

1 HB21
2 179831-1
3 By Representative Weaver
4 RFD: Judiciary
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8 SYNOPSIS: Under existing law, a juvenile court may
9 allow a dependent child to remain with a parent or
10 legal guardian or be placed with certain licensed
11 public or private agencies, organizations, or
12 facilities willing and able to assume the
13 education, care, and maintenance of the child or a
14 suitable relative or other individual approved by
15 the department.

16 This bill would require the Department of
17 Human Resources to make every effort to place an
18 infant of a dependent minor mother together with
19 the minor mother in foster care.

20
21 A BILL
22 TO BE ENTITLED
23 AN ACT
24

25 To amend Section 12-15-314, Code of Alabama 1975, as
26 last amended by Act 2016-129, 2016 Regular Session, relating
27 to the disposition of dependent children, to require the

1 Department of Human Resources to make every effort to place an
2 infant of a minor mother together with the minor mother in
3 foster care.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Section 12-15-314, Code of Alabama 1975,
6 as last amended by Act 2016-129, 2016 Regular Session, is
7 amended to read as follows:

8 "§12-15-314.

9 "(a) If a child is found to be dependent, the
10 juvenile court may make any of the following orders of
11 disposition to protect the welfare of the child:

12 "(1) Permit the child to remain with the parent,
13 legal guardian, or other legal custodian of the child, subject
14 to conditions and limitations as the juvenile court may
15 prescribe.

16 "(2) Place the child under protective supervision
17 under the Department of Human Resources.

18 "(3) Transfer legal custody to any of the following:

19 "a. The Department of Human Resources.

20 "b. A local public or private agency, organization,
21 or facility willing and able to assume the education, care,
22 and maintenance of the child and which is licensed by the
23 Department of Human Resources or otherwise authorized by law
24 to receive and provide care for the child.

25 "c. A relative or other individual who, after study
26 by the Department of Human Resources, is found by the juvenile
27 court to be qualified to receive and care for the child.

1 Unless the juvenile court finds it not in the best interests
2 of the child, a willing, fit, and able relative shall have
3 priority for placement or custody over a non-relative.

4 "(4) Make any other order as the juvenile court in
5 its discretion shall deem to be for the welfare and best
6 interests of the child.

7 "(5) In appropriate cases, award permanent custody
8 to the Department of Human Resources or to a licensed
9 child-placing agency after termination of parental rights and
10 authorization to place for adoption, without appointing a
11 legal guardian, or award temporary custody to the department
12 or a licensed child-placing agency without appointing a legal
13 custodian or legal guardian.

14 "(b) Unless a child found dependent shall also be
15 found to be delinquent, the child shall not be confined in an
16 institution established for the care and rehabilitation of
17 delinquent children or in a juvenile detention facility.
18 Nothing in this subsection shall be construed to prohibit the
19 placement of dependent children in any other residential
20 facility as defined in subdivision (22) of Section 12-15-102.

21 "(c) There shall be a rebuttable presumption that
22 children cannot be removed from the custody of their parents
23 solely because of a need for emergency housing.

24 "(d) In providing shelter or other care for children
25 referred to or coming under the jurisdiction of the juvenile
26 court, the juvenile court and the Department of Human
27 Resources shall utilize only those facilities as have been

1 established, licensed, or approved by law, or by agencies
2 pursuant to law, for those purposes.

3 "(e) When a child is placed in the legal custody of
4 the Department of Human Resources or any other department,
5 agency, organization, entity, or person pursuant to this
6 section and when the parent, legal guardian, or legal
7 custodian of the child has resources for child support, the
8 juvenile court shall order child support in conformity with
9 the child support guidelines as set out in Rule 32, Alabama
10 Rules of Judicial Administration. The child support shall be
11 paid to the Department of Human Resources or department,
12 agency, any other organization, entity, or person in whose
13 legal custody the child is placed and may be expended for
14 those matters that are necessary for the welfare and
15 well-being of those children placed in the Department of Human
16 Resources or any other departments, agencies, organizations,
17 entities, or person. In these cases, the juvenile court shall
18 issue income withholding orders subject to state law. Any
19 petition alleging dependency of a child filed by the
20 Department of Human Resources shall contain a request for
21 child support.

