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3 By Representative Hall  
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ENROLLED, 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.

(2) An increasing number of relatives, including grandparents, find themselves wanting to provide care to related foster children on a long-term basis to prevent the children from remaining in foster care with unrelated

1 caregivers yet these relatives are either unable or unwilling  
2 to seek termination of the legal relationships between the  
3 parent and the child, particularly when it is the caregiver's  
4 own child or sibling who is the parent.

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

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

16 (5) The purposes of kinship guardianships include  
17 the following:

18 a. Establish procedures to effect a legal  
19 relationship between a child in the legal custody of the  
20 Department of Human Resources and a kinship guardian when the  
21 child is not residing with either parent, a legal guardian, or  
22 a legal custodian and to terminate legal custody with the  
23 department.

24 b. Provide a child in the legal custody of the  
25 Department of Human Resources with a stable and consistent

1 long-term relationship with a kinship guardian that will  
2 enable the child to develop physically, mentally, and  
3 emotionally to the maximum extent possible when the parents,  
4 legal guardians, or legal custodians of the child are not  
5 willing or able to do so.

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

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

21 e. Establish a kinship guardianship subsidy program  
22 to help kinship guardians bear the cost of providing care for  
23 their relatives' children outside the foster care system with  
24 available federal funds and funds made available from other  
25 sources.

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

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

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

13           (3) COURT. The juvenile court.

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

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

23           (6) 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 or  
2 care and support of the child.

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

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

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

19 Section 5. (a) Subject to rules adopted to implement  
20 this act, the department may provide subsidies for an eligible  
21 child placed in kinship guardianship by a court, or by a  
22 federally recognized Native American Indian tribe, if the  
23 child would not be placed in a kinship guardianship without  
24 the assistance of the program.

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

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

10           (2) The department is responsible for the placement  
11 and care of the child.

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

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

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

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

22           (7) With respect to a child who has attained 14  
23 years of age, the child has been consulted regarding the  
24 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.



1           Section 7. Provided that federal funding is  
2 available, the kinship guardianship subsidy shall continue  
3 until the following occur:

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

8           a. Completing secondary education or a program  
9 leading to an equivalent credential.

10           b. Enrolled in an institution which provides  
11 postsecondary or vocational education.

12           c. Participating in a program or activity designed  
13 to promote, or remove barriers to, employment.

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

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

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

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

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

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

16           (2) The additional services and assistance that the  
17 child and relative guardian will be eligible for under the  
18 agreement.

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

21           (4) That the department will pay the cost of  
22 nonrecurring expenses associated with obtaining a legal order  
23 of kinship guardianship of the child, to the extent the cost  
24 does not exceed the federally established amount.

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

8           Section 9. If the subsidy continues for more than  
9 one year, the eligibility for and amount of the subsidy shall  
10 be reviewed at least annually by the department as provided by  
11 rule. The subsidy continues regardless of the state in which  
12 the kinship guardian resides, or the state to which the  
13 kinship guardian moves, if the kinship guardian continues to  
14 be responsible for the child provided funding is available.

15           Section 10. The department shall adopt rules for the  
16 program consistent with this act.

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

1           Section 12. The department may provide a kinship  
2 guardianship subsidy pursuant to this act to any eligible  
3 child in department custody by court order on the effective  
4 date of this act and to any eligible child placed in  
5 department custody by court order after the effective date of  
6 the act.

7           Section 13. Sections 12-15-301, 12-15-314.  
8 12-15-315, 38-12-2, and 38-12-4, Code of Alabama 1975, are  
9 amended to read as follows:

10           "§12-15-301.

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

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

20           "(2) ABUSE. Harm or the risk of harm to the  
21 emotional, physical health, or welfare of a child. Harm or the  
22 risk of harm to the emotional, physical health, or welfare of  
23 a child can occur through nonaccidental physical or mental  
24 injury, sexual abuse, or attempted sexual abuse or sexual  
25 exploitation or attempted sexual exploitation.

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

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

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

16           "(6) KINSHIP GUARDIAN. A caregiver who is willing to  
17 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.

