

1 SB95  
2 173098-2  
3 By Senator Brewbaker  
4 RFD: Education and Youth Affairs  
5 First Read: 02-FEB-16

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8 SYNOPSIS: Under existing law, a child who is placed  
9 for care may be placed with a kinship guardian.

10 This bill would provide for a successor  
11 guardian to be named in a kinship guardian  
12 agreement in the event the kinship guardian dies or  
13 becomes incapacitated.

14 Under existing law, a standard is not  
15 provided for a foster parent or a designated  
16 institutional caregiver of a foster child to  
17 authorize a child to participate in age or  
18 developmentally appropriate activities.

19 This bill would define age or  
20 developmentally appropriate for the purposes of  
21 childhood activities and specify a reasonable and  
22 prudent parent standard for a caregiver to allow a  
23 child to participate in activities and would  
24 provide the standard would apply for purposes of  
25 caregiver liability.

26 The bill would also require the juvenile  
27 court to consider services for a child at age 14 or

1 over, instead of age 16 or over, related to  
2 transition of the child from foster care to  
3 independent living.

4  
5 A BILL  
6 TO BE ENTITLED  
7 AN ACT

8  
9 Relating to foster care and kinship guardianship; to  
10 amend Sections 12-15-301, 12-15-314, 12-15-315, 38-12-32,  
11 38-12-35, 38-12-36, 38-12-37, 38-12-38, and 38-12-40 of the  
12 Code of Alabama 1975, to provide for the appointment of  
13 successor guardianships when a kinship guardian dies or is  
14 incapacitated; to require the juvenile court to consider  
15 services needed to assist a child to make the transition from  
16 foster care to independent living at the age of 14 instead of  
17 age 16; and to define age or developmentally appropriate  
18 childhood activities and reasonable and prudent parent  
19 standard for caregivers of children in foster care; and to  
20 provide that the reasonable and prudent parent standard would  
21 apply for purposes of caregiver liability.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 12-15-301, 12-15-314, 12-15-315,  
24 38-12-32, 38-12-35, 38-12-36, 38-12-37, 38-12-38, and 38-12-40  
25 of the Code of Alabama 1975, are amended to read as follows:

26 "§12-15-301.

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

3           "(1) ABANDONMENT. A voluntary and intentional  
4 relinquishment of the custody of a child by a parent, or a  
5 withholding from the child, without good cause or excuse, by  
6 the parent, of his or her presence, care, love, protection,  
7 maintenance, or the opportunity for the display of filial  
8 affection, or the failure to claim the rights of a parent, or  
9 failure to perform the duties of a parent.

10           "(2) ABUSE. Harm or the risk of harm to the  
11 emotional, physical health, or welfare of a child. Harm or the  
12 risk of harm to the emotional, physical health, or welfare of  
13 a child can occur through nonaccidental physical or mental  
14 injury, sexual abuse, or attempted sexual abuse or sexual  
15 exploitation or attempted sexual exploitation.

16           "(3) AGE OR DEVELOPMENTALLY APPROPRIATE. Activities  
17 or items that are generally accepted as suitable for children  
18 of the same chronological age or level of maturity or that are  
19 determined to be developmentally appropriate for a child based  
20 on the development of cognitive, emotional, physical, and  
21 behavioral capacities that are typical for an age or age group  
22 and, in the case of a specific child, activities or items that  
23 are suitable for the child based on the developmental stages  
24 attained by the child with respect to the cognitive,  
25 emotional, physical, and behavioral capacities of the child.

26           "~~(3)~~(4) CAREGIVER. An individual 21 years of age or  
27 older, other than a parent, legal guardian, or legal custodian

1 of a child who is an approved foster parent and who is a  
2 relative of the child and has been providing care and support  
3 for the child while the child has been residing in the home of  
4 the caregiver for at least the last six consecutive months  
5 while in the legal custody of the Department of Human  
6 Resources or a designated official for a child-placing agency  
7 or a successor guardian.

8 "~~(4)~~ (5) CHILD-PLACING AGENCY. The same as the term  
9 is defined in subdivision (3) of Section 38-7-2.

10 "~~(5)~~ (6) ELIGIBLE CHILD. In addition to the  
11 definition of child in subdivision (3) of Section 12-15-102,  
12 an individual under 18 years of age who has been residing with  
13 the caregiver for at least the last six consecutive months  
14 while in the legal custody of the Department of Human  
15 Resources.

