

1 HB617
2 119982-2
3 By Representative Hall
4 RFD: Judiciary
5 First Read: 23-FEB-10

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

To establish a kinship guardianships; to establish a kinship guardianship subsidy program; to provide legislative intent and purpose; to set procedures for establishing kinship guardianships and legal authority of kinship guardians; and to amend Sections 12-15-301, 12-15-314, 12-15-315, 38-12-2, and 38-12-4, Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act may be cited as the "Alabama
Kinship Guardianship Subsidy Act."

Section 2. (a) The Legislature finds and declares
the following:

(1) There exists in this state a number of children who cannot reside with their parents, legal guardians, or legal custodians because of such parents', legal guardians', or custodians' incapacity or inability to perform the regular and expected functions of care and support of the children and family care and who thereby come to the attention of juvenile court and into the care and custody of the Department of Human Resources.

1 (2) An increasing number of relatives, including
2 grandparents, find themselves wanting to provide care to
3 related foster children on a long-term basis to prevent the
4 children from remaining in foster care with unrelated
5 caregivers yet these relatives are either unable or unwilling
6 to seek termination of the legal relationships between the
7 parent and the child, particularly when it is the caregiver's
8 own child or sibling who is the parent.

9 (3) It is in the public interest to support legal
10 guardianship assistance that addresses the needs of the
11 children and caregivers in long-term kinship relationships by
12 providing financial assistance to help relatives bear the
13 long-term costs of child care and support for children outside
14 the foster care system.

15 (4) It is in the public interest to create a new
16 type of legal guardianship that addresses the needs of
17 children in the legal custody of the Department of Human
18 Resources and to establish long-term legal relationships with
19 relatives and place children out of the foster care system.

20 (5) The purposes of kinship guardianships include
21 the following:

22 a. Establish procedures to effect a legal
23 relationship between a child in the legal custody of the
24 Department of Human Resources and a kinship guardian when the
25 child is not residing with either parent, a legal guardian, or

1 a legal custodian and to terminate legal custody with the
2 department.

3 b. Provide a child in the legal custody of the
4 Department of Human Resources with a stable and consistent
5 long-term relationship with a kinship guardian that will
6 enable the child to develop physically, mentally, and
7 emotionally to the maximum extent possible when the parents,
8 legal guardians, or legal custodians of the child are not
9 willing or able to do so.

10 c. Establish a permanent placement alternative to a
11 child remaining in the legal custody of the Department of
12 Human Resources under juvenile court supervision in situations
13 where the child cannot be reunited with the parent, legal
14 guardian, or legal custodian, and other persons are not
15 interested in pursuing adoption.

16 d. Establish a new legal relationship which is
17 permanent during the minority of the child and not subject to
18 modification or revocation merely for a material change in
19 circumstances which has occurred since the order granting the
20 kinship guardianship was entered, but also that the change
21 would materially promote the child's best interest and
22 welfare, and that the positive good brought about by the
23 change would more than offset the inherently disruptive effect
24 caused by uprooting the child.

25 e. Establish a kinship guardianship subsidy program
26 to help kinship guardians bear the cost of providing care for

1 their relatives' children outside the foster care system with
2 available federal funds and funds made available from other
3 sources.

4 Section 3. As used in this act, the following terms
5 shall have the following meanings:

6 (1) CAREGIVER. An individual 21 years of age or
7 older, other than a child's parent, legal guardian, or legal
8 custodian who is an approved foster parent, who is a relative
9 of the child and who has been providing care and support for
10 the child while the child has been residing in the caregiver's
11 home for at least the last six consecutive months while in the
12 legal custody of the Department of Human Resources.

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

16 (3) COURT. The juvenile court.

17 (4) DEPARTMENT. The Department of Human Resources.

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

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

6 (7) PROGRAM. The Kinship Guardianship Subsidy
7 Program established by Section 4.

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

14 Section 4. There is established in the department
15 the Kinship Guardianship Subsidy Program. For the purposes of
16 this act, the department is authorized to use funds that are
17 appropriated for child welfare services and funds provided
18 under the United States Social Security Act, Titles IV-B and
19 IV-E, or under any waiver that the department receives
20 pursuant to those titles, or out of any funds made available
21 to it from other sources for the program.