22 "(f) (1) After a child has been placed in the legal
23 custody of the Department of Human Resources, the department
24 may file with the juvenile court a written request for
25 appointment of a kinship guardian in cases where the juvenile
26 court has entered an order under Section 12-15-315 affirming
27 kinship guardianship as the permanent plan for the child.

1 "(2) If the kinship guardian dies or becomes
2 incapacitated, the department or the named prospective
3 successor guardian in the kinship guardian subsidy agreement
4 may file a written request for appointment of the successor
5 guardian. The department or the prospective successor guardian
6 may file for an ex parte order of temporary guardianship
7 pending a hearing on the written request for appointment of a
8 successor guardian.

9 "(3) A written request for appointment of a kinship
10 guardian or successor guardian shall be verified and allege
11 the following with respect to the child:

12 "a. Facts that if proved will meet the requirements
13 for a kinship guardianship or successor guardianship.

14 "b. The date and place of birth of the child, if
15 known, and if not known, the reason for the lack of knowledge.

16 "c. The legal residence of the child and the place
17 where he or she resides, if different from the legal
18 residence.

19 "d. The marital status of the child, if applicable.

20 "e. The name and home and business addresses of an
21 individual caregiver sought to be appointed as a kinship
22 guardian or successor guardian and all residents of that
23 individual's household.

24 "f. The relationship between the individual
25 caregiver sought to be appointed as a kinship guardian or
26 successor guardian and the child.

1 "g. The names and home and business addresses of the
2 parents of the child, if known.

3 "h. The names and home and business addresses of
4 legal guardians or legal custodians.

5 "i. The existence of any pending matters involving
6 the custody of the child.

7 "j. A signed statement from the individual caregiver
8 sought to be appointed as a kinship guardian or successor
9 guardian that the individual agrees to accept the duties and
10 responsibilities of being a kinship guardian or successor
11 guardian.

12 "k. The existence of any other matters pending in
13 the juvenile court involving the child and, if they exist, a
14 statement that departments, agencies, individuals, or entities
15 authorized or involved in the proceedings, by law or court
16 order, consent to the relief requested.

17 "l. The results of a criminal history record
18 background check of the individual caregiver seeking to be
19 appointed as a kinship guardian or successor guardian and all
20 adult residents of the household of the individual caregiver.
21 In addition, the results of a child abuse record check of the
22 individual caregiver seeking to be appointed as a kinship
23 guardian or successor guardian and all residents 14 years or
24 older of the household of the individual caregiver.

25 "m. Whether the child is subject to provisions of
26 the federal Indian Child Welfare Act of 1978, 25 U.S.C. §1901,
27 and, if so:

1 "1. The tribal affiliations of the parents, legal
2 guardians, or legal custodians of the child; and

3 "2. The specific actions taken to notify the tribes
4 of the parents, legal guardians, or legal custodians and the
5 results of the contacts.

6 "n. Other relevant facts in support of the written
7 request to be appointed as a kinship guardian or successor
8 guardian.

9 "(4) After the juvenile court finds that an
10 individual caregiver qualifies to be appointed as a kinship
11 guardian, the requirements of subdivision (5) or (6) have been
12 proved, and the best interests of the child will be served by
13 the requested appointment, it may make the appointment. After
14 a kinship guardianship appointment, the juvenile court may
15 make any other disposition of the matter that will serve the
16 best interests of the child.

17 "(5) A kinship guardian may be appointed by the
18 juvenile court only if:

19 "a.1. A parent, legal guardian, or legal custodian
20 of the child is living and has consented in writing to the
21 appointment of a kinship guardian and the consent has not been
22 withdrawn; or

23 "2. A parent of the child is living but all parental
24 rights in regard to the child have been terminated or
25 restricted by a prior court order, provided that for this
26 purpose only, the blood relationship with the child will
27 continue to be recognized in defining relative caregiver; and

1 "b.1. The child has resided with the individual
2 caregiver seeking to be appointed as a kinship guardian
3 without the parent, legal guardian, or legal custodian for a
4 period of six months or more immediately preceding the date
5 the written request is filed, and a parent, legal guardian, or
6 legal custodian having legal custody of the child is currently
7 unwilling or unable to provide adequate care, maintenance, and
8 supervision for the child or there are extraordinary
9 circumstances; and

10 "2. No legal guardian of the child is currently
11 appointed pursuant to the Alabama Uniform Guardianship and
12 Protective Proceedings Act, Chapter 2A of Title 26.