16 "~~(6)~~ (7) KINSHIP GUARDIAN. A caregiver who is willing  
17 to assume care of a child because of parental incapacity of a  
18 parent, legal guardian, or legal custodian, or other  
19 dependency reasons, with the intent to raise the child to  
20 adulthood, and who is appointed the kinship guardian of the  
21 child by a juvenile court. A kinship guardian shall be  
22 responsible for the care and protection of the child and for  
23 providing for the health, education, and maintenance of the  
24 child.

25 "~~(7)~~ (8) NEGLECT. Negligent treatment or maltreatment  
26 of a child, including, but not limited to, the failure to

1 provide adequate food, medical treatment, supervision,  
2 education, clothing, or shelter.

3 "~~(8)~~ (9) PARENTAL INCAPACITY. Abandonment or  
4 incapacity of such a serious nature as to demonstrate that the  
5 parent, legal guardian, or legal custodian is unable,  
6 unavailable, or unwilling to perform the regular and expected  
7 functions of care and support of the child.

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

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

21 "~~(10)~~ (12) REASONABLE EFFORTS. Efforts made to  
22 preserve and reunify families prior to the placement of a  
23 child in foster care, to prevent or eliminate the need for  
24 removing the child from his or her home, and to make it  
25 possible for a child to return safely to his or her home.  
26 Reasonable efforts also refers to efforts made to place the  
27 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 "~~(11)~~ (13) 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 "~~(12)~~ (14) 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 "~~(13)~~ (15) 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.

26 "(16) SUCCESSOR GUARDIAN. A person or persons named  
27 in a kinship guardianship assistance agreement, or any

1 amendments thereto, as the person or persons to provide care  
2 and guardianship for a child in the event of the death or  
3 incapacity of a kinship guardian. The successor guardian may  
4 be unrelated to the child.

5 "~~(14)~~(16) TERMINATION OF PARENTAL RIGHTS. A  
6 severance of all rights of a parent to a child.

7 "§12-15-314.

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

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

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

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

18 "a. The Department of Human Resources.

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

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

27 Unless the juvenile court finds it not in the best interests

1 of the child, a willing, fit, and able relative shall have  
2 priority for placement or custody over a non-relative.

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

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

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

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

23 "(d) In providing shelter or other care for children  
24 referred to or coming under the jurisdiction of the juvenile  
25 court, the juvenile court and the Department of Human  
26 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           "~~(2)~~ (3) A written request for appointment of a  
10 kinship guardian or successor guardian shall be verified and  
11 allege 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 ~~and a child abuse record check~~ of the  
19 individual caregiver seeking to be appointed as a kinship  
20 guardian or successor guardian and all adult residents of the  
21 household of the individual caregiver. In addition, the  
22 results of a child abuse record check of the individual  
23 caregiver seeking to be appointed as a kinship guardian or  
24 successor guardian and all residents 14 years or older of the  
25 household of the individual caregiver.

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

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

6 "2. The specific actions taken to notify the tribes  
7 of the parents, legal guardians, or legal custodians and the  
8 results of the contacts.

9 "n. Other relevant facts in support of the written  
10 request to be appointed as a kinship guardian or successor  
11 guardian.

12 "~~(3)~~(4) After the juvenile court finds that an  
13 individual caregiver qualifies to be appointed as a kinship  
14 guardian, the requirements of subdivision (5) or (6) have been  
15 proved, and the best interests of the child will be served by  
16 the requested appointment, it may make the appointment. After  
17 a kinship guardianship appointment, the juvenile court may  
18 make any other disposition of the matter that will serve the  
19 best interests of the child.

20 "~~(4)~~(5) A kinship guardian may be appointed by the  
21 juvenile court only if:

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

26 "2. A parent of the child is living but all parental  
27 rights in regard to the child have been terminated or

1 restricted by a prior court order, provided that for this  
2 purpose only, the blood relationship with the child will  
3 continue to be recognized in defining relative caregiver; and

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

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

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

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

24 "b. A parent, legal guardian, or legal custodian of  
25 the child has consented in writing to the appointment of the  
26 successor guardian named in the original adoption subsidy

1 agreement unless all parental rights have been terminated or  
2 restricted by a prior court order.

