

1 HB236
2 148204-1
3 By Representatives Long, Baughn and Gaston
4 RFD: Children and Senior Advocacy
5 First Read: 12-FEB-13

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8 SYNOPSIS: Under existing law, a juvenile court may
9 terminate the parental rights of a parent if the
10 court finds by clear and convincing evidence that
11 the parent is unable or unwilling to discharge his
12 or her responsibilities or that the conduct or
13 condition of the parent renders the parent unable
14 to properly care for the child and the conduct or
15 condition is unlikely to change in the foreseeable
16 future. The juvenile court may consider certain
17 factors in rendering its decision.

18 This bill would define drug rehabilitation
19 program.

20 This bill would provide that where the court
21 finds clear and convincing evidence excessive use
22 of alcohol or controlled substance has rendered a
23 parent unable to care for the needs of the child, a
24 rebuttable presumption that the conduct is unlikely
25 to change in the future exists if the parent has
26 participated in a voluntary or court-ordered drug
27 rehabilitation program on at least two separate

1 occasions in the preceding five years or the child
2 has been removed following an adjudication of
3 dependency due to alcohol or controlled substance
4 use by the parent on at least two separate
5 occasions in the preceding five years and the
6 parent has again used alcohol or controlled
7 substances.

8
9 A BILL
10 TO BE ENTITLED
11 AN ACT
12

13 To amend Sections 12-15-301 and 12-15-319, Code of
14 Alabama 1975; to define drug rehabilitation program; to
15 provide further for termination of parental rights; and to
16 provide a rebuttable presumption that the conduct of a parent
17 who has been adjudged unable or unwilling to properly care for
18 a child due to repeated excessive use of alcohol or controlled
19 substances is unlikely to change in the foreseeable future.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 12-15-301 and 12-15-319, Code of
22 Alabama 1975, are amended to read as follows:

23 "§12-15-301.

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

26 "(1) ABANDONMENT. A voluntary and intentional
27 relinquishment of the custody of a child by a parent, or a

1 withholding from the child, without good cause or excuse, by
2 the parent, of his or her presence, care, love, protection,
3 maintenance, or the opportunity for the display of filial
4 affection, or the failure to claim the rights of a parent, or
5 failure to perform the duties of a parent.

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

12 "(3) CAREGIVER. An individual 21 years of age or
13 older, other than a parent, legal guardian, or legal custodian
14 of a child who is an approved foster parent and who is a
15 relative of the child and has been providing care and support
16 for the child while the child has been residing in the home of
17 the caregiver for at least the last six consecutive months
18 while in the legal custody of the Department of Human
19 Resources.

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

22 "(5) DRUG REHABILITATION PROGRAM. Any program which
23 utilizes addiction therapy, counseling, physical confinement,
24 detoxification services, group therapy, or other organized
25 services to cure persons of addiction to drugs or alcohol, or
26 both. This definition specifically includes, but is not
27 limited to, a family treatment drug court program, another

1 drug court program, Alcoholics Anonymous, or any other
2 program, whether administered by a hospital, private health
3 care facility, government agency, church, religious
4 organization, or private entity or corporation.

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

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

20 "~~(7)~~ (8) NEGLECT. Negligent treatment or
21 maltreatment of a child, including, but not limited to, the
22 failure to provide adequate food, medical treatment,
23 supervision, education, clothing, or shelter.

24 "~~(8)~~ (9) PARENTAL INCAPACITY. Abandonment or
25 incapacity of such a serious nature as to demonstrate that the
26 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 "~~(9)~~ (10) 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 "~~(10)~~ (11) 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 "~~(11)~~ (12) 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.

26 "~~(12)~~ (13) SEXUAL ABUSE. Sexual abuse includes the
27 employment, use, persuasion, inducement, enticement, or

1 coercion of any child to engage in, or having a child assist
2 any person to engage in, any sexually explicit conduct or any
3 simulation of the conduct for the purpose of producing any
4 visual depiction of the conduct. Sexual abuse also includes
5 rape, molestation, prostitution, or other forms of sexual
6 exploitation or abuse of children, or incest with children, as
7 those acts are defined in this article or by Alabama law.

8 "~~(13)~~ (14) SEXUAL EXPLOITATION. Sexual exploitation
9 includes allowing, permitting, or encouraging a child to
10 engage in prostitution and allowing, permitting, encouraging,
11 or engaging in the obscene or pornographic photographing,
12 filming, or depicting of a child.

13 "~~(14)~~ (15) TERMINATION OF PARENTAL RIGHTS. A
14 severance of all rights of a parent to a child.