22 Section 5. (a) Subject to rules adopted to implement
23 this act, the department may provide subsidies for an eligible
24 child placed in kinship guardianship by a court, or by a
25 federally recognized Native American Indian tribe, if the

1 child would not be placed in a kinship guardianship without
2 the assistance of the program.

3 (b) A child is an eligible child for a kinship
4 guardianship subsidy if the department determines the
5 following:

6 (1) The child has been removed from the custody of
7 his or her parent or parents, legal guardian, or legal
8 custodian as a result of a judicial determination to the
9 effect that continuation in the custody of the parent or
10 parents, legal guardian, or legal custodian would be contrary
11 to the welfare of the child.

12 (2) The department is responsible for the placement
13 and care of the child.

14 (3) Being returned home or being adopted are not
15 appropriate permanent options for the child.

16 (4) Permanent placement with a kinship guardian is
17 in the child's best interests.

18 (5) The child demonstrates a strong attachment to
19 the prospective kinship guardian and the kinship guardian has
20 a strong commitment to caring permanently for the child.

21 (6) The child has received foster care maintenance
22 payments while residing for at least six consecutive months in
23 the home of the prospective kinship guardian.

24 (7) With respect to a child who has attained 14
25 years of age, the child has been consulted regarding the
26 kinship guardianship.

1 (8) If required for federal funding participation,
2 the kinship guardian is qualified pursuant to a means-based
3 test and any other requirements.

4 (9) If required for federal funding participation,
5 the necessary degree of relationship exists between the
6 prospective kinship guardian and the child.

7 Section 6. The amount of a kinship guardianship
8 subsidy shall be determined according to this section and as
9 provided by rules of the department. The subsidy may be paid
10 monthly and the monthly amount may not exceed the monthly
11 foster care maintenance board payment for the child if the
12 child were to remain in the care or custody of the department,
13 without regard to the sources of the funds. No foster care
14 maintenance board payment and kinship subsidy payment shall be
15 paid for the same child for the same period of time. The
16 kinship guardianship subsidy may only be provided for an
17 eligible child. Subject to rules adopted by the department,
18 the subsidy may include up to the federally established amount
19 for nonrecurring expenses, including attorney's fees, incurred
20 by the kinship guardian to complete the kinship guardianship
21 in court. Subsidy payments are subject to the availability of
22 funds and the allocation of funding by the Department of Human
23 Resources.

24 Section 7. Provided that federal funding is
25 available, the kinship guardianship subsidy shall continue
26 until the following occur:

1 (1) The child who is being cared for by the kinship
2 guardian reaches age 18 years, or age 21 if the child has
3 attained age 16 before the kinship subsidy agreement became
4 effective, and the child is:

5 a. Completing secondary education or a program
6 leading to an equivalent credential.

7 b. Enrolled in an institution which provides
8 postsecondary or vocational education.

9 c. Participating in a program or activity designed
10 to promote, or remove barriers to, employment.

11 d. Employed for at least 80 hours per month.

12 e. Incapable of doing any of these activities
13 described in paragraphs a. through d. due to a medical
14 condition, which incapability is supported by regularly
15 updated information in the case plan of the child, if
16 applicable.

17 (2) The kinship guardian is no longer legally
18 responsible for support of the child.

19 (3) The kinship guardian is no longer providing
20 support to the child under the care of the kinship guardian,
21 at which time the kinship guardianship subsidy ceases.

22 Section 8. (a) Applications for the program may be
23 submitted by a prospective kinship guardian. A written
24 agreement between the prospective kinship guardian entering
25 into the program and the department shall precede the award of
26 a kinship guardianship. The kinship guardianship subsidy

1 agreement and kinship guardianship subsidy shall become
2 effective only upon entry of an order of a court awarding
3 kinship guardianship. The agreement shall specify, at a
4 minimum, the following:

5 (1) The amount of, and manner in which, each kinship
6 guardianship assistance payment will be provided under the
7 agreement, and the manner in which the payment may be adjusted
8 periodically, in consultation with the relative guardian,
9 based on the circumstances of the relative guardian and the
10 needs of the child.