3 "c. The department has completed a criminal history  
4 record check on the prospective successor guardian and all  
5 adult residents of the household of the prospective successor  
6 guardian. The department also has completed a child abuse  
7 record check on the prospective successor guardian and all  
8 residents 14 years or older of the household of the individual  
9 caregiver.

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

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

18 "~~(5)~~(7) The burden of proof shall be by clear and  
19 convincing evidence, except that in those cases involving an  
20 Indian child as defined in the federal Indian Child Welfare  
21 Act of 1978, 25 U.S.C. §1901, the burden of proof shall be  
22 proof beyond a reasonable doubt.

23 "~~(6)~~(8) As part of a kinship guardianship order or  
24 successor guardianship order, the juvenile court may order a  
25 parent, legal guardian, or legal custodian to pay the  
26 reasonable costs of support and maintenance of the child that  
27 the parent, legal guardian, or legal custodian is financially

1 able to pay. The juvenile court shall use the Child Support  
2 Guidelines established by rules of the Alabama Supreme Court  
3 to calculate a reasonable payment.

4 "~~(7)~~(9) The juvenile court may order visitation  
5 between a parent, legal guardian, or legal custodian and the  
6 child to maintain or rebuild a parent-child relationship if  
7 the visitation is in the best interests of the child.

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

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

1 Department of Human Resources. If the juvenile court finds  
2 that a petition for modification of the kinship guardianship  
3 or successor guardianship filed by the Department of Human  
4 Resources meets the standard in paragraph a., it shall grant  
5 the petition, and the child shall remain with the kinship  
6 guardian or successor guardian but shall be under the  
7 protective supervision of the department.

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

16 "~~(9)~~ (11)a. Except as provided herein, a kinship  
17 guardian or successor guardian shall have the same rights,  
18 responsibilities, and authority relating to the child as a  
19 parent, including, but not limited to, making decisions  
20 concerning the care and well-being of the child; consenting to  
21 routine, preventative, necessary, elective, cosmetic, and  
22 emergency medical, dental, and mental health needs; arranging  
23 and consenting to educational plans for the child; arranging  
24 and consenting to athletic, sport, or other activity  
25 participation; applying for financial assistance and social  
26 services for which the child is eligible; applying for a  
27 permit or license; applying for admission to a college or

1 university; responsibility for activities necessary to ensure  
2 the safety, permanency, and well-being of the child; and  
3 ensuring the maintenance and protection of the child, and  
4 further provided, that the appointment of the kinship guardian  
5 or successor guardian terminates the education rights of the  
6 parent in favor of the kinship guardian or successor guardian  
7 and the kinship guardian or successor guardian shall be deemed  
8 the parent for federal IDEA and other educational purposes.

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

14 "c. The parent, legal guardian, or legal custodian  
15 from whose custody the child was removed shall retain the  
16 obligation to pay child support.

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

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

26 "f. A kinship guardianship or successor guardianship  
27 terminates when the child reaches 18 years of age, or when the

1 child reaches age 21 if the child is eligible for a  
2 guardianship subsidy up to age 21 regardless of whether the  
3 juvenile court has continued jurisdiction, or when the kinship  
4 guardianship or successor guardianship is otherwise terminated  
5 or revoked by the juvenile court.

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

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

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

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

1 parental rights or a person having legal custody of the child  
2 has contrary wishes. A person who relies upon a kinship  
3 guardianship or successor guardianship order is under no duty  
4 to make further inquiry or investigation.

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

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

24 "§12-15-315.

25 "(a) Within 12 months of the date a child is removed  
26 from the home and placed in out-of-home care, and not less  
27 frequently than every 12 months thereafter during the

1 continuation of the child in out-of-home care, the juvenile  
2 court shall hold a permanency hearing. The Department of Human  
3 Resources shall present to the juvenile court at the hearing a  
4 permanent plan for the child. The juvenile court shall consult  
5 with the child, in an age-appropriate manner, regarding the  
6 permanency plan and any transition plan to independent living.  
7 If a permanent plan is not presented to the juvenile court at  
8 this hearing, there shall be a rebuttable presumption that the  
9 child should be returned home. This provision is intended to  
10 ensure that a permanent plan is prepared by the Department of  
11 Human Resources and presented to the juvenile court within 12  
12 months of the placement of any child in foster care and no  
13 less frequently than every 12 months thereafter. The purpose  
14 of the permanency hearing shall be to determine the permanency  
15 plan for the child which may include whether, and, if  
16 applicable, when, the child shall be:

17 "(1) Returned home on a specific date.

