

1 SB377  
2 200453-1  
3 By Senator Givhan  
4 RFD: Judiciary  
5 First Read: 02-MAY-19

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.

23 A BILL  
24 TO BE ENTITLED  
25 AN ACT

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

16           "a. A minimum of 32 hours of instruction and  
17 practice in forensic interviewing.

18           "b. Training in evidence-supported interview  
19 protocols.

20           "c. Pre-testing and post-testing that reflects  
21 understanding of the principles of legally sound forensic  
22 interviewing.

23           "d. Training in child development, question design,  
24 implementation of interview protocols, dynamics of abuse,  
25 disclosure process, cultural competency, and sensitivity.

26           "e. Training including a practice component that is  
27 subject to a standardized review process.

1                   "f. Required reading of current articles  
2                   specifically pertaining to the practice of forensic  
3                   interviewing.

4                   "~~(7)~~(8) KINSHIP GUARDIAN. A caregiver who is willing  
5                   to assume care of a child because of parental incapacity of a  
6                   parent, legal guardian, or legal custodian, or other  
7                   dependency reasons, with the intent to raise the child to  
8                   adulthood, and who is appointed the kinship guardian of the  
9                   child by a juvenile court. A kinship guardian shall be  
10                  responsible for the care and protection of the child and for  
11                  providing for the health, education, and maintenance of the  
12                  child.

13                  "~~(8)~~(9) NEGLECT. Negligent treatment or maltreatment  
14                  of a child, including, but not limited to, the failure to  
15                  provide adequate food, medical treatment, supervision,  
16                  education, clothing, or shelter.

17                  "~~(9)~~(10) PARENTAL INCAPACITY. Abandonment or  
18                  incapacity of such a serious nature as to demonstrate that the  
19                  parent, legal guardian, or legal custodian is unable,  
20                  unavailable, or unwilling to perform the regular and expected  
21                  functions of care and support of the child.

22                  "~~(10)~~(11) PROTECTIVE SUPERVISION. A legal status  
23                  created by order of the juvenile court following an  
24                  adjudication of dependency whereby a child is placed with a  
25                  parent or other person subject to supervision by the  
26                  Department of Human Resources.

1                   "~~(11)~~(12) REASONABLE AND PRUDENT PARENT STANDARD.

2           The standard characterized by careful and sensible parental  
3           decisions that maintain the health, safety, and best interests  
4           of a child, while at the same time encouraging the emotional  
5           and developmental growth of the child, that a caregiver shall  
6           use when determining whether to allow a child in foster care  
7           under the responsibility of the state to participate in  
8           extracurricular, enrichment, cultural, and social activities.

9                   "~~(12)~~(13) REASONABLE EFFORTS. Efforts made to

10          preserve and reunify families prior to the placement of a  
11          child in foster care, to prevent or eliminate the need for  
12          removing the child from his or her home, and to make it  
13          possible for a child to return safely to his or her home.  
14          Reasonable efforts also refers to efforts made to place the  
15          child in a timely manner in accordance with the permanency  
16          plan, and to complete whatever steps are necessary to finalize  
17          the permanency placement of the child. In determining the  
18          reasonable efforts to be made with respect to a child, and in  
19          making these reasonable efforts, the health and safety of the  
20          child shall be the paramount concern.

21                  "~~(13)~~(14) RELATIVE. An individual who is legally

22          related to the child by blood, marriage, or adoption within  
23          the fourth degree of kinship, including only a brother,  
24          sister, uncle, aunt, first cousin, grandparent, great  
25          grandparent, great-aunt, great-uncle, great great grandparent,  
26          niece, nephew, grandniece, grandnephew, or a stepparent.

1           "~~(14)~~(15) SEXUAL ABUSE. Sexual abuse includes the  
2 employment, use, persuasion, inducement, enticement, or  
3 coercion of any child to engage in, or having a child assist  
4 any person to engage in, any sexually explicit conduct or any  
5 simulation of the conduct for the purpose of producing any  
6 visual depiction of the conduct. Sexual abuse also includes  
7 rape, molestation, prostitution, or other forms of sexual  
8 exploitation or abuse of children, or incest with children, as  
9 those acts are defined in this article or by Alabama law.

10           "~~(15)~~(16) SEXUAL EXPLOITATION. Sexual exploitation  
11 includes allowing, permitting, or encouraging a child to  
12 engage in prostitution and allowing, permitting, encouraging,  
13 or engaging in the obscene or pornographic photographing,  
14 filming, or depicting of a child.

15           "~~(16)~~(17) SUCCESSOR GUARDIAN. A person or persons  
16 named in a kinship guardianship assistance agreement, or any  
17 amendments thereto, as the person or persons to provide care  
18 and guardianship for a child in the event of the death or  
19 incapacity of a kinship guardian. The successor guardian may  
20 be unrelated to the child.

21           "~~(17)~~(18) TERMINATION OF PARENTAL RIGHTS. A  
22 severance of all rights of a parent to a child.

23           "§12-15-310.

24           "(a) An adjudicatory hearing is a hearing at which  
25 evidence is presented for a juvenile court to determine if a  
26 child is dependent. At the commencement of the hearing, if the  
27 parties are not represented by counsel, they shall be informed



1 of the specific allegations in the petition. The parties shall  
2 be permitted to admit or deny the allegations prior to the  
3 taking of testimony.

4 "(b) If the allegations are denied by the parties or  
5 if they fail to respond, the juvenile court shall proceed to  
6 hear evidence on the petition. The juvenile court shall record  
7 its findings on whether the child is dependent. If the  
8 juvenile court finds that the allegations in the petition have  
9 not been proven by clear and convincing evidence, the juvenile  
10 court shall dismiss the petition.

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

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

22 "(2) The juvenile court finds that the time,  
23 content, and circumstances of the statement provide sufficient  
24 indicia of reliability. In making its determination, the  
25 juvenile court may consider the physical and mental age and  
26 maturity of the child, the nature and duration of the abuse or

1 offense, the relationship of the child to the offender, and  
2 any other factor deemed appropriate.

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

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