

1 HB31
2 196673-4
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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2 ENROLLED, An Act,

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

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

13 "§12-15-301.

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

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

23 "~~(2) ABUSE. Harm or the risk of harm to the~~
24 ~~emotional, physical health, or welfare of a child. Harm or the~~
25 ~~risk of harm to the emotional, physical health, or welfare of~~

1 ~~a child can occur through nonaccidental physical or mental~~
2 ~~injury, sexual abuse, or attempted sexual abuse or sexual~~
3 ~~exploitation or attempted sexual exploitation.~~

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

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

24 "(4) CHILD ABUSE. Harm or the risk of harm to the
25 emotional health, physical health, or welfare of a child,

1 which can occur through nonaccidental physical or mental
2 injury, sexual abuse, or attempted sexual abuse or sexual
3 exploitation or attempted sexual exploitation.

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

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

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

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

21 "a. A minimum of 32 hours of instruction and
22 practice in forensic interviewing.

23 "b. Training in evidence-supported interview
24 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.

1 "~~(9)~~(10) PARENTAL INCAPACITY. Abandonment or
2 incapacity of such a serious nature as to demonstrate that the
3 parent, legal guardian, or legal custodian is unable,
4 unavailable, or unwilling to perform the regular and expected
5 functions of care and support of the child.

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

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

19 "~~(12)~~(13) REASONABLE EFFORTS. Efforts made to
20 preserve and reunify families prior to the placement of a
21 child in foster care, to prevent or eliminate the need for
22 removing the child from his or her home, and to make it
23 possible for a child to return safely to his or her home.
24 Reasonable efforts also refers to efforts made to place the
25 child in a timely manner in accordance with the permanency

1 plan, and to complete whatever steps are necessary to finalize
2 the permanency placement of the child. In determining the
3 reasonable efforts to be made with respect to a child, and in
4 making these reasonable efforts, the health and safety of the
5 child shall be the paramount concern.

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

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

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

1 "~~(16)~~ (17) SUCCESSOR GUARDIAN. A person or persons
2 named in a kinship guardianship assistance agreement, or any
3 amendments thereto, as the person or persons to provide care
4 and guardianship for a child in the event of the death or
5 incapacity of a kinship guardian. The successor guardian may
6 be unrelated to the child.

7 "~~(17)~~ (18) TERMINATION OF PARENTAL RIGHTS. A
8 severance of all rights of a parent to a child.

9 "§12-15-310.

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

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

24 "(c) A statement made by a child under the age of 12
25 describing any act of ~~sexual conduct performed with or on~~

1 child abuse committed against the child by another, if it is
2 not otherwise admissible by statute or court rule, is
3 admissible only in ~~all~~ dependency cases brought by the State
4 of Alabama acting by and through a local department of human
5 resources if both of the following are true:

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

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

17 "(d) A statement may not be admitted pursuant to
18 this section unless the proponent of the statement makes known
19 to the adverse party the intention of the proponent to offer
20 the statement and the particulars of the statement
21 sufficiently in advance of the proceedings to provide the
22 adverse party with a fair opportunity to rebut the statement.
23 This child hearsay exception applies to all hearings involving
24 dependency including, but not limited to, the 72-hour hearing
25 requirement, the adjudicatory hearing, and the dispositional

1 hearing. The exception contained in this subsection shall not
2 apply to a criminal proceeding or charge."

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 02-APR-19, as amended.

Jeff Woodard
Clerk

Senate

30-MAY-19

Passed