

1 HB96
2 204387-2
3 By Representative Lee
4 RFD: Children and Senior Advocacy
5 First Read: 04-FEB-20

SYNOPSIS: Existing law provides factors for a juvenile court to consider in making a determination of whether to terminate parental rights.

This bill would require a juvenile court to consider a child's relationship with his or her current foster parents and the child's best interests when making a determination of whether to terminate parental rights.

This bill would provide that a juvenile court is not required to consider a relative for candidacy to be a child's legal guardian if the relative has not met certain requirements.

This bill would also provide that service on an individual whose parental rights have been terminated are not entitled to receive notice of pendency regarding an adoption proceeding involving a child for whom the individual's parental rights have been terminated.

A BILL

1 TO BE ENTITLED

2 AN ACT

3
4 Relating to juveniles; to amend Sections 12-15-319
5 and 26-10A-17, Code of Alabama 1975; to require a juvenile
6 court to consider a child's relationship with his or her
7 current foster parents and the child's best interests when
8 making a determination of whether to terminate parental
9 rights; to provide that a juvenile court is not required to
10 consider a relative for candidacy to be a child's legal
11 guardian if the relative has not met certain requirements; and
12 to provide that service on an individual whose parental rights
13 have been terminated are not entitled to receive notice of
14 pendency regarding an adoption proceeding involving a child
15 for whom the individual's parental rights have been
16 terminated.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 12-15-319 and 26-10A-17, Code of
19 Alabama 1975, are amended to read as follows:

20 "§12-15-319.

21 "(a) If the juvenile court finds from clear and
22 convincing evidence, competent, material, and relevant in
23 nature, that the parents of a child are unable or unwilling to
24 discharge their responsibilities to and for the child, or that
25 the conduct or condition of the parents renders them unable to
26 properly care for the child and that the conduct or condition
27 is unlikely to change in the foreseeable future, it may

1 terminate the parental rights of the parents. In a hearing on
2 a petition for termination of parental rights, the court shall
3 consider the best interests of the child. In determining
4 whether or not the parents are unable or unwilling to
5 discharge their responsibilities to and for the child and to
6 terminate the parental rights, the juvenile court shall
7 consider the following factors including, but not limited to,
8 the following:

9 "(1) That the parents have abandoned the child,
10 provided that in these cases, proof shall not be required of
11 reasonable efforts to prevent removal or reunite the child
12 with the parents.

13 "(2) Emotional illness, mental illness, or mental
14 deficiency of the parent, or excessive use of alcohol or
15 controlled substances, of a duration or nature as to render
16 the parent unable to care for the needs of the child.

17 "(3) That the parent has tortured, abused, cruelly
18 beaten, or otherwise maltreated the child, or attempted to
19 torture, abuse, cruelly beat, or otherwise maltreat the child,
20 or the child is in clear and present danger of being thus
21 tortured, abused, cruelly beaten, or otherwise maltreated as
22 evidenced by the treatment of a sibling.

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

24 "(5) Commission by the parents of any of the
25 following:

26 "a. Murder or manslaughter of another child of that
27 parent.

1 "b. Aiding, abetting, attempting, conspiring, or
2 soliciting to commit murder or manslaughter of another child
3 of that parent.

4 "c. A felony assault or abuse which results in
5 serious bodily injury to the surviving child or another child
6 of that parent. The term serious bodily injury shall mean
7 bodily injury which involves substantial risk of death,
8 extreme physical pain, protracted and obvious disfigurement,
9 or protracted loss or impairment of the function of a bodily
10 member, organ, or mental faculty.

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

15 "(7) That reasonable efforts by the Department of
16 Human Resources or licensed public or private child care
17 agencies leading toward the rehabilitation of the parents have
18 failed.

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

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

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

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

3 "(12) Lack of effort by the parent to adjust his or
4 her circumstances to meet the needs of the child in accordance
5 with agreements reached, including agreements reached with
6 local departments of human resources or licensed child-placing
7 agencies, in an administrative review or a judicial review.

8 "(13) The existence of any significant emotional
9 ties that have developed between the child and his or her
10 current foster parent or parents, with additional
11 consideration given to the following factors:

12 "a. The length of time that the child has lived in a
13 stable and satisfactory environment.

14 "b. Whether severing the ties between the child and
15 his or her current foster parent or parents is contrary to the
16 best interest of the child.

