

1 SB494
2 169821-1
3 By Senator Bussman
4 RFD: Education and Youth Affairs
5 First Read: 21-MAY-15

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8 SYNOPSIS: Under existing law, after a child has been
9 placed in the legal custody of the Department of
10 Human Resources, the department may request the
11 court to appoint a kinship guardian to care for the
12 child.

13 This bill would specify that the department
14 would not be required to consider a relative of the
15 child who resides outside of this state for
16 appointment if the relative has not notified the
17 department within six months after the child has
18 been placed in the legal custody of the department
19 that the person desires to be considered for
20 appointment as a kinship guardian.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 Relating the Department of Human Resources; to amend
27 Section 12-15-314 of the Code of Alabama 1975, relating to

1 written requests of the department for the appointment of
2 kinship guardians; to specify that the department would not be
3 required to consider a relative of the child who resides
4 outside of this state for appointment if the person has had no
5 contact with the department under certain conditions.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Section 12-15-314 of the Code of Alabama
8 1975, is amended to read as follows:

9 "§12-15-314.

10 "(a) If a child is found to be dependent, the
11 juvenile court may make any of the following orders of
12 disposition to protect the welfare of the child:

13 "(1) Permit the child to remain with the parent,
14 legal guardian, or other legal custodian of the child, subject
15 to conditions and limitations as the juvenile court may
16 prescribe.

17 "(2) Place the child under protective supervision
18 under the Department of Human Resources.

19 "(3) Transfer legal custody to any of the following:

20 "a. The Department of Human Resources.

21 "b. A local public or private agency, organization,
22 or facility willing and able to assume the education, care,
23 and maintenance of the child and which is licensed by the
24 Department of Human Resources or otherwise authorized by law
25 to receive and provide care for the child.

26 "c. A relative or other individual who, after study
27 by the Department of Human Resources, is found by the juvenile

1 court to be qualified to receive and care for the child.
2 Unless the juvenile court finds it not in the best interests
3 of the child, a willing, fit, and able relative shall have
4 priority for placement or custody over a non-relative.

5 "(4) Make any other order as the juvenile court in
6 its discretion shall deem to be for the welfare and best
7 interests of the child.

8 "(5) In appropriate cases, award permanent custody
9 to the Department of Human Resources or to a licensed
10 child-placing agency after termination of parental rights and
11 authorization to place for adoption, without appointing a
12 legal guardian, or award temporary custody to the department
13 or a licensed child-placing agency without appointing a legal
14 custodian or legal guardian.

15 "(b) Unless a child found dependent shall also be
16 found to be delinquent, the child shall not be confined in an
17 institution established for the care and rehabilitation of
18 delinquent children or in a juvenile detention facility.
19 Nothing in this subsection shall be construed to prohibit the
20 placement of dependent children in any other residential
21 facility as defined in subdivision (22) of Section 12-15-102.

22 "(c) There shall be a rebuttable presumption that
23 children cannot be removed from the custody of their parents
24 solely because of a need for emergency housing.

25 "(d) In providing shelter or other care for children
26 referred to or coming under the jurisdiction of the juvenile
27 court, the juvenile court and the Department of Human

1 Resources shall utilize only those facilities as have been
2 established, licensed, or approved by law, or by agencies
3 pursuant to law, for those purposes.

4 "(e) When a child is placed in the legal custody of
5 the Department of Human Resources or any other department,
6 agency, organization, entity, or person pursuant to this
7 section and when the parent, legal guardian, or legal
8 custodian of the child has resources for child support, the
9 juvenile court shall order child support in conformity with
10 the child support guidelines as set out in Rule 32, Alabama
11 Rules of Judicial Administration. The child support shall be
12 paid to the Department of Human Resources or department,
13 agency, any other organization, entity, or person in whose
14 legal custody the child is placed and may be expended for
15 those matters that are necessary for the welfare and
16 well-being of those children placed in the Department of Human
17 Resources or any other departments, agencies, organizations,
18 entities, or person. In these cases, the juvenile court shall
19 issue income withholding orders subject to state law. Any
20 petition alleging dependency of a child filed by the
21 Department of Human Resources shall contain a request for
22 child support.

23 "(f) (1) After a child has been placed in the legal
24 custody of the Department of Human Resources, the department
25 may file with the juvenile court a written request for
26 appointment of a kinship guardian in cases where the juvenile
27 court has entered an order under Section 12-15-315 affirming

1 kinship guardianship as the permanent plan for the child.
2 Notwithstanding the foregoing, the department shall not
3 consider a relative of the child who resides outside of this
4 state for appointment if the relative has not notified the
5 department within six months after the child is placed in the
6 legal custody of the department that the person desires to be
7 considered for appointment as a kinship guardian.

