

1 HB31
2 196673-3
3 By Representatives Reynolds, Robertson and Stringer
4 RFD: Judiciary
5 First Read: 05-MAR-19
6 PFD: 02/14/2019

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 To amend Sections 12-15-301 and 12-15-310, Code of
9 Alabama 1975, to provide that statements made during a
10 forensic interview by a child under the age of 12 may be
11 entered into evidence in a juvenile dependency hearing
12 involving that child, in certain circumstances, if the
13 statements pertain to allegations of abuse committed against
14 the child; and to update defined terms.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 12-15-301 and 12-15-310, Code of
17 Alabama 1975, are amended to read as follows:

18 "§12-15-301.

19 "For purposes of this article, the following words
20 and phrases shall have the following meanings:

21 "(1) ABANDONMENT. A voluntary and intentional
22 relinquishment of the custody of a child by a parent, or a
23 withholding from the child, without good cause or excuse, by
24 the parent, of his or her presence, care, love, protection,
25 maintenance, or the opportunity for the display of filial
26 affection, or the failure to claim the rights of a parent, or
27 failure to perform the duties of a parent.

1 "~~(2) ABUSE. Harm or the risk of harm to the~~
2 ~~emotional, physical health, or welfare of a child. Harm or the~~
3 ~~risk of harm to the emotional, physical health, or welfare of~~
4 ~~a child can occur through nonaccidental physical or mental~~
5 ~~injury, sexual abuse, or attempted sexual abuse or sexual~~
6 ~~exploitation or attempted sexual exploitation.~~

7 "~~(3)~~ (2) AGE APPROPRIATE OR DEVELOPMENTALLY
8 APPROPRIATE. Activities or items that are generally accepted
9 as suitable for children of the same chronological age or
10 level of maturity or that are determined to be developmentally
11 appropriate for a child based on the development of cognitive,
12 emotional, physical, and behavioral capacities that are
13 typical for an age or age group and, in the case of a specific
14 child, activities or items that are suitable for the child
15 based on the developmental stages attained by the child with
16 respect to the cognitive, emotional, physical, and behavioral
17 capacities of the child.

18 "~~(4)~~ (3) CAREGIVER. An individual 21 years of age or
19 older, other than a parent, legal guardian, or legal custodian
20 of a child who is an approved foster parent and who is a
21 relative of the child and has been providing care and support
22 for the child while the child has been residing in the home of
23 the caregiver for at least the last six consecutive months
24 while in the legal custody of the Department of Human
25 Resources or a designated official for a child-placing agency
26 or a successor guardian.

1 "(4) CHILD ABUSE. Harm or the risk of harm to the
2 emotional health, physical health, or welfare of a child,
3 which can occur through nonaccidental physical or mental
4 injury, sexual abuse, or attempted sexual abuse or sexual
5 exploitation or attempted sexual exploitation.

6 "(5) CHILD-PLACING AGENCY. The same as the term is
7 defined in subdivision (3) of Section 38-7-2.

8 "(6) ELIGIBLE CHILD. In addition to the definition
9 of child in subdivision (3) of Section 12-15-102, an
10 individual under 18 years of age who has been residing with
11 the caregiver for at least the last six consecutive months
12 while in the legal custody of the Department of Human
13 Resources.

14 "(7) FORENSIC INTERVIEW. A developmentally sensitive
15 and legally sound method of gathering factual information
16 regarding allegations of abuse or exposure to violence,
17 conducted by a neutral professional utilizing research and
18 practice-informed techniques as part of a larger investigative
19 process.

20 "An individual conducting forensic interviews shall
21 have completed specialized forensic interview training that
22 includes, but is not limited to, the following:

23 "a. A minimum of 32 hours of instruction and
24 practice in forensic interviewing.

25 "b. Training in evidence-supported interview
26 protocols.

1 "c. Pre-testing and post-testing that reflects
2 understanding of the principles of legally sound forensic
3 interviewing.

4 "d. Training in child development, question design,
5 implementation of interview protocols, dynamics of abuse,
6 disclosure process, cultural competency, and sensitivity.

7 "e. Training including a practice component that is
8 subject to a standardized review process.

9 "f. Required reading of current articles
10 specifically pertaining to the practice of forensic
11 interviewing.

12 "~~(7)~~(8) KINSHIP GUARDIAN. A caregiver who is willing
13 to assume care of a child because of parental incapacity of a
14 parent, legal guardian, or legal custodian, or other
15 dependency reasons, with the intent to raise the child to
16 adulthood, and who is appointed the kinship guardian of the
17 child by a juvenile court. A kinship guardian shall be
18 responsible for the care and protection of the child and for
19 providing for the health, education, and maintenance of the
20 child.

21 "~~(8)~~(9) NEGLECT. Negligent treatment or maltreatment
22 of a child, including, but not limited to, the failure to
23 provide adequate food, medical treatment, supervision,
24 education, clothing, or shelter.

25 "~~(9)~~(10) PARENTAL INCAPACITY. Abandonment or
26 incapacity of such a serious nature as to demonstrate that the
27 parent, legal guardian, or legal custodian is unable,

1 unavailable, or unwilling to perform the regular and expected
2 functions of care and support of the child.