11 (2) The additional services and assistance that the
12 child and relative guardian will be eligible for under the
13 agreement.

14 (3) The procedure by which the relative guardian may
15 apply for additional services as needed.

16 (4) That the department will pay the cost of
17 nonrecurring expenses associated with obtaining a legal order
18 of kinship guardianship of the child, to the extent the cost
19 does not exceed the federally established amount.

20 (b) No kinship guardianship subsidy shall be made
21 unless satisfactory documentation is submitted by the kinship
22 guardian showing an eligible child lives in the home of the
23 kinship guardian. Upon approval by the department that all the
24 requirements for payment eligibility have been satisfied, the
25 kinship guardianship subsidy may be retroactive to the date of
26 the court order appointing kinship guardianship.

1 Section 9. If the subsidy continues for more than
2 one year, the eligibility for and amount of the subsidy shall
3 be reviewed at least annually by the department as provided by
4 rule. The subsidy continues regardless of the state in which
5 the kinship guardian resides, or the state to which the
6 kinship guardian moves, if the kinship guardian continues to
7 be responsible for the child provided funding is available.

8 Section 10. The department shall adopt rules for the
9 program consistent with this act.

10 Section 11. Except as required by federal law or
11 regulation, the kinship guardianship subsidy may not be
12 counted as a resource or income in the determination of the
13 kinship guardian's or child's eligibility for any public
14 benefits or assistance. Kinship guardianship subsidy payments
15 shall be exempt from any tax levied by the state or any
16 subdivision thereof and shall be exempt from levy,
17 garnishment, attachment, or any other process whatsoever and
18 shall be inalienable.

19 Section 12. The department may provide a kinship
20 guardianship subsidy pursuant to this act to any eligible
21 child in department custody by court order on the effective
22 date of this act and to any eligible child placed in
23 department custody by court order after the effective date of
24 the act.

1 Section 13. Sections 12-15-301, 12-15-314.
2 12-15-315, 38-12-2, and 38-12-4, Code of Alabama 1975, are
3 amended to read as follows:

4 "§12-15-301.

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

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

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

20 "(3) CAREGIVER. An individual 21 years of age or
21 older, other than a parent, legal guardian, or legal custodian
22 of a child who is an approved foster parent and who is a
23 relative of the child and has been providing care and support
24 for the child while the child has been residing in the home of
25 the caregiver for at least the last six consecutive months

1 while in the legal custody of the Department of Human
2 Resources.

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

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

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

19 "~~(4)~~(7) NEGLECT. Negligent treatment or maltreatment
20 of a child, including, but not limited to, the failure to
21 provide adequate food, medical treatment, supervision,
22 education, clothing, or shelter.

23 "(8) PARENTAL INCAPACITY. Abandonment or incapacity
24 of such a serious nature as to demonstrate that the parent,
25 legal guardian, or legal custodian is unable, unavailable, or

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

3 ~~"(5)(9)~~ 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 ~~"(6)(10)~~ REASONABLE EFFORTS. Efforts made to
9 preserve and reunify families prior to the placement of a
10 child in foster care, to prevent or eliminate the need for
11 removing the child from his or her home, and to make it
12 possible for a child to return safely to his or her home.
13 Reasonable efforts also refers to efforts made to place the
14 child in a timely manner in accordance with the permanency
15 plan, and to complete whatever steps are necessary to finalize
16 the permanency placement of the child. In determining the
17 reasonable efforts to be made with respect to a child, and in
18 making these reasonable efforts, the health and safety of the
19 child shall be the paramount concern.

20 ~~"(7)(11)~~ RELATIVE. An individual who is legally
21 related to the child by blood, marriage, or adoption within
22 the fourth degree of kinship, including only a brother,
23 sister, uncle, aunt, first cousin, grandparent, great
24 grandparent, great-aunt, great-uncle, great great grandparent,
25 niece, nephew, grandniece, grandnephew, or a stepparent.

