

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

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8 SYNOPSIS: Existing law provides rules pertaining to
9 the admissibility of certain statements as evidence
10 when they are presented during a juvenile
11 dependency hearing. These include certain
12 statements made by a child under the age of 12 when
13 those statements pertain to alleged sexual abuse of
14 the child.

15 This bill would provide that statements made
16 during a forensic interview by a child under the
17 age of 12 may be entered into evidence in a
18 juvenile dependency hearing involving that child,
19 in certain circumstances, if the statements pertain
20 to allegations of abuse committed against the
21 child. This bill would also update defined terms.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 To amend Sections 12-15-301 and 12-15-310, Code of
2 Alabama 1975, to provide that statements made during a
3 forensic interview by a child under the age of 12 may be
4 entered into evidence in a juvenile dependency hearing
5 involving that child, in certain circumstances, if the
6 statements pertain to allegations of abuse committed against
7 the child; and to update defined terms.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

11 "§12-15-301.

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

14 "(1) ABANDONMENT. A voluntary and intentional
15 relinquishment of the custody of a child by a parent, or a
16 withholding from the child, without good cause or excuse, by
17 the parent, of his or her presence, care, love, protection,
18 maintenance, or the opportunity for the display of filial
19 affection, or the failure to claim the rights of a parent, or
20 failure to perform the duties of a parent.

21 "~~(2) ABUSE. Harm or the risk of harm to the~~
22 ~~emotional, physical health, or welfare of a child. Harm or the~~
23 ~~risk of harm to the emotional, physical health, or welfare of~~
24 ~~a child can occur through nonaccidental physical or mental~~
25 ~~injury, sexual abuse, or attempted sexual abuse or sexual~~
26 ~~exploitation or attempted sexual exploitation.~~

1 "~~(3)~~(2) AGE APPROPRIATE OR DEVELOPMENTALLY
2 APPROPRIATE. Activities or items that are generally accepted
3 as suitable for children of the same chronological age or
4 level of maturity or that are determined to be developmentally
5 appropriate for a child based on the development of cognitive,
6 emotional, physical, and behavioral capacities that are
7 typical for an age or age group and, in the case of a specific
8 child, activities or items that are suitable for the child
9 based on the developmental stages attained by the child with
10 respect to the cognitive, emotional, physical, and behavioral
11 capacities of the child.

12 "~~(4)~~(3) CAREGIVER. An individual 21 years of age or
13 older, other than a parent, legal guardian, or legal custodian
14 of a child who is an approved foster parent and who is a
15 relative of the child and has been providing care and support
16 for the child while the child has been residing in the home of
17 the caregiver for at least the last six consecutive months
18 while in the legal custody of the Department of Human
19 Resources or a designated official for a child-placing agency
20 or a successor guardian.

21 "(4) CHILD ABUSE. Harm or the risk of harm to the
22 emotional health, physical health, or welfare of a child,
23 which can occur through nonaccidental physical or mental
24 injury, sexual abuse, or attempted sexual abuse or sexual
25 exploitation or attempted sexual exploitation.

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

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

7 "(7) FORENSIC INTERVIEW. A developmentally sensitive
8 and legally sound method of gathering factual information
9 regarding allegations of abuse or exposure to violence,
10 conducted by a neutral professional utilizing research and
11 practice-informed techniques as part of a larger investigative
12 process.

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

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

26 "~~(9)~~(10) PARENTAL INCAPACITY. Abandonment or
27 incapacity of such a serious nature as to demonstrate that the

1 parent, legal guardian, or legal custodian is unable,
2 unavailable, or unwilling to perform the regular and expected
3 functions of care and support of the child.

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

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

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

1 making these reasonable efforts, the health and safety of the
2 child shall be the paramount concern.

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

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

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

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

1 incapacity of a kinship guardian. The successor guardian may
2 be unrelated to the child.

3 "~~(17)~~(18) TERMINATION OF PARENTAL RIGHTS. A
4 severance of all rights of a parent to a child.

5 "§12-15-310.

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

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

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

1 "(1) The statement was made to a social worker,
2 ~~child sexual abuse~~ therapist, ~~or~~ counselor, licensed
3 psychologist, physician, or school or kindergarten teacher or
4 instructor; ~~and,~~ or during a forensic interview.

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

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

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