

1           HB31  
2        196673-3  
3        By Representatives Reynolds, Robertson and Stringer  
4        RFD: Judiciary  
5        First Read: 05-MAR-19  
6        PFD: 02/14/2019

ENGROSSED

A BILL

TO BE ENTITLED

## AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§12-15-301.

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

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

1                             "(2) ABUSE. Harm or the risk of harm to the  
2                             emotional, physical health, or welfare of a child. Harm or the  
3                             risk of harm to the emotional, physical health, or welfare of  
4                             a child can occur through nonaccidental physical or mental  
5                             injury, sexual abuse, or attempted sexual abuse or sexual  
6                             exploitation or attempted sexual exploitation.

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

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

1                         "(4) CHILD ABUSE. Harm or the risk of harm to the  
2                         emotional health, physical health, or welfare of a child,  
3                         which can occur through nonaccidental physical or mental  
4                         injury, sexual abuse, or attempted sexual abuse or sexual  
5                         exploitation or attempted sexual exploitation.

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

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

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

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

23                         "a. A minimum of 32 hours of instruction and  
24                         practice in forensic interviewing.

25                         "b. Training in evidence-supported interview  
26                         protocols.

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

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

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

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

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

"~~(8)~~<sup>(9)</sup> NEGLECT. Negligent treatment or maltreatment of a child, including, but not limited to, the failure to provide adequate food, medical treatment, supervision, education, clothing, or shelter.

"~~(9)~~(10) PARENTAL INCAPACITY. Abandonment or incapacity of such a serious nature as to demonstrate that the parent, legal guardian, or legal custodian is unable,

1 unavailable, or unwilling to perform the regular and expected  
2 functions of care and support of the child.

3                             "(10) (11) PROTECTIVE SUPERVISION. A legal status  
4 created by order of the juvenile court following an  
5 adjudication of dependency whereby a child is placed with a  
6 parent or other person subject to supervision by the  
7 Department of Human Resources.

8                             "(11) (12) REASONABLE AND PRUDENT PARENT STANDARD.  
9 The standard characterized by careful and sensible parental  
10 decisions that maintain the health, safety, and best interests  
11 of a child, while at the same time encouraging the emotional  
12 and developmental growth of the child, that a caregiver shall  
13 use when determining whether to allow a child in foster care  
14 under the responsibility of the state to participate in  
15 extracurricular, enrichment, cultural, and social activities.

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

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

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

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

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

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

"§12-15-310.

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

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

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

"(1) The statement was made to a social worker, ~~child sexual abuse~~ therapist, or counselor, licensed

1 psychologist, physician, or school or kindergarten teacher or  
2 instructor; ~~and, or during a forensic interview.~~

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

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

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

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## House of Representatives

4           Read for the first time and re-  
5           ferred to the House of Representa-  
6           tives committee on Judiciary .....       ..... 05-MAR-19

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8            Read for the second time and placed  
9            on the calendar 1 amendment .....        ..... 20-MAR-19

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Read for the third time and passed  
as amended..... 02-APR-19

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Jeff Woodard  
Clerk