17 "c. Whether the juvenile court has found at least
18 one other ground for termination of parental rights.

19 "(b) If a parent has been convicted of rape in the
20 first degree pursuant to Section 13A-6-61, sodomy in the first
21 degree pursuant to Section 13A-6-63, or incest pursuant to
22 Section 13A-13-3, the juvenile court shall make a finding that
23 the parent is unable to properly care for a child and to
24 discharge his or her responsibilities to and for a child, and
25 shall terminate the parental rights of the parent.

26 "(c) The juvenile court is not required to consider
27 a relative to be a candidate for legal guardian of the child

1 in a proceeding for termination of parental rights if both of
2 the following circumstances exist:

3 "(1) The relative did not attempt to care for the
4 child or obtain custody of the child within four months of the
5 child being removed from the custody of the parents or placed
6 in foster care, if the removal was known to the relative.

7 "(2) The goal of the current permanency plan
8 formulated by the Department of Human Resources is adoption by
9 the current foster parents.

10 ~~"(c)~~ (d) A rebuttable presumption that the parents
11 are unable or unwilling to act as parents exists in any case
12 where the parents have abandoned a child and this abandonment
13 continues for a period of four months next preceding the
14 filing of the petition. Nothing in this subsection is intended
15 to prevent the filing of a petition in an abandonment case
16 prior to the end of the four-month period.

17 "§26-10A-17.

18 "(a) Unless service has been previously waived,
19 notice of pendency of the adoption proceeding shall be served
20 by the petitioner on:

21 "(1) Any person, agency, or institution whose
22 consent or relinquishment is required by Section 26-10A-7,
23 ~~unless service has been previously waived or consent has been~~
24 ~~implied~~ parental rights have been terminated pursuant to
25 Section 12-15-319.

26 "(2) The legally appointed custodian or guardian of
27 the adoptee.

1 "(3) The spouse of any petitioner who has not joined
2 in the petition.

3 "(4) The spouse of the adoptee.

4 "(5) The surviving parent or parents of a deceased
5 parent of the adoptee unless parental rights have been
6 terminated pursuant to Section 12-15-319.

7 "(6) Any person known to the petitioners as
8 currently having physical custody of the adoptee, excluding
9 ~~licensed foster care~~ parents or other private licensed
10 agencies or having visitation rights with the adoptee under an
11 existing court order.

12 "(7) The agency or individual authorized to
13 investigate the adoption under Section 26-10A-19.

14 "(8) Any other person designated by the court.

15 "(9) The Department of Human Resources.

16 "(10) The father and putative father of the adoptee
17 if made known by the mother or otherwise known by the court
18 unless the court finds that the father or putative father has
19 given implied consent to the adoption, as defined in Section
20 26-10A-9 or unless parental rights have been terminated
21 pursuant to Section 12-15-319.

22 "(b) The notice shall specifically state that the
23 person served must respond to the petitioner within 30 days if
24 he or she intends to contest the adoption. A copy of the
25 petition for adoption shall be delivered to those individuals
26 or agencies in subdivisions (a) (2) through (a) (10). Any notice

1 required by this chapter may be served on a natural parent
2 prior to birth.

3 "(c) Service of the notice shall be made in the
4 following manner:

5 "(1) Service of process shall be made in accordance
6 with the Alabama Rules of Civil Procedure except as otherwise
7 provided by the Alabama Rules of Juvenile Procedure. If the
8 identity or whereabouts of the parent is unknown, or if one
9 parent fails or refuses to disclose the identity or
10 whereabouts of the other parent, the court shall then issue an
11 order providing for service by publication, by posting, or by
12 any other substituted service.

13 "(2) As to the agency or individual referred to in
14 subdivisions (a) (7) and (a) (9) ~~above~~, notice shall be by
15 certified mail.

16 "(3) As to any other person for whom notice is
17 required under subsection (a) ~~of this section~~, service by
18 certified mail, return receipt requested, shall be sufficient.
19 If such service cannot be completed after two attempts, the
20 court shall issue an order providing for service by
21 publication, by posting, or by any other substituted service.

22 "(d) The notice required by this section may be
23 waived in writing by the person entitled to receive notice.

24 "(e) Proof of service of the notice on all persons
25 for whom notice is required by this section must be filed with
26 the court before the adjudicational hearing, provided in
27 Section 26-10A-24."

1 Section 2. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.