1           "~~(4)~~(7) NEGLECT. Negligent treatment or maltreatment  
2 of a child, including, but not limited to, the failure to  
3 provide adequate food, medical treatment, supervision,  
4 education, clothing, or shelter.

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

10           "~~(5)~~(9) PROTECTIVE SUPERVISION. A legal status  
11 created by order of the juvenile court following an  
12 adjudication of dependency whereby a child is placed with a  
13 parent or other person subject to supervision by the  
14 Department of Human Resources.

15           "~~(6)~~(10) REASONABLE EFFORTS. Efforts made to  
16 preserve and reunify families prior to the placement of a  
17 child in foster care, to prevent or eliminate the need for  
18 removing the child from his or her home, and to make it  
19 possible for a child to return safely to his or her home.  
20 Reasonable efforts also refers to efforts made to place the  
21 child in a timely manner in accordance with the permanency  
22 plan, and to complete whatever steps are necessary to finalize  
23 the permanency placement of the child. In determining the  
24 reasonable efforts to be made with respect to a child, and in

1 making these reasonable efforts, the health and safety of the  
2 child shall be the paramount concern.

3 "~~(7)~~ (11) RELATIVE. An individual who is legally  
4 related to the child by blood, marriage, or adoption within  
5 the fourth degree of kinship, including only a brother,  
6 sister, uncle, aunt, first cousin, grandparent, great  
7 grandparent, great-aunt, great-uncle, great great grandparent,  
8 niece, nephew, grandniece, grandnephew, or a stepparent.

9 "~~(8)~~ (12) SEXUAL ABUSE. Sexual abuse includes the  
10 employment, use, persuasion, inducement, enticement, or  
11 coercion of any child to engage in, or having a child assist  
12 any person to engage in, any sexually explicit conduct or any  
13 simulation of the conduct for the purpose of producing any  
14 visual depiction of the conduct. Sexual abuse also includes  
15 rape, molestation, prostitution, or other forms of sexual  
16 exploitation or abuse of children, or incest with children, as  
17 those acts are defined in this article or by Alabama law.

18 "~~(9)~~ (13) SEXUAL EXPLOITATION. Sexual exploitation  
19 includes allowing, permitting, or encouraging a child to  
20 engage in prostitution and allowing, permitting, encouraging,  
21 or engaging in the obscene or pornographic photographing,  
22 filming, or depicting of a child.

23 "~~(10)~~ (14) TERMINATION OF PARENTAL RIGHTS. A  
24 severance of all rights of a parent to a child.

25 "§12-15-314.

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

4           "(1) Permit the child to remain with the parent,  
5 legal guardian, or other legal custodian of the child, subject  
6 to conditions and limitations as the juvenile court may  
7 prescribe.

8           "(2) Place the child under protective supervision  
9 under the Department of Human Resources.

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

11          "a. The Department of Human Resources.

12          "b. A local public or private agency, organization,  
13 or facility willing and able to assume the education, care,  
14 and maintenance of the child and which is licensed by the  
15 Department of Human Resources or otherwise authorized by law  
16 to receive and provide care for the child.

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

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

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



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

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

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

18           "(d) In providing shelter or other care for children  
19 referred to or coming under the jurisdiction of the juvenile  
20 court, the juvenile court and the Department of Human  
21 Resources shall utilize only those facilities as have been  
22 established, licensed, or approved by law, or by agencies  
23 pursuant to law, for those purposes.

24           "(e) When a child is placed in the legal custody of  
25 the Department of Human Resources or any other department,

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

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

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

4           "a. Facts that if proved will meet the requirements  
5 for a kinship guardianship.

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

8           "c. The legal residence of the child and the place  
9 where he or she resides, if different from the legal  
10 residence.

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

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

15           "f. The relationship between the individual  
16 caregiver sought to be appointed as a kinship guardian and the  
17 child.

18           "g. The names and home and business addresses of the  
19 parents of the child if known.

20           "h. The names and home and business addresses of  
21 legal guardians or legal custodians.