18 "(2) Placed for adoption with no identified resource  
19 or with the current foster parent wherein the Department of  
20 Human Resources shall file a petition for termination of  
21 parental rights.

22 "(3) Permanently placed with a relative with a  
23 transfer of legal and physical custody to the relative or with  
24 a transfer of physical custody to the relative but with the  
25 Department of Human Resources retaining legal custody.

26 "(4) Permanently placed with a kinship guardian  
27 pursuant to a written request filed by the Department of Human

1 Resources for appointment of an individual as a kinship  
2 guardian. In addition to the allegations set forth in this  
3 section, the written request shall further contain the  
4 following:

5 "a. That granting kinship guardianship of the child  
6 to the relative caregiver is in the best interests of the  
7 child and that neither a permanency goal of return of the  
8 child to the parents of the child nor adoption would be in the  
9 best interests of the child and are therefore not appropriate  
10 permanent plans for the child.

11 "b. That granting a kinship guardianship of the  
12 child to the relative caregiver will provide the child with a  
13 safe and permanent home.

14 "c. That the child demonstrates a strong attachment  
15 to the relative caregiver and the relative caregiver  
16 demonstrates a strong commitment to caring permanently for the  
17 child.

18 "d. That the relative caregiver has been approved as  
19 a foster parent pursuant to regulations of the Department of  
20 Human Resources, has completed a criminal history clearance  
21 and child abuse and neglect central registry clearance, and  
22 that results of these clearances have been provided to the  
23 juvenile court.

24 "e. That the child has been in foster care in the  
25 care of the prospective kinship guardian for a period of not  
26 less than six consecutive months preceding the filing of the  
27 written request for appointment of a kinship guardian.

1           "f. ~~That, if the child~~ A child who is 14 years of  
2 age or older, ~~he or she has indicated his or her position~~  
3 shall be consulted as to his or her position regarding the  
4 prospective kinship guardianship and, if the child is 18 years  
5 of age or older, he or she has consented to the kinship  
6 guardianship if capable of giving effective consent.

7           "(5) Placed in adult custodial care.

8           "(6) Placed in another planned permanent living  
9 arrangement. In the case of a child who will not be returned  
10 home, at the permanency hearing, the juvenile court shall  
11 consider in-state and out-of-state placement options.

12           "(b) If the juvenile court determines the permanent  
13 plan under subsection (a) shall be placement in another  
14 planned permanent living arrangement, the Department of Human  
15 Resources must document to the juvenile court a compelling  
16 reason for determining that it would not be in the best  
17 interests of the child to return home, be placed for adoption  
18 with no identified resource or with the current foster parent,  
19 or be permanently placed with a relative, with a transfer of  
20 legal and physical custody to the relative or with a transfer  
21 of physical custody to the relative but with the Department of  
22 Human Resources retaining legal custody, be placed with a  
23 kinship guardian, or be placed in adult custodial care. If the  
24 child has been placed in foster care outside the State of  
25 Alabama, at the permanency hearing, the juvenile court shall  
26 determine whether the out-of-state placement continues to be  
27 appropriate and in the best interests of the child. In the

1 case of a child who has attained the age of ~~16~~ 14 years, at  
2 the permanency hearing, the juvenile court shall consider the  
3 services needed to assist the child to make the transition  
4 from foster care to independent living. In any permanency  
5 hearing held with respect to the child, including any hearing  
6 regarding the transition of the child from foster care to  
7 independent living, the juvenile court shall consult, in an  
8 age-appropriate manner, with the child regarding the proposed  
9 permanency or transition plan for the child. Permanency plans  
10 may be concurrent and the Department of Human Resources may  
11 make reasonable efforts concurrently towards multiple  
12 permanency goals.

13 "(c) The permanency hearing order of the juvenile  
14 court shall address whether the Department of Human Resources  
15 has made reasonable efforts to finalize any existing  
16 permanency plan for the child.