1 "~~(8)~~ (12) 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 "~~(9)~~ (13) 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 "~~(10)~~ (14) TERMINATION OF PARENTAL RIGHTS. A
16 severance of all rights of a parent to a child.

17 "§12-15-314.

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

21 "(1) Permit the child to remain with the parent,
22 legal guardian, or other legal custodian of the child, subject
23 to conditions and limitations as the juvenile court may
24 prescribe.

25 "(2) Place the child under protective supervision
26 under the Department of Human Resources.

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

2 "a. The Department of Human Resources.

3 "b. A local public or private agency, organization,
4 or facility willing and able to assume the education, care,
5 and maintenance of the child and which is licensed by the
6 Department of Human Resources or otherwise authorized by law
7 to receive and provide care for the child.

8 "c. A relative or other individual who, after study
9 by the Department of Human Resources, is found by the juvenile
10 court to be qualified to receive and care for the child.
11 Unless the juvenile court finds it not in the best interests
12 of the child, a willing, fit, and able relative shall have
13 priority for placement or custody over a non-relative.

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

17 "(5) In appropriate cases, award permanent custody
18 to the Department of Human Resources or to a licensed
19 child-placing agency after termination of parental rights and
20 authorization to place for adoption, without appointing a
21 legal guardian, or award temporary custody to the department
22 or a licensed child-placing agency without appointing a legal
23 custodian or legal guardian.

24 "(b) Unless a child found dependent shall also be
25 found to be delinquent, the child shall not be confined in an
26 institution established for the care and rehabilitation of

1 delinquent children or in a juvenile detention facility.

2 Nothing in this subsection shall be construed to prohibit the
3 placement of dependent children in any other residential
4 facility as defined in subdivision (22) of Section 12-15-102.

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

8 "(d) In providing shelter or other care for children
9 referred to or coming under the jurisdiction of the juvenile
10 court, the juvenile court and the Department of Human
11 Resources shall utilize only those facilities as have been
12 established, licensed, or approved by law, or by agencies
13 pursuant to law, for those purposes.

14 "(e) When a child is placed in the legal custody of
15 the Department of Human Resources or any other department,
16 agency, organization, entity, or person pursuant to this
17 section and when the parent, legal guardian, or legal
18 custodian of the child has resources for child support, the
19 juvenile court shall order child support in conformity with
20 the child support guidelines as set out in Rule 32, Alabama
21 Rules of Judicial Administration. The child support shall be
22 paid to the Department of Human Resources or department,
23 agency, any other organization, entity, or person in whose
24 legal custody the child is placed and may be expended for
25 those matters that are necessary for the welfare and
26 well-being of those children placed in the Department of Human

1 Resources or any other departments, agencies, organizations,
2 entities, or person. In these cases, the juvenile court shall
3 issue income withholding orders subject to state law. Any
4 petition alleging dependency of a child filed by the
5 Department of Human Resources shall contain a request for
6 child support.

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

13 "(2) A written request for appointment of a kinship
14 guardian shall be verified and allege the following with
15 respect to the child:

16 "a. Facts that if proved will meet the requirements
17 for a kinship guardianship.

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

20 "c. The legal residence of the child and the place
21 where he or she resides, if different from the legal
22 residence.

23 "d. The marital status of the child if applicable.

24 "e. The name and home and business addresses of an
25 individual caregiver sought to be appointed as a kinship
26 guardian and all residents of that individual's household.

1 "f. The relationship between the individual
2 caregiver sought to be appointed as a kinship guardian and the
3 child.

4 "g. The names and home and business addresses of the
5 parents of the child if known.

6 "h. The names and home and business addresses of
7 legal guardians or legal custodians.

8 "i. The existence of any pending matters involving
9 the custody of the child.

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

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

19 "l. The results of a criminal history record
20 background check and a child abuse record check of the
21 individual caregiver seeking to be appointed as a kinship
22 guardian and all adult residents of the household of the
23 individual caregiver.

24 "m. Whether the child is subject to provisions of
25 the federal Indian Child Welfare Act of 1978 (25 U.S.C. §1901
26 et seq.) 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.

