsor: Rep. Limehouse  
Status: June 18, 2012 Signed by Governor  
Effective: June 18, 2012

**Change to S.C. Code §§ 63-7-2340 (Fingerprint review), -45 (Payment of cost of FBI fingerprint review), - 50 (Restriction on foster care placement)**

This act changes S.C. Code §§ 63-7-23-40, -45 to add persons applying for approval of adoption placement to undergo state and federal background checks and to allow appropriated funds to pay for the costs of FBI fingerprint reviews for foster families recruited and selected as potential adoption and foster care providers for children in the custody of DSS. The act amends §63-7-2350(A) by adding offenses which preclude placement in foster care or for adoption when a person eighteen years old or older residing in the home has been convicted of the additional offenses.

**S. 300, R. 264, A. 227 – Department of Juvenile Justice Probation and Commitment Evaluations**

Sponsor: Senator Fair See <http://www.sccommitteeonchildren.org/index.shtml> for our other members.  
Status: June 18, 2012 Signed by Governor  
Effective: June 18, 2012

**Change to S.C. Code § 63-19-1440 (Commitment) and addition of S.C. Code § 63-19-1835 (Reduction of probation or parole)**

This act amends §63-19-1440(C) to provide that, for any child adjudicated delinquent for a status offense, a misdemeanor offense, or a violation of probation or contempt for any offense who is temporarily committed to DJJ's custody for a residential evaluation, DJJ may allow the child to in community and undergo a community evaluation. However, the act allows a judge to find and conclude in the order for evaluation that a community evaluation must not be conducted because the child presents an unreasonable flight or public safety risk to his home community.

The act adds S.C. Code § 63-19-1835 that provides that DJJ may grant a ten-day reduction of probation or parole term for each month a juvenile is compliant with the terms of the juvenile's parole or probation.

**S. 1099, R. 273, A. 246 –Juvenile Parole Board Members Receiving Compensation**

Sponsor: Sen. Fair  
Status: June 18, 2012 Signed by Governor  
Effective: June 18, 2012

**Addition of S.C. Code § 63-19-650 (Source of compensation)**

This act adds S.C. Code § 63-19-650 to provide that members of the Board of Juvenile Parole shall receive compensation according to the annual appropriations act by the General Assembly. The act also amends S.C. Code § 24-21-55 to provide that the Department of Probation, Parole, and Pardon Services will receive compensation according to the annual appropriations act by the General Assembly.

## II. Family Court

### **H. 4614, R. 301, A. 259 – Joint Custody**

Sponsor: Rep. Pitts

Status: June 18, 2012 Signed by Governor

Effective: Section 1, estimated effective date: August 18, 2012; All other sections effective June 18, 2012

#### **Addition of S.C. Code § 63-15-210 and following (Custody)**

This act adds S.C. Code §63-15-210 to define joint and sole custody. The act also adds §63-15-220 to require that each parent submit a parenting plan at temporary hearings where custody is contested. Parenting plans must include the allocation of time with each parent and which parent will make major educational, medical, extracurricular, and religious decisions for the child. The South Carolina Supreme Court shall develop parenting plan rules and forms. Section 63-15-230 requires the court to make a final custody determination in the best interest of the child in either joint or sole custody, and requires the court to consider all custody options and provide the reasoning for the decision in the court's final order. In issuing or modifying a custody order, the court must consider the best interests of the child which may include, but is not limited to the temperament and developmental needs of the child, the capacity and disposition of the parents to understand the child's needs, the preferences of the child; the wishes of the parents as to custody; the past and current interactions and relationship of the child with each parent, the presence of siblings, and other persons such as grandparents who may significantly affect the best interest of the child; the actions of each parent in the parent-child relationship, manipulation or coercive behavior of the parents, disparaging remarks by one parent against the other in the presence of the child; the ability of the parents to be actively involved in the life of the child; the child's adjustment to her environment; the stability of the child's residences; mental and physical health; the child's cultural and spiritual background; whether the child or a sibling of the child has been abused or neglected; whether one parent has perpetrated domestic violence or child abuse or the effect of any previous domestic violence in front of the child; whether one parent has relocated more than 100 miles from the child's primary residence and other factors as the court considers necessary. Sections 63-15-250 and 63-15-260 provide that when a court orders custody, except in cases of abuse, neglect, or abandonment, parents should facilitate opportunities for reasonable telephonic and electronic communication between the minor child and the noncustodial or joint-custody parent, as appropriate and only if in the best interest of the child. Section 63-15-260 notes that regardless of the custody arrangement, both parents will retain all rights and duties given to parents to include equal access to educational records and medical records and the right to participate in the children's school activities and extracurricular activities unless specifically denied by court order or State law. The bill also creates the South Carolina Family Court Study Committee to determine the feasibility of studying outcomes of contested custody battles in family court.