17 "(d) The Department of Human Resources shall provide  
18 a copy of available health and education records of the foster  
19 child to the foster parent or foster care provider at the time  
20 of placement and provide a copy of available health and  
21 education records to the foster child, at no cost, at the time  
22 the child is emancipated or released from foster care by  
23 reason of attaining the age of majority.

24 "(e) If the permanency plan for a child is placement  
25 with a kinship guardian, the individualized service plan must  
26 contain the following:

1           "(1) The steps that the Department of Human  
2 Resources has taken to determine that it is not appropriate  
3 for the child to be returned home or adopted.

4           "(2) The reasons for any separation of siblings  
5 during placement.

6           "(3) The reasons why a permanent placement with a  
7 fit and willing relative caregiver through a kinship  
8 guardianship arrangement is in the best interests of the  
9 child.

10           "(4) The ways in which the child meets the  
11 eligibility requirements for the kinship guardianship program.

12           "(5) The efforts the Department of Human Resources  
13 has made to discuss adoption by the relative foster parent of  
14 the child as a more permanent alternative to a kinship  
15 guardianship and, in the case of a relative foster parent who  
16 has chosen not to pursue adoption, documentation of the  
17 reasons therefor.

18           "(6) The efforts made by the Department of Human  
19 Resources to discuss with the parent, legal guardian, or legal  
20 custodian of the child the kinship guardianship arrangement,  
21 or the reasons why the efforts were not made.

22           "§38-12-32.

23           "As used in this article, the following terms shall  
24 have the following meanings:

25           "(1) CAREGIVER. An individual 21 years of age or  
26 older, other than a child's parent, legal guardian, or legal  
27 custodian who is an approved foster parent, who is a relative

1 of the child, and who has been providing care and support for  
2 the child while the child has been residing in the caregiver's  
3 home for at least the last six consecutive months while in the  
4 legal custody of the Department of Human Resources, a  
5 designated official for a child-placing agency, or a successor  
6 guardian.

7 "(2) CHILD. An individual under 18 years of age who  
8 is in foster care with the caregiver and over whom a court has  
9 exercised continuing jurisdiction.

10 "(3) COURT. The juvenile court.

11 "(4) DEPARTMENT. The Department of Human Resources.

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

20 "(6) PARENTAL INCAPACITY. Abandonment or incapacity  
21 of such a serious nature as to demonstrate that the parent,  
22 legal guardian, or legal custodian is unable, unavailable, or  
23 unwilling to perform the regular and expected functions or  
24 care and support of the child.

25 "(7) PROGRAM. The Kinship Guardianship Subsidy  
26 Program established by Section 38-12-33.

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

7           "(9) SUCCESSOR GUARDIAN. A person or persons named  
8 in a kinship guardianship assistance agreement, or any  
9 amendment thereto, as the person or persons to provide care  
10 and guardianship for a child in the event of the death or  
11 incapacity of a kinship guardian. The successor guardian may  
12 be unrelated to the child.

13           "§38-12-35.

14           "The amount of a kinship guardianship subsidy shall  
15 be determined according to this section and as provided by  
16 rules of the department. The subsidy may be paid monthly and  
17 the monthly amount may not exceed the monthly foster care  
18 maintenance board payment for the child if the child were to  
19 remain in the care or custody of the department, without  
20 regard to the sources of the funds. No foster care maintenance  
21 board payment and kinship subsidy payment shall be paid for  
22 the same child for the same period of time. The kinship  
23 guardianship subsidy may only be provided for an eligible  
24 child. Subject to rules adopted by the department, the subsidy  
25 may include up to the federally established amount for  
26 nonrecurring expenses, including attorney's fees, incurred by  
27 the kinship guardian or successor guardian to complete the

1 kinship guardianship or successor guardianship in court.  
2 Subsidy payments are subject to the availability of funds and  
3 the allocation of funding by the department.

4 "§38-12-36.

5 "Provided that federal funding is available, the  
6 kinship guardianship subsidy shall continue until the  
7 following occur:

8 "(1) The child who is being cared for by the kinship  
9 guardian or successor guardian reaches age 18 years, or age 21  
10 if the child has attained age 16 before the kinship subsidy  
11 agreement became effective, and the child is:

12 "a. Completing secondary education or a program  
13 leading to an equivalent credential.

14 "b. Enrolled in an institution which provides  
15 postsecondary or vocational education.

16 "c. Participating in a program or activity designed  
17 to promote, or remove barriers to, employment.