8 "(2) A written request for appointment of a kinship
9 guardian shall be verified and allege the following with
10 respect to the child:

11 "a. Facts that if proved will meet the requirements
12 for a kinship guardianship.

13 "b. The date and place of birth of the child, if
14 known, and if not known, the reason for the lack of knowledge.

15 "c. The legal residence of the child and the place
16 where he or she resides, if different from the legal
17 residence.

18 "d. The marital status of the child, if applicable.

19 "e. The name and home and business addresses of an
20 individual caregiver sought to be appointed as a kinship
21 guardian and all residents of that individual's household.

22 "f. The relationship between the individual
23 caregiver sought to be appointed as a kinship guardian and the
24 child.

25 "g. The names and home and business addresses of the
26 parents of the child, if known.

1 "h. The names and home and business addresses of
2 legal guardians or legal custodians.

3 "i. The existence of any pending matters involving
4 the custody of the child.

5 "j. A signed statement from the individual caregiver
6 sought to be appointed as a kinship guardian that the
7 individual agrees to accept the duties and responsibilities of
8 being a kinship guardian.

9 "k. The existence of any other matters pending in
10 the juvenile court involving the child and, if they exist, a
11 statement that departments, agencies, individuals, or entities
12 authorized or involved in the proceedings, by law or court
13 order, consent to the relief requested.

14 "l. The results of a criminal history record
15 background check and a child abuse record check of the
16 individual caregiver seeking to be appointed as a kinship
17 guardian and all adult residents of the household of the
18 individual caregiver.

19 "m. Whether the child is subject to provisions of
20 the federal Indian Child Welfare Act of 1978, 25 U.S.C. §1901,
21 and, if so:

22 "1. The tribal affiliations of the parents, legal
23 guardians, or legal custodians of the child; and

24 "2. The specific actions taken to notify the tribes
25 of the parents, legal guardians, or legal custodians and the
26 results of the contacts.

1 "n. Other relevant facts in support of the written
2 request to be appointed as a kinship guardian.

3 "(3) After the juvenile court finds that an
4 individual caregiver qualifies to be appointed as a kinship
5 guardian, the requirements of subdivision (5) have been
6 proved, and the best interests of the child will be served by
7 the requested appointment, it may make the appointment. After
8 a kinship guardianship appointment, the juvenile court may
9 make any other disposition of the matter that will serve the
10 best interests of the child.

11 "(4) A kinship guardian may be appointed by the
12 juvenile court only if:

13 "a.1. A parent, legal guardian, or legal custodian
14 of the child is living and has consented in writing to the
15 appointment of a kinship guardian and the consent has not been
16 withdrawn; or

17 "2. A parent of the child is living but all parental
18 rights in regard to the child have been terminated or
19 restricted by a prior court order, provided that for this
20 purpose only, the blood relationship with the child will
21 continue to be recognized in defining relative caregiver; and

22 "b.1. The child has resided with the individual
23 caregiver seeking to be appointed as a kinship guardian
24 without the parent, legal guardian, or legal custodian for a
25 period of six months or more immediately preceding the date
26 the written request is filed, and a parent, legal guardian, or
27 legal custodian having legal custody of the child is currently

1 unwilling or unable to provide adequate care, maintenance, and
2 supervision for the child or there are extraordinary
3 circumstances; and

4 "2. No legal guardian of the child is currently
5 appointed pursuant to the Alabama Uniform Guardianship and
6 Protective Proceedings Act, Chapter 2A of Title 26.

7 "(5) The burden of proof shall be by clear and
8 convincing evidence, except that in those cases involving an
9 Indian child as defined in the federal Indian Child Welfare
10 Act of 1978, 25 U.S.C. §1901, the burden of proof shall be
11 proof beyond a reasonable doubt.

12 "(6) As part of a kinship guardianship order, the
13 juvenile court may order a parent, legal guardian, or legal
14 custodian to pay the reasonable costs of support and
15 maintenance of the child that the parent, legal guardian, or
16 legal custodian is financially able to pay. The juvenile court
17 shall use the Child Support Guidelines established by rules of
18 the Alabama Supreme Court to calculate a reasonable payment.

19 "(7) The juvenile court may order visitation between
20 a parent, legal guardian, or legal custodian and the child to
21 maintain or rebuild a parent-child relationship if the
22 visitation is in the best interests of the child.