15 "§12-15-319.

16 "(a) If the juvenile court finds from clear and
17 convincing evidence, competent, material, and relevant in
18 nature, that the parents of a child are unable or unwilling to
19 discharge their responsibilities to and for the child, or that
20 the conduct or condition of the parents renders them unable to
21 properly care for the child and that the conduct or condition
22 is unlikely to change in the foreseeable future, it may
23 terminate the parental rights of the parents. In determining
24 whether or not the parents are unable or unwilling to
25 discharge their responsibilities to and for the child and to
26 terminate the parental rights, the juvenile court shall

1 consider the following factors including, but not limited to,
2 the following:

3 "(1) That the parents have abandoned the child,
4 provided that in these cases, proof shall not be required of
5 reasonable efforts to prevent removal or reunite the child
6 with the parents.

7 "(2) Emotional illness, mental illness, or mental
8 deficiency of the parent, or excessive use of alcohol or
9 controlled substances, of a duration or nature as to render
10 the parent unable to care for needs of the child.

11 "(3) That the parent has tortured, abused, cruelly
12 beaten, or otherwise maltreated the child, or attempted to
13 torture, abuse, cruelly beat, or otherwise maltreat the child,
14 or the child is in clear and present danger of being thus
15 tortured, abused, cruelly beaten, or otherwise maltreated as
16 evidenced by the treatment of a sibling.

17 "(4) Conviction of and imprisonment for a felony.

18 "(5) Commission by the parents of any of the
19 following:

20 "a. Murder or manslaughter of another child of that
21 parent.

22 "b. Aiding, abetting, attempting, conspiring, or
23 soliciting to commit murder or manslaughter of another child
24 of that parent.

25 "c. A felony assault or abuse which results in
26 serious bodily injury to the surviving child or another child
27 of that parent. The term serious bodily injury shall mean

1 bodily injury which involves substantial risk of death,
2 extreme physical pain, protracted and obvious disfigurement,
3 or protracted loss or impairment of the function of a bodily
4 member, organ, or mental faculty.

5 "(6) Unexplained serious physical injury to the
6 child under those circumstances as would indicate that the
7 injuries resulted from the intentional conduct or willful
8 neglect of the parent.

9 "(7) That reasonable efforts by the Department of
10 Human Resources or licensed public or private child care
11 agencies leading toward the rehabilitation of the parents have
12 failed.

13 "(8) That parental rights to a sibling of the child
14 have been involuntarily terminated.

15 "(9) Failure by the parents to provide for the
16 material needs of the child or to pay a reasonable portion of
17 support of the child, where the parent is able to do so.

18 "(10) Failure by the parents to maintain regular
19 visits with the child in accordance with a plan devised by the
20 Department of Human Resources, or any public or licensed
21 private child care agency, and agreed to by the parent.

22 "(11) Failure by the parents to maintain consistent
23 contact or communication with the child.

24 "(12) Lack of effort by the parent to adjust his or
25 her circumstances to meet the needs of the child in accordance
26 with agreements reached, including agreements reached with

1 local departments of human resources or licensed child-placing
2 agencies, in an administrative review or a judicial review.

3 "(b) A rebuttable presumption that the parents are
4 unable or unwilling to act as parents exists in any case where
5 the parents have abandoned a child and this abandonment
6 continues for a period of four months next preceding the
7 filing of the petition. Nothing in this subsection is intended
8 to prevent the filing of a petition in an abandonment case
9 prior to the end of the four-month period.

10 "(c) Where excessive use of alcohol or controlled
11 substances, of a duration or nature as to render the parent
12 unable to care for the needs of the child has been proved by
13 clear and convincing evidence pursuant to subdivision (2) of
14 subsection (a), a rebuttable presumption that such conduct or
15 condition is unlikely to change in the foreseeable future
16 arises if either of the following circumstances exists:

17 "(1) The parent or parents who have excessively used
18 alcohol or controlled substances, whether voluntarily or
19 involuntarily, have been enrolled in, submitted to, admitted
20 to or participated in a drug rehabilitation program, as that
21 term is defined in subdivision (15) of Section 12-15-301, on
22 two separate occasions within the five years immediately
23 preceding the filing of the petition to terminate parental
24 rights; and have again used alcohol or controlled substances
25 thereafter.

26 "(2) The subject juvenile, or any other child of the
27 parent or parents has been removed by court order, following

1 an adjudication of dependency, from the custody of the parent
2 or parents on two separate occasions within the five years
3 preceding the filing of the petition to terminate parental
4 rights; and the parents have again used alcohol or controlled
5 substances thereafter."

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