

Briefing Paper to Senate Judiciary Committee Members on “Responsible Father Registry”/ S.284

The SC Center for Fathers and Families (Center) respectfully submits this brief to the members of the SC Senate Judiciary Committee regarding S.284. We would like for the Committee to consider several issues before passing this legislation.

First, the Center would ask Representatives to consider passing an amendment to SC Code Section 63-7-1660 (a) that would require the Department of Social Services (DSS) to establish a written protocol for identifying, locating, and notifying absent parents in child protective hearings. The Center believes that one of the primary underlying purposes for establishing a Responsible Father Registry (which is to expedite adoption proceedings) will be undermined if a written protocol for identifying, locating, and notifying absent parents is not developed.

Second, the Center asks Representatives to consider lessons learned in other states that have had a Putative Father Registry for several years and incorporate those lessons learned into legislation that is ultimately passed.

**Issue One: Amendment to SC Code Section 63-7-1660(a) which states that:
SCDSS/CPS will establish a written protocol that outlines those steps necessary to constitute a due diligent search for identifying, locating and notifying absent parents whose children have been removed from the custodial parent's home due to suspected abuse and/or neglect.**

On October 7, 2008, Congress passed the Fostering Connections and Increasing Adoptions Act (H.R. 6893). The Act requires among other things that state agencies exercise “**due diligence**” to provide notice to all adult relatives of a child within 30 days after a child is removed from the home for suspected abuse and/or neglect. The Act states that child welfare agencies can directly access the Federal Parent Locator Service (FPLS) used by child support enforcement to assist with locating adult relatives, specifically the noncustodial parent. SC law states that if the noncustodial parent is not named in the removal petition, the agency shall exercise every “**reasonable effort**” to notify the noncustodial parent that a removal hearing has been initiated.

In practice, DSS caseworkers within child protective services admittedly have done little in the past to locate a noncustodial father when a child is removed from the home for suspected abuse and/or neglect. “Reasonable effort” is defined by caseworkers as asking the custodial parent if they know where the father resides. However, there are numerous reasons why a custodial parent would fail to state where a father resides at a time when they are being accused of abuse and /or neglect. These minimal efforts by caseworkers are due largely to an ineffective exchange of information in the FPLS database between child support enforcement and child protective services. In recent years, child support enforcement has become increasingly adept at locating a child's biological parents.¹ Child

¹ There is a distinction between a “putative” father and an “legal” father. In S.284, only putative fathers will be required to put their names into the registry – not legal fathers. It is the opinion of the SC Center for Fathers and Families that this distinction in the pending legislation is correct. Simply put, a legal father may not have been married to the mother when the child was born, but has established legal paternity, most often through child support enforcement. A putative father is one that was not married to the mother when the child was born and who has not established legal paternity.

support enforcement utilizes state tax intercept programs, access to federal directory of new hires, and Federal Parent Locator services to locate these parents. Currently, none of these tools are routinely used by child protective services when exercising the necessary “reasonable effort” under state law. As stated, federal law now specifically requires that they exercise “due diligence” which includes accessing these database tools. However, there is currently no state definition of what efforts constitute “due diligence”. A written protocol that must be followed by CPS caseworkers in order to meet the “due diligence” standard would provide certainty that due diligence was in fact exercised in locating the noncustodial parent. Numerous other states have enacted written protocols to address this issue because failure to identify and involve absent parents is a barrier to a timely, permanent placement for children.

The result of the lack of a written protocol for identifying, locating, and notifying absent parents early on in the child protection proceeding is that children are placed into the foster care system that have a fit and willing parent, and even at times a parent that has established legal paternity and pays child support, that should be considered a reasonable placement option in the event the child cannot be returned to the home of the custodial parent. In SC, within one year of a child's placement into the foster care system, the department must provide to the court compelling reasons why a child cannot be placed with a fit and willing relative.

Finally, regardless of whether or not S.284 passes and a Responsible Father Registry is established, notice must be given to any father who has established legal paternity of an upcoming adoption proceeding. Adoption proceedings can be delayed indefinitely when DSS has not previously notified this father of prior hearings nor included him into any placement or permanency planning. Relative placement is preferred by the court if there is a fit and willing relative that can provide a safe and permanent environment for the child to reside. It is also worth noting that failure to notify the father means that the father's family is also denied placement consideration.

Issue Two: Incorporate lessons learned by other states into current legislation

- **Lesson learned: It is important to publicize the existence of the registry to the public and to ensure that agency budgets adequately provide for this publication. Otherwise, fathers will be unaware of their duty to place their names into the registry.**

Parental rights must be protected. A parent has an inherent right to the care, custody, and upbringing of their own child. The Supreme Court has consistently protected these rights against state's unwarranted usurpation. In Santosky v. Kramer, 455 US 745 (1982), the Supreme Court declared that the “fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the 14th Amendment, and does not evaporate simply because they have not been model parents.” In Florida, where the court has consistently upheld that notice was adequately provided to fathers who failed to register in the putative father registry, the state statute, 63.054, requires that:

“(11) The Department of Health shall produce and distribute, within existing resources, a pamphlet or publication informing the public about the Florida Putative Father Registry and which is printed in English, Spanish, and Creole. The pamphlet shall indicate the procedures for voluntary acknowledgment of paternity, the consequences of acknowledgment of paternity, the consequences of failure to acknowledge paternity, and the address of the Florida Putative Father Registry. Such pamphlets or publications shall be made available for distribution at all offices of the Department of Health and the Department of Children and Family Services and shall be included in health class curricula taught in public and charter schools in this state. The Department of Health shall also provide such pamphlets or publications to hospitals, adoption

entities, libraries, medical clinics, schools, universities, and providers of child-related services, upon request. In cooperation with the Department of Highway Safety and Motor Vehicles, each person applying for a Florida driver's license, or renewal thereof, and each person applying for a Florida identification card shall be offered the pamphlet or publication informing the public about the Florida Putative Father Registry.

“(12)The Department of Health shall, within existing resources, provide additional information about the Florida Putative Father Registry and its services to the public in English, Spanish, and Creole using public service announcements, Internet websites, and such other means as it deems appropriate”.

For further reading on the importance of public awareness of a Putative Father Registry, one Ohio man details his frustrating account of his attempt to locate the Ohio Putative Father Registry so that he could place his name on the list. Please see: <http://www.adopting.org/adoptions/the-ohio-putative-father-registry-the-what.html>.

- **Lesson learned: Consider providing certain “impossibility exceptions” for fathers who do not include their names into the Putative Father Registry.**

Several states have litigated these issues, specifically:

- (1) When the mother has intentionally misled the father over his paternity of the child, or
- (2) When the mother has moved out of state after conception and father has no knowledge of her whereabouts and therefore no knowledge of where to file his name into a Putative Father Registry. Since there is no national registry to date, fathers who reside outside the state, may be unaware that their children are involved in adoption proceedings here in South Carolina.

In conclusion, it is important to remember that in South Carolina close to 50% of all births are to unmarried women. Therefore, this proposed legislation potentially impacts a large number of families. It is important to ensure that all parents who want to play an active role in the life of their child have the ability to do so, and that the state supports both the mother and father in fulfilling their role to provide a nurturing and loving home for their children. The vast majority of parents, whether married or unmarried at the time of their child's birth, love their children and have an innate desire to see them happy and secure. The issues we have raised in this brief are to ensure that the rights of those parents are protected throughout the child protective hearing process and any subsequent adoption proceeding.

Respectfully submitted,

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