**H. 3400, R. 317, A. 273 – Child Support Termination and Family Court Jurisdiction**

Sponsor: Rep. Weeks  
Status: June 26, 2012 Signed by Governor  
Effective: June 26, 2012

**Change to S.C. Code § 63-3-530(A)(17) (Jurisdiction in domestic matters)**

This act amends S.C. Code § 63-3-530(A)(17) to add that no child support arrearage will be incurred after the child's eighteenth birthday, the child's graduation from high school, or the last day of the school year when the child is nineteen, whichever of those occurrences caused the termination of child support.

**H. 4699, R. 303, A. 241 – Judicial Circuits and Family Court Judges**

Sponsor: Rep. Bannister  
Status: June 18, 2012 Signed by Governor  
Effective: June 18, 2012

**Change to S.C. Code 14-5-610 (Division of State into sixteen judicial circuits)**

Amends S.C. Code § 14-5-610 to divide the State into sixteen judicial circuits, to add three additional circuit court judges and to create an additional six family court judges who will sit at large.

**III. Health and Safety**

**S. 929, R. 136, A. 129 – “Benji’s Law”**

Sponsor: Rep. Peeler  
Status: March 13, 2012 Signed by Governor  
Effective: March 13, 2012

**Addition of S.C. Code § 41-18-170 (Miniature train permits)**

This act adds S.C. Code § 41-18-170 specifying permit requirements for public miniature trains operated as amusement devices in an amusement park. Before the Department of Labor, Licensing and Regulation (LLR) may issue a permit or a renewal, a miniature train must have a properly operating speedometer and a device to regulate the speed of the train which must be set at or below the maximum speed recommended by the manufacturer. All drivers operating the ride must be tested by LLR and must be trained in accordance with the manufacturer's recommendations prior to operating the train. The owner must maintain a training record for each driver. The ride must be inspected mechanically annually to ensure that it is operating properly with respect to speed or other regulations promulgated by LLR.

**S. 1149, R. 200, A. 174 –Born Alive Infant Protection Act**

Sponsor: Sen. Campsen  
Status: May 25, 2012 Signed by Governor  
Effective: May 25, 2012

**Change to S.C. Code § 2-7-30 (Construction of words)**

S.C. Code § 2-7-30 provides for interpretation of the words “person” and “party” in any act or joint resolution. The act amends S.C. Code §2-7-30 to provide that, unless otherwise provided in an act or joint resolution, the words “person,” “human being,” “child,” and “individual” must include every infant homo sapien who is born alive at any stage of development. The act

defines “born alive” to mean the complete expulsion or extraction from the mother of that infant who afterwards breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless whether the umbilical cord has been cut or regardless whether the expulsion or extraction occurred through natural labor, induced labor, cesarean section, or induced abortion.

**H. 4705, R. 237, A. 191 –Pertussis Vaccines for Parents of Newborns**

Sponsor: Rep Brady  
Status: June 7, 2012 Signed by Governor  
Effective: June 7, 2012

**Addition of S.C. Code 44-37-60 (Pertussis vaccine)**

The act adds S.C. Code § 44-37-60 requiring hospitals to provide educational materials to parents of newborns prior to discharge on pertussis and the recommendation that parents receive tetanus, diphtheria, and pertussis vaccines after childbirth to protect the newborns. The hospital may also provide any other information it deems appropriate. Hospitals are not required to provide or pay for the vaccines.