3 "~~(10)~~ (11) PROTECTIVE SUPERVISION. A legal status
4 created by order of the juvenile court following an
5 adjudication of dependency whereby a child is placed with a
6 parent or other person subject to supervision by the
7 Department of Human Resources.

8 "~~(11)~~ (12) REASONABLE AND PRUDENT PARENT STANDARD.
9 The standard characterized by careful and sensible parental
10 decisions that maintain the health, safety, and best interests
11 of a child, while at the same time encouraging the emotional
12 and developmental growth of the child, that a caregiver shall
13 use when determining whether to allow a child in foster care
14 under the responsibility of the state to participate in
15 extracurricular, enrichment, cultural, and social activities.

16 "~~(12)~~ (13) REASONABLE EFFORTS. Efforts made to
17 preserve and reunify families prior to the placement of a
18 child in foster care, to prevent or eliminate the need for
19 removing the child from his or her home, and to make it
20 possible for a child to return safely to his or her home.
21 Reasonable efforts also refers to efforts made to place the
22 child in a timely manner in accordance with the permanency
23 plan, and to complete whatever steps are necessary to finalize
24 the permanency placement of the child. In determining the
25 reasonable efforts to be made with respect to a child, and in
26 making these reasonable efforts, the health and safety of the
27 child shall be the paramount concern.

1 "~~(13)~~(14) RELATIVE. An individual who is legally
2 related to the child by blood, marriage, or adoption within
3 the fourth degree of kinship, including only a brother,
4 sister, uncle, aunt, first cousin, grandparent, great
5 grandparent, great-aunt, great-uncle, great great grandparent,
6 niece, nephew, grandniece, grandnephew, or a stepparent.

7 "~~(14)~~(15) SEXUAL ABUSE. Sexual abuse includes the
8 employment, use, persuasion, inducement, enticement, or
9 coercion of any child to engage in, or having a child assist
10 any person to engage in, any sexually explicit conduct or any
11 simulation of the conduct for the purpose of producing any
12 visual depiction of the conduct. Sexual abuse also includes
13 rape, molestation, prostitution, or other forms of sexual
14 exploitation or abuse of children, or incest with children, as
15 those acts are defined in this article or by Alabama law.

16 "~~(15)~~(16) SEXUAL EXPLOITATION. Sexual exploitation
17 includes allowing, permitting, or encouraging a child to
18 engage in prostitution and allowing, permitting, encouraging,
19 or engaging in the obscene or pornographic photographing,
20 filming, or depicting of a child.

21 "~~(16)~~(17) SUCCESSOR GUARDIAN. A person or persons
22 named in a kinship guardianship assistance agreement, or any
23 amendments thereto, as the person or persons to provide care
24 and guardianship for a child in the event of the death or
25 incapacity of a kinship guardian. The successor guardian may
26 be unrelated to the child.

1 "~~(17)~~(18) TERMINATION OF PARENTAL RIGHTS. A
2 severance of all rights of a parent to a child.

3 "§12-15-310.

4 "(a) An adjudicatory hearing is a hearing at which
5 evidence is presented for a juvenile court to determine if a
6 child is dependent. At the commencement of the hearing, if the
7 parties are not represented by counsel, they shall be informed
8 of the specific allegations in the petition. The parties shall
9 be permitted to admit or deny the allegations prior to the
10 taking of testimony.

11 "(b) If the allegations are denied by the parties or
12 if they fail to respond, the juvenile court shall proceed to
13 hear evidence on the petition. The juvenile court shall record
14 its findings on whether the child is dependent. If the
15 juvenile court finds that the allegations in the petition have
16 not been proven by clear and convincing evidence, the juvenile
17 court shall dismiss the petition.

18 "(c) A statement made by a child under the age of 12
19 describing any act of ~~sexual conduct performed with or on~~
20 child abuse committed against the child ~~by another~~, if it is
21 not otherwise admissible by statute or court rule, is
22 admissible only in ~~all~~ dependency cases brought by the State
23 of Alabama acting by and through a local department of human
24 resources if both of the following are true:

25 "(1) The statement was made to a social worker,
26 ~~child sexual abuse~~ therapist, ~~or~~ counselor, licensed

1 psychologist, physician, or school or kindergarten teacher or
2 instructor; ~~and,~~ or during a forensic interview.

3 "(2) The juvenile court finds that the time,
4 content, and circumstances of the statement provide sufficient
5 indicia of reliability. In making its determination, the
6 juvenile court may consider the physical and mental age and
7 maturity of the child, the nature and duration of the abuse or
8 offense, the relationship of the child to the offender, and
9 any other factor deemed appropriate.

10 "(d) A statement may not be admitted pursuant to
11 this section unless the proponent of the statement makes known
12 to the adverse party the intention of the proponent to offer
13 the statement and the particulars of the statement
14 sufficiently in advance of the proceedings to provide the
15 adverse party with a fair opportunity to rebut the statement.
16 This child hearsay exception applies to all hearings involving
17 dependency including, but not limited to, the 72-hour hearing
18 requirement, the adjudicatory hearing, and the dispositional
19 hearing. The exception contained in this subsection shall not
20 apply to a criminal proceeding or charge."

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 05-MAR-19

Read for the second time and placed
on the calendar 1 amendment 20-MAR-19

Read for the third time and passed
as amended..... 02-APR-19

Yeas 102, Nays 0, Abstains 0

Jeff Woodard
Clerk