22           "i. The existence of any pending matters involving  
23 the custody of the child.

24           "j. A signed statement from the individual caregiver  
25 sought to be appointed as a kinship guardian that the

1 individual agrees to accept the duties and responsibilities of  
2 being a kinship guardian.

3 "k. The existence of any other matters pending in  
4 the juvenile court involving the child and, if they exist, a  
5 statement that departments, agencies, individuals, or entities  
6 authorized or involved in the proceedings by law or court  
7 order consent to the relief requested.

8 "l. The results of a criminal history record  
9 background check and a child abuse record check of the  
10 individual caregiver seeking to be appointed as a kinship  
11 guardian and all adult residents of the household of the  
12 individual caregiver.

13 "m. Whether the child is subject to provisions of  
14 the federal Indian Child Welfare Act of 1978 (25 U.S.C. §1901  
15 et seq.) and, if so:

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

18 "2. The specific actions taken to notify the tribes  
19 of the parents, legal guardians, or legal custodians and the  
20 results of the contacts.

21 "n. Other relevant facts in support of the written  
22 request to be appointed as a kinship guardian.

23 "(3) After the juvenile court finds that an  
24 individual caregiver qualifies to be appointed as a kinship  
25 guardian, the requirements of subdivision (5) have been

1 proved, and the best interests of the child will be served by  
2 the requested appointment, it may make the appointment. After  
3 a kinship guardianship appointment, the juvenile court may  
4 make any other disposition of the matter that will serve the  
5 best interests of the child.

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

8 "a.1. A parent, legal guardian, or legal custodian  
9 of the child is living and has consented in writing to the  
10 appointment of a kinship guardian and the consent has not been  
11 withdrawn; or

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

17 "b.1. The child has resided with the individual  
18 caregiver seeking to be appointed as a kinship guardian  
19 without the parent, legal guardian, or legal custodian for a  
20 period of six months or more immediately preceding the date  
21 the written request is filed, and a parent, legal guardian, or  
22 legal custodian having legal custody of the child is currently  
23 unwilling or unable to provide adequate care, maintenance, and  
24 supervision for the child or there are extraordinary  
25 circumstances; and

1           "2. No legal guardian of the child is currently  
 2 appointed pursuant to the Alabama Uniform Guardianship and  
 3 Protective Proceedings Act, Section 26-2A-1, et seq.

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

9           "(6) As part of a kinship guardianship order, the  
 10 juvenile court may order a parent, legal guardian, or legal  
 11 custodian to pay the reasonable costs of support and  
 12 maintenance of the child that the parent, legal guardian, or  
 13 legal custodian is financially able to pay. The juvenile court  
 14 shall use the Child Support Guidelines established by Rules of  
 15 the Alabama Supreme Court to calculate a reasonable payment.

16           "(7) The juvenile court may order visitation between  
 17 a parent, legal guardian, or legal custodian and the child to  
 18 maintain or rebuild a parent-child relationship if the  
 19 visitation is in the best interests of the child.

20           "(8)a. A kinship guardianship is intended to be  
 21 permanent during the child's minority similar to other  
 22 permanency plan options. After the kinship guardian has been  
 23 appointed by the juvenile court, a parent, other person,  
 24 entity, department, or agency, including the Department of  
 25 Human Resources, may file a petition to revoke or modify the

1 kinship guardianship by proving not only that a material  
2 change in circumstances has occurred since the order granting  
3 the kinship guardianship was entered, but also that the change  
4 would materially promote the child's best interest and  
5 welfare, and that the positive good brought about by the  
6 change would more than offset the inherently disruptive effect  
7 caused by uprooting the child.

8 "b. If the juvenile court finds that a petition for  
9 revocation of the kinship guardianship filed by the Department  
10 of Human Resources meets the standard in paragraph a. above,  
11 it shall grant the petition, and the child shall be placed in  
12 the legal custody of the Department of Human Resources. If the  
13 juvenile court finds that a petition for modification of the  
14 kinship guardianship filed by the Department of Human  
15 Resources meets the standard in paragraph a. above, it shall  
16 grant the petition, and the child shall remain with the  
17 kinship guardian but shall be under the protective supervision  
18 of the department.