13 "(6) A successor guardian may be appointed by the
14 juvenile court only if all of the following requirements have
15 been met:

16 "a. The original kinship guardian subsidy agreement
17 or amendments to such agreement names the prospective
18 successor guardian as the person to become the legal guardian
19 of the child in the event of the death or incapacitation of
20 the kinship guardian.

21 "b. A parent, legal guardian, or legal custodian of
22 the child has consented in writing to the appointment of the
23 successor guardian named in the original subsidy agreement
24 unless all parental rights have been terminated or restricted
25 by a prior court order.

26 "c. The department has completed a criminal history
27 record check on the prospective successor guardian and all

1 adult residents of the household of the prospective successor
2 guardian. The department also has completed a child abuse
3 record check on the prospective successor guardian and all
4 residents 14 years or older of the household of the individual
5 caregiver.

6 "d. No legal guardian of the child is currently
7 appointed pursuant to the Alabama Uniform Guardianship and
8 Protective Proceedings Act, Section 26-2A-1.

9 "e. A child that is 14 years of age or older must be
10 consulted as to his or her position regarding the prospective
11 successor guardianship and if the child is 18 years or older,
12 he or she has consented to the successor guardianship if
13 capable of giving effective consent.

14 "(7) The burden of proof shall be by clear and
15 convincing evidence, except that in those cases involving an
16 Indian child as defined in the federal Indian Child Welfare
17 Act of 1978, 25 U.S.C. §1901, the burden of proof shall be
18 proof beyond a reasonable doubt.

19 "(8) As part of a kinship guardianship order or
20 successor guardianship order, the juvenile court may order a
21 parent, legal guardian, or legal custodian to pay the
22 reasonable costs of support and maintenance of the child that
23 the parent, legal guardian, or legal custodian is financially
24 able to pay. The juvenile court shall use the Child Support
25 Guidelines established by rules of the Alabama Supreme Court
26 to calculate a reasonable payment.

1 "(9) The juvenile court may order visitation between
2 a parent, legal guardian, or legal custodian and the child to
3 maintain or rebuild a parent-child relationship if the
4 visitation is in the best interests of the child.

5 "(10)a. A kinship guardianship or successor
6 guardianship is intended to be permanent during the child's
7 minority similar to other permanency plan options. After the
8 kinship guardian or successor guardian has been appointed by
9 the juvenile court, a parent, other person, entity,
10 department, or agency, including the Department of Human
11 Resources, may file a petition to revoke or modify the kinship
12 guardianship or successor guardianship by proving not only
13 that a material change in circumstances has occurred since the
14 order granting the kinship guardianship or successor
15 guardianship was entered, but also that the change would
16 materially promote the child's best interest and welfare, and
17 that the positive good brought about by the change would more
18 than offset the inherently disruptive effect caused by
19 uprooting the child.

20 "b. If the juvenile court finds that a petition for
21 revocation of the kinship guardianship or successor
22 guardianship filed by the Department of Human Resources meets
23 the standard in paragraph a., it shall grant the petition, and
24 the child shall be placed in the legal custody of the
25 Department of Human Resources. If the juvenile court finds
26 that a petition for modification of the kinship guardianship
27 or successor guardianship filed by the Department of Human

1 Resources meets the standard in paragraph a., it shall grant
2 the petition, and the child shall remain with the kinship
3 guardian or successor guardian but shall be under the
4 protective supervision of the department.

5 "c. This subsection does not preclude a parent,
6 other person, entity, department, or agency, including the
7 Department of Human Resources, from filing a petition to
8 modify other terms of the order of the juvenile court granting
9 the kinship guardianship or successor guardianship, including,
10 but not limited to, visitation, which shall be decided, after
11 notice to the department, on the basis of what is in the best
12 interests of the child.

