

1 HB361
2 115934-1
3 By Representative Grimes
4 RFD: Judiciary
5 First Read: 19-JAN-10

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8 SYNOPSIS: Existing law provides that certain
9 statements by a child describing an act of sexual
10 contact performed on the child that are otherwise
11 not admissible in court may be admissible in
12 dependency cases that are brought by the State
13 Department of Human Resources acting through a
14 local department of human resources.

15 This bill would remove the requirement that
16 in order for statements of this nature to be
17 admissible, the dependency case must have been
18 brought by the Department of Human Resources.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT
23

24 To amend Section 12-15-310, Code of Alabama 1975, to
25 provide further for admissibility in dependency cases of
26 certain statements made by a child regarding sexual contact.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 12-15-310, Code of Alabama 1975,
2 is amended to read as follows:

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 the
20 child by another, not otherwise admissible by statute or court
21 rule, is admissible in all dependency cases ~~brought by the~~
22 ~~State of Alabama acting by and through a local department of~~
23 ~~human resources~~ if:

24 "(1) The statement was made to a social worker,
25 child sexual abuse therapist or counselor, licensed
26 psychologist, physician, or school or kindergarten teacher or
27 instructor; and

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

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

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