19 "c. This subsection does not ~~intended to~~ preclude a  
20 parent, other person, entity, department, or agency, including  
21 the Department of Human Resources, from filing a petition to  
22 modify other terms of the order of the juvenile court granting  
23 the kinship guardianship, including, but not limited to,  
24 visitation, which shall be decided, after notice to the

1 department, on the basis of what is in the best interests of  
2 the child.

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

22 "b. A kinship guardian may not consent to the  
23 adoption of the child or a name change for the child. The  
24 parent of the child shall retain the authority to consent to  
25 the adoption of the child or a name change for the child.



1           "c. The parent, legal guardian, or legal custodian  
 2 from whose custody the child was removed shall retain the  
 3 obligation to pay child support.

4           "d. Unless otherwise ordered by the juvenile court,  
 5 a kinship guardian has the authority to make all decisions  
 6 regarding appropriate visitation between the parent, legal  
 7 guardian, or legal custodian and the child.

8           "e. The appointment of a kinship guardian does not  
 9 limit or terminate any rights or benefits derived from or  
 10 between the child and parent, legal guardian, or legal  
 11 custodian relating to inheritance or insurance.

12           "f. A kinship guardianship terminates when the child  
 13 reaches 18 years of age, or when the child reaches age 21 if  
 14 the child is eligible for guardianship subsidy up to age 21  
 15 regardless of whether the juvenile court has continued  
 16 jurisdiction, or when the kinship guardianship is otherwise  
 17 terminated or revoked by the juvenile court.

18           "g. A certified copy of the court order appointing a  
 19 kinship guardian shall be satisfactory proof of the authority  
 20 of the kinship guardian, and letters of guardianship need not  
 21 be issued.

22           "h. A kinship guardianship order is the legal  
 23 authority to enroll the named child in school and consent to  
 24 school-related activities and medical care for the child; to  
 25 give permission or consent for other non-school related

1 activities, placements, and events; and to enroll the child in  
2 health, homeowner, employment, motor vehicle, and other  
3 insurance.

4 "i. A kinship guardianship order is the legal  
5 authority for the kinship guardian to authorize or consent to  
6 medical care, dental care, and mental health care for the  
7 child.

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

18 "§12-15-315.

19 "(a) Within 12 months of the date a child is removed  
20 from the home and placed in out-of-home care, and not less  
21 frequently than every 12 months thereafter during the  
22 continuation of the child in out-of-home care, the juvenile  
23 court shall hold a permanency hearing. The Department of Human  
24 Resources shall present to the juvenile court at the hearing a  
25 permanent plan for the child. The juvenile court shall consult

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

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

14 "(2) Placed for adoption with no identified resource  
15 or with the current foster parent wherein the Department of  
16 Human Resources shall file a petition for termination of  
17 parental rights.

18 "(3) Permanently placed with a relative with a  
19 transfer of legal and physical custody to the relative or with  
20 a transfer of physical custody to the relative but with the  
21 Department of Human Resources retaining legal custody.

22 "(4) Permanently placed with a kinship guardian  
23 pursuant to a written request filed by the Department of Human  
24 Resources for appointment of an individual as a kinship  
25 guardian. In addition to the allegations set forth in this

1 section, the written request shall further contain the  
2 following:

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

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

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

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

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

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

6           "~~(4)~~(5) Placed in adult custodial care.

7           "~~(5)~~(6) Placed in another planned permanent living  
8 arrangement. In the case of a child who will not be returned  
9 home, at the permanency hearing, the juvenile court shall  
10 consider in-state and out-of-state placement options.

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

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

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

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

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

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

7           "(2) The reasons for any separation of siblings  
8 during placement.

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

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

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

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

25           "§38-12-2.

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

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

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

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

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

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

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

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

19 Section 15. This act shall become effective October  
20 1, 2010.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 08-APR-10, as amended.

Greg Pappas  
Clerk

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Senate

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21-APR-10

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Passed