23 "(8)a. A kinship guardianship is intended to be
24 permanent during the child's minority similar to other
25 permanency plan options. After the kinship guardian has been
26 appointed by the juvenile court, a parent, other person,
27 entity, department, or agency, including the Department of

1 Human Resources, may file a petition to revoke or modify the
2 kinship guardianship by proving not only that a material
3 change in circumstances has occurred since the order granting
4 the kinship guardianship was entered, but also that the change
5 would materially promote the child's best interest and
6 welfare, and that the positive good brought about by the
7 change would more than offset the inherently disruptive effect
8 caused by uprooting the child.

9 "b. If the juvenile court finds that a petition for
10 revocation of the kinship guardianship filed by the Department
11 of Human Resources meets the standard in paragraph a., it
12 shall grant the petition, and the child shall be placed in the
13 legal custody of the Department of Human Resources. If the
14 juvenile court finds that a petition for modification of the
15 kinship guardianship filed by the Department of Human
16 Resources meets the standard in paragraph a., it shall grant
17 the petition, and the child shall remain with the kinship
18 guardian but shall be under the protective supervision of the
19 department.

20 "c. This subsection does not preclude a parent,
21 other person, entity, department, or agency, including the
22 Department of Human Resources, from filing a petition to
23 modify other terms of the order of the juvenile court granting
24 the kinship guardianship, including, but not limited to,
25 visitation, which shall be decided, after notice to the
26 department, on the basis of what is in the best interests of
27 the child.

1 "(9)a. Except as provided herein, a kinship guardian
2 shall have the same rights, responsibilities, and authority
3 relating to the child as a parent, including, but not limited
4 to, making decisions concerning the care and well-being of the
5 child; consenting to routine, preventative, necessary,
6 elective, cosmetic, and emergency medical, dental, and mental
7 health needs; arranging and consenting to educational plans
8 for the child; arranging and consenting to athletic, sport, or
9 other activity participation; applying for financial
10 assistance and social services for which the child is
11 eligible; applying for a permit or license; applying for
12 admission to a college or university; responsibility for
13 activities necessary to ensure the safety, permanency, and
14 well-being of the child; and ensuring the maintenance and
15 protection of the child, and further provided, that the
16 appointment of the kinship guardian terminates the education
17 rights of the parent in favor of the kinship guardian and the
18 kinship guardian shall be deemed the parent for federal IDEA
19 and other educational purposes.

20 "b. A kinship guardian may not consent to the
21 adoption of the child or a name change for the child. The
22 parent of the child shall retain the authority to consent to
23 the adoption of the child or a name change for the child.

24 "c. The parent, legal guardian, or legal custodian
25 from whose custody the child was removed shall retain the
26 obligation to pay child support.

1 "d. Unless otherwise ordered by the juvenile court,
2 a kinship guardian has the authority to make all decisions
3 regarding appropriate visitation between the parent, legal
4 guardian, or legal custodian and the child.

5 "e. The appointment of a kinship guardian does not
6 limit or terminate any rights or benefits derived from or
7 between the child and parent, legal guardian, or legal
8 custodian relating to inheritance or insurance.

9 "f. A kinship guardianship terminates when the child
10 reaches 18 years of age, or when the child reaches age 21 if
11 the child is eligible for a guardianship subsidy up to age 21
12 regardless of whether the juvenile court has continued
13 jurisdiction, or when the kinship guardianship is otherwise
14 terminated or revoked by the juvenile court.

15 "g. A certified copy of the court order appointing a
16 kinship guardian shall be satisfactory proof of the authority
17 of the kinship guardian, and letters of guardianship need not
18 be issued.

19 "h. A kinship guardianship order is the legal
20 authority to enroll the named child in school and consent to
21 school-related activities and medical care for the child; to
22 give permission or consent for other non-school related
23 activities, placements, and events; and to enroll the child in
24 health, homeowner, employment, motor vehicle, and other
25 insurance.

26 "i. A kinship guardianship order is the legal
27 authority for the kinship guardian to authorize or consent to

1 medical care, dental care, and mental health care for the
2 child.

3 "j. Absent negligence, wantonness, recklessness, or
4 deliberate misconduct, no person who acts in good faith
5 reliance on a kinship guardianship order without actual
6 knowledge of facts contrary to that order is subject to
7 criminal or civil liability or professional disciplinary
8 action. This good faith immunity applies even though a parent,
9 legal guardian, or legal custodian having parental rights or a
10 person having legal custody of the child has contrary wishes.
11 A person who relies upon a kinship guardianship order is under
12 no duty to make further inquiry or investigation."

13 Section 2. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.