## **IV. Education**

**H. 4690, R. 194, A. 170 –“Jason Flatt Act” Suicide Prevention and Awareness**

Sponsor: Rep. Owens  
Status: May 14, 2012 Signed by Governor  
Effective: May 14, 2012

**Addition of S.C. Code § 59-26-110 (Suicide Prevention and Awareness)**

The act adds S.C. Code § 59-26-110 so that beginning with the 2013-14 school year, the State Department of Education (SDE) will require, as a condition for renewing credentials, two hours of training in youth suicide prevention for middle and high school employees. The two hours of training counts towards the required 120 hours for credential renewal. The SDE will develop guidelines for training and materials, and districts may approve materials that will be used. Required training may be completed by self-review of materials. The bill also contains an immunity of liability clause for any loss caused as a result of training or a lack of training, unless the misconduct was willful or wanton.

**H. 3241, R. 188, A. 164 –Charter Schools**

Sponsor: Rep. Owens  
Status: May 14, 2012 Signed by Governor  
Effective: May 14, 2012

**Changes to S.C. Code 59-40-20 and following (Charter schools)**

This act provides extensive instructions on how charter schools will be established, qualified, funded, staffed, and incorporated into the general education system of South Carolina to include extracurricular activities and teacher retirement programs. The act further explains the process of conversion to a charter school, defines terms relating to charter schools, establishes the responsibilities and authority of a charter school sponsor, and the purpose of charter schools within the State.

**S. 1200, R. 139 –Approval of Regulations Created by State Board of Education Concerning At-Risk Students**

Sponsor: Joint Resolution/Education Committee  
Status: March 14, 2012 Enacted without Governor’s Signature  
Effective: March 14, 2012

This act approves State Board of Education Document number 4208 concerning the definition of and testing for at-risk students. The document principally adopts the Palmetto Assessment of State Standards (PASS) in place of the Palmetto Achievement Challenge Test (PACT) and changes the statewide student information system from SASI™ to PowerSchool™.

**H. 3236, R. 187, A. 163 –Compulsory School Requirement Exception**

Sponsor: Reps. Daning and Smith  
Status: May 14, 2012 Signed by Governor  
Effective: May 14, 2012

**Changes to S.C. Code §§ 59-65-10(A) and 59-65-30(a) (Compulsory Attendance)**

This act amends §59-65-10(A) to allow member schools of the South Carolina Association of Christian Schools to meet the requirements for compulsory education programs within the State. The bill also amends §59-65-30(a) to include a child who has graduated from a school that is a member of the South Carolina Association of Christian Schools as exempt from compulsory attendance requirements.

**H. 4595, R. 167, A. 148 –Funding for Individuals with Disabilities Act**

Sponsor: Rep. Bingham  
Status: April 23, 2012 Signed by Governor  
Effective: April 23, 2012

This act revises state funding for the Individuals with Disabilities Education Act. State Department of Education will direct \$33.5M to school districts and schools for students with disabilities. Funds may not be transferred to any other purpose and to the extent possible be made exempt from budget cuts because the funds are required to meet federal maintenance of effort. Furthermore, the act also allows schools districts to negotiate teacher salaries for retired teachers below the district salary schedule.

**S. 149, R. 212, A. 203 –Equal Access to Interscholastic Activities Act**

Sponsor: Sen. Campsen  
Status: June 7, 2012 Signed by Governor  
Effective: June 7, 2012

Adds § 59-63-100 to allow home school, Governor’s school, and charter school students to participate in interscholastic activities to include athletics, music, speech, and other activities. The bill also provides guidance on how non-traditional students may participate in those activities and prevents school districts from contracting with private entities involved with interscholastic activities if that entity prohibits participation by charter school, Governor’s school, or home school students.