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

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

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

22 "2. A parent of the child is living but all parental
23 rights in regard to the child have been terminated or
24 restricted by a prior court order, provided that for this
25 purpose only, the blood relationship with the child will
26 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, Section 26-2A-1, et seq.

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

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

25 "(7) The juvenile court may order visitation between
26 a parent, legal guardian, or legal custodian and the child to

1 maintain or rebuild a parent-child relationship if the
2 visitation is in the best interests of the child.

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

16 "b. If the juvenile court finds that a petition for
17 revocation of the kinship guardianship filed by the Department
18 of Human Resources meets the standard in paragraph a. above,
19 it shall grant the petition, and the child shall be placed in
20 the legal custody of the Department of Human Resources. If the
21 juvenile court finds that a petition for modification of the
22 kinship guardianship filed by the Department of Human
23 Resources meets the standard in paragraph a. above, it shall
24 grant the petition, and the child shall remain with the
25 kinship guardian but shall be under the protective supervision
26 of the department.

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

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

1 kinship guardian shall be deemed the parent for federal IDEA
2 and other educational purposes.

3 "b. A kinship guardian may not consent to the
4 adoption of the child or a name change for the child. The
5 parent of the child shall retain the authority to consent to
6 the adoption of the child or a name change for the child.

7 "c. The parent, legal guardian, or legal custodian
8 from whose custody the child was removed shall retain the
9 obligation to pay child support.

10 "d. Unless otherwise ordered by the juvenile court,
11 a kinship guardian has the authority to make all decisions
12 regarding appropriate visitation between the parent, legal
13 guardian, or legal custodian and the child.

14 "e. The appointment of a kinship guardian does not
15 limit or terminate any rights or benefits derived from or
16 between the child and parent, legal guardian, or legal
17 custodian relating to inheritance or insurance.

18 "f. A kinship guardianship terminates when the child
19 reaches 18 years of age, or when the child reaches age 21 if
20 the child is eligible for guardianship subsidy up to age 21
21 regardless of whether the juvenile court has continued
22 jurisdiction, or when the kinship guardianship is otherwise
23 terminated or revoked by the juvenile court.

24 "g. A certified copy of the court order appointing a
25 kinship guardian shall be satisfactory proof of the authority

1 of the kinship guardian, and letters of guardianship need not
2 be issued.

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

10 "i. A kinship guardianship order is the legal
11 authority for the kinship guardian to authorize or consent to
12 medical care, dental care, and mental health care for the
13 child.

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

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

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

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

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

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

1 "(4) Permanently placed with a kinship guardian
2 pursuant to a written request filed by the Department of Human
3 Resources for appointment of an individual as a kinship
4 guardian. In addition to the allegations set forth in this
5 section, the written request shall further contain the
6 following:

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

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

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

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

1 "e. That the child has been in foster care in the
2 care of the prospective kinship guardian for a period of not
3 less than six consecutive months preceding the filing of the
4 written request for appointment of a kinship guardian.

5 "f. That if the child is 14 years of age or older,
6 he or she has indicated his or her position regarding the
7 prospective kinship guardianship and if the child is 18 years
8 of age or older, he or she has consented to the kinship
9 guardianship if capable of giving effective consent.

10 ~~"(4)~~ (5) Placed in adult custodial care.

11 ~~"(5)~~ (6) Placed in another planned permanent living
12 arrangement. In the case of a child who will not be returned
13 home, at the permanency hearing, the juvenile court shall
14 consider in-state and out-of-state placement options.

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

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

17 "(c) The permanency hearing order of the juvenile
18 court shall address whether the Department of Human Resources
19 has made reasonable efforts to finalize any existing
20 permanency plan for the child.

21 "(d) The Department of Human Resources shall provide
22 a copy of available health and education records of the foster
23 child to the foster parent or foster care provider at the time
24 of placement and provide a copy of available health and
25 education records to the foster child, at no cost, at the time

1 the child is emancipated or released from foster care by
2 reason of attaining the age of majority.