13 "(11)a. Except as provided herein, a kinship
14 guardian or successor guardian shall have the same rights,
15 responsibilities, and authority relating to the child as a
16 parent, including, but not limited to, making decisions
17 concerning the care and well-being of the child; consenting to
18 routine, preventative, necessary, elective, cosmetic, and
19 emergency medical, dental, and mental health needs; arranging
20 and consenting to educational plans for the child; arranging
21 and consenting to athletic, sport, or other activity
22 participation; applying for financial assistance and social
23 services for which the child is eligible; applying for a
24 permit or license; applying for admission to a college or
25 university; responsibility for activities necessary to ensure
26 the safety, permanency, and well-being of the child; and
27 ensuring the maintenance and protection of the child, and

1 further provided, that the appointment of the kinship guardian
2 or successor guardian terminates the education rights of the
3 parent in favor of the kinship guardian or successor guardian
4 and the kinship guardian or successor guardian shall be deemed
5 the parent for federal IDEA and other educational purposes.

6 "b. A kinship guardian or successor guardian may not
7 consent to the adoption of the child or a name change for the
8 child. The parent of the child shall retain the authority to
9 consent to the adoption of the child or a name change for the
10 child.

11 "c. The parent, legal guardian, or legal custodian
12 from whose custody the child was removed shall retain the
13 obligation to pay child support.

14 "d. Unless otherwise ordered by the juvenile court,
15 a kinship guardian or successor guardian has the authority to
16 make all decisions regarding appropriate visitation between
17 the parent, legal guardian, or legal custodian and the child.

18 "e. The appointment of a kinship guardian or
19 successor guardian does not limit or terminate any rights or
20 benefits derived from or between the child and parent, legal
21 guardian, or legal custodian relating to inheritance or
22 insurance.

23 "f. A kinship guardianship or successor guardianship
24 terminates when the child reaches 18 years of age, or when the
25 child reaches age 21 if the child is eligible for a
26 guardianship subsidy up to age 21 regardless of whether the
27 juvenile court has continued jurisdiction, or when the kinship

1 guardianship or successor guardianship is otherwise terminated
2 or revoked by the juvenile court.

3 "g. A certified copy of the court order appointing a
4 kinship guardian or successor guardian shall be satisfactory
5 proof of the authority of the kinship guardian or successor
6 guardian, and letters of guardianship need not be issued.

7 "h. A kinship guardianship or successor guardianship
8 order is the legal authority to enroll the named child in
9 school and consent to school-related activities and medical
10 care for the child; to give permission or consent for other
11 non-school related activities, placements, and events; and to
12 enroll the child in health, homeowner, employment, motor
13 vehicle, and other insurance.

14 "i. A kinship guardianship or successor guardianship
15 order is the legal authority for the kinship guardian or
16 successor guardian to authorize or consent to medical care,
17 dental care, and mental health care for the child.

18 "j. Absent negligence, wantonness, recklessness, or
19 deliberate misconduct, no person who acts in good faith
20 reliance on a kinship guardianship or successor guardianship
21 order without actual knowledge of facts contrary to that order
22 is subject to criminal or civil liability or professional
23 disciplinary action. This good faith immunity applies even
24 though a parent, legal guardian, or legal custodian having
25 parental rights or a person having legal custody of the child
26 has contrary wishes. A person who relies upon a kinship

1 guardianship or successor guardianship order is under no duty
2 to make further inquiry or investigation.

3 "(g) (1) A caregiver shall have the authority,
4 without prior approval of the department, juvenile court, or
5 circuit court, to allow a child in his or her care that is in
6 foster care to participate in activities that are age or
7 developmentally appropriate for the child based on a
8 reasonable and prudent parent standard, provided the
9 activities are consistent with provisions of any existing
10 court order, individualized service plan, or promulgated
11 policy of the department that provides guidance to caregivers
12 concerning the reasonable and prudent parent standard. The
13 guidance shall include factors for the caregiver to consider
14 prior to allowing a child to participate in age or
15 developmentally appropriate normal childhood activities.

16 "(2) A caregiver shall be immune from liability in a
17 civil action to recover damages for injury, death, or loss to
18 person or property that results from a caregiver's decisions
19 using a reasonable and prudent parent standard. This
20 subsection shall not be construed to remove or limit any
21 existing liability protection provided by law.

22 "(h) The department shall make every effort to place
23 an infant of a dependent minor mother together with the minor
24 mother in foster care."

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