18 "d. Employed for at least 80 hours per month.

19 "e. Incapable of doing any of the activities  
20 described in paragraphs a. through d. due to a medical  
21 condition, which incapability is supported by regularly  
22 updated information in the case plan of the child, if  
23 applicable.

24 "(2) The kinship guardian or successor guardian is  
25 no longer legally responsible for support of the child.

26 "(3) The kinship guardian or successor guardian is  
27 no longer providing support to the child under the care of the

1 kinship guardian or successor guardian, at which time the  
2 kinship guardianship subsidy ceases.

3 "§38-12-37.

4 "(a) Applications for the program may be submitted  
5 by a prospective kinship guardian. A written agreement between  
6 the prospective kinship guardian entering into the program and  
7 the department shall precede the award of a kinship  
8 guardianship. The kinship guardianship subsidy agreement and  
9 kinship guardianship subsidy shall become effective only upon  
10 entry of an order of a court awarding kinship guardianship.  
11 The agreement shall specify, at a minimum, the following:

12 "(1) The amount of, and manner in which, each  
13 kinship guardianship assistance payment will be provided under  
14 the agreement, and the manner in which the payment may be  
15 adjusted periodically, in consultation with the relative  
16 guardian, based on the circumstances of the relative guardian  
17 and the needs of the child.

18 "(2) The additional services and assistance that the  
19 child and relative guardian or successor guardian will be  
20 eligible for under the agreement.

21 "(3) The procedure by which the relative guardian or  
22 successor guardian may apply for additional services as  
23 needed.

24 "(4) That the department will pay the cost of  
25 nonrecurring expenses associated with obtaining a legal order  
26 of kinship guardianship or successor guardianship of the

1 child, to the extent the cost does not exceed the federally  
2 established amount.

3 "(b) No kinship guardianship subsidy shall be made  
4 unless satisfactory documentation is submitted by the kinship  
5 guardian or successor guardian showing an eligible child lives  
6 in the home of the kinship guardian or successor guardian.  
7 Upon approval by the department that all the requirements for  
8 payment eligibility have been satisfied, the kinship  
9 guardianship subsidy may be retroactive to the date of the  
10 court order appointing kinship guardianship.

11 "(c) The kinship guardianship assistance agreement  
12 executed in accordance with this section and any amendments  
13 thereto may name an appropriate person to act as a successor  
14 guardian for the purpose of providing care and guardianship  
15 for a child in the event of death or incapacity of the  
16 relative guardian.

17 "(d) A child shall remain eligible for kinship  
18 guardianship assistance payments under this title when a  
19 successor guardian assumes care and guardianship of the child.

20 "(e) The department shall complete a criminal  
21 history record check on the prospective successor guardian and  
22 all adult residents of the household of the prospective  
23 successor guardian before approval to receive payments. The  
24 department also shall complete a child abuse record check on  
25 the prospective successor guardian and all household members  
26 that are 14 years or older before approval to receive  
27 payments.

1           "(f) It shall be the duty of the prospective  
2           successor guardian to inform the social services official that  
3           has entered into an agreement with the relative guardian for  
4           payments under this title in writing of the death or  
5           incapacity of the relative guardian and of the prospective  
6           successor guardian's desire to enforce the provisions in the  
7           agreement that authorize payment to him or her in the event of  
8           the death or incapacity of the kinship guardian.

9           "§38-12-38.

10           "If the subsidy continues for more than one year,  
11           the eligibility for and amount of the subsidy shall be  
12           reviewed at least annually by the department as provided by  
13           rule. The subsidy continues regardless of the state in which  
14           the kinship guardian or successor guardian resides, or the  
15           state to which the kinship guardian or successor guardian  
16           moves, if the kinship guardian or successor guardian continues  
17           to be responsible for the child, provided funding is  
18           available.

19           "§38-12-40.

20           "Except as required by federal law or regulation,  
21           the kinship guardianship subsidy may not be counted as a  
22           resource or income in the determination of the kinship  
23           guardian's, successor guardian's, or child's eligibility for  
24           any public benefits or assistance. Kinship guardianship  
25           subsidy payments shall be exempt from any tax levied by the  
26           state or any subdivision thereof and shall be exempt from

1       levy, garnishment, attachment, or any other process whatsoever  
2       and shall be inalienable."

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.