3 "(e) If the permanency plan for a child is placement
4 with a kinship guardian, the individualized service plan must
5 contain the following:

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

9 "(2) The reasons for any separation of siblings
10 during placement.

11 "(3) The reasons why a permanent placement with a
12 fit and willing relative caregiver through a kinship
13 guardianship arrangement is in the best interests of the
14 child.

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

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

23 "(6) The efforts made by the Department of Human
24 Resources to discuss with the parent, legal guardian, or legal
25 custodian of the child the kinship guardianship arrangement,
26 or the reasons why the efforts were not made.

1 "§38-12-2.

2 "(a) There is established a Kinship Foster Care
3 Program in the State Department of Human Resources.

4 "(b) When a child has been removed from his or her
5 home and is in the care, custody, or guardianship of the
6 department, the department shall attempt to place the child
7 with a relative for kinship foster care. If the relative is
8 approved by the department to provide foster care services, in
9 accordance with rules and regulations adopted by the
10 department regarding foster care services, and a placement
11 with the relative is made, the relative may receive payment
12 for the full foster care rate only as provided by federal law
13 for the care of the child and any other benefits that might be
14 available to foster parents, whether in money or in services.
15 Foster care payments shall cease upon the effective date of
16 the kinship subsidiary payments or as provided by the
17 department.

18 "(c) The department shall establish ~~eligibility~~
19 standards for becoming a kinship foster parent as follows:

20 "~~(1) Relatives within the first, second, or third~~
21 ~~degree to the parent or stepparent of a child who may be~~
22 ~~related through blood, marriage, or adoption may be eligible~~
23 ~~for approval as a kinship foster parent. A relative shall be~~
24 an individual who is legally related to the child by blood,
25 marriage, or adoption within the fourth degree of kinship,
26 including only a brother, sister, uncle, aunt, first cousin,

1 grandparent, great grandparent, great aunt, great uncle, great
2 great grandparent, niece, nephew, grandniece, grandnephew, or
3 a stepparent. For the purposes of kinship foster care, the
4 blood relationship will continue to be recognized in defining
5 relative after termination of parental rights.

6 "(2) The kinship foster parent shall be 21 years of
7 age or older, ~~except that if the spouse or partner of the~~
8 ~~relative is 21 years of age or older and living in the home,~~
9 ~~and the relative is between 18 and 21 years of age, the~~
10 ~~department may waive the age requirement~~ unless the department
11 provides otherwise by rule to carry out the provisions of this
12 chapter.

13 "(3) The department may waive standards for kinship
14 foster care as provided by department rule and as permitted by
15 other state and federal law.

16 "§38-12-4.

17 "(a) The department shall determine whether the
18 person is able to care effectively for the foster child by the
19 following methods:

20 "(1) Reviewing personal and professional references.

21 "(2) Observing during a home visit of the kinship
22 foster parent with household members.

23 "(3) Interviewing the kinship foster parent.

24 "(b) The department and the kinship foster parent
25 shall develop ~~a case~~ an individualized service plan for the
26 foster care of the child. The plan shall be periodically

1 reviewed and updated. If the plan includes the use of an
2 approved daycare center or family daycare home, the department
3 shall pay for child care arrangements, according to
4 established rates.

5 "(c) The kinship foster parent shall cooperate with
6 any activities specified in the ~~case~~ individualized service
7 plan for the foster child, such as counseling, therapy, court
8 sessions, or visits with the foster child's parents or other
9 family members.

10 "(d) Whether appointed kinship guardian by the
11 juvenile court or awarded a kinship guardianship subsidy, the
12 kinship foster parent shall meet and continue to meet all
13 subsidy program and funding requirements."

14 Section 14. The provisions of this act are
15 severable. If any part of this act is declared invalid or
16 unconstitutional, that declaration shall not affect the part
17 which remains.

18 Section 15. This act shall become effective October
19 1, 2010.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 23-FEB-10

Read for the second time and placed
on the calendar with 1 substitute
and 11-MAR-10

Read for the third time and passed
as amended 08-APR-10

Yeas 101, Nays 0, Abstains 0

Greg Pappas
Clerk