

1 SB80
2 202986-1
3 By Senator Jones
4 RFD: Children, Youth and Human Services
5 First Read: 04-FEB-20
6 PFD: 02/03/2020

1
2
3
4
5
6
7
8 SYNOPSIS: Existing law requires juvenile courts and
9 the Department of Human Resources to abide by
10 certain requirements for placement and treatment of
11 children in juvenile dependency cases.

12 This bill would require the Department of
13 Human Resources to conduct a diligent search when
14 seeking a relative or other individual to be a
15 caregiver for a child determined to be dependent by
16 a juvenile court. A diligent search pursuant to
17 this bill would include interviews with both the
18 child and his or her relatives, as well as records
19 searches and other targeted inquiries during court
20 hearings pertaining to criminal history, financial
21 status, employment status, and residential status.

22 This bill would also require a juvenile
23 court to find that in a situation where a child
24 determined to be dependent has resided with a
25 caregiver for at least 12 months prior to the
26 determination of dependency, and where removal of
27 the child from the home environment would be

1 detrimental to the child's emotional well-being,
2 continuation of the child's placement with his or
3 her current caregiver or caregivers is in the
4 child's best interests, and to make an order
5 granting permanent custody to the caregiver or
6 caregivers.

7
8 A BILL
9 TO BE ENTITLED
10 AN ACT

11
12 Relating to juvenile dependency cases; to amend
13 Section 12-15-314, Code of Alabama 1975; to require the
14 Department of Human Resources to conduct a diligent search
15 when seeking a relative or other individual to be a caregiver
16 for a child determined to be dependent by a juvenile court;
17 and to provide for orders of permanent custody to caregivers
18 of dependent children under certain conditions.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Section 12-15-314, Code of Alabama 1975,
21 is amended to read as follows:

22 "§12-15-314.

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

26 "~~(1)~~a. Permit the child to remain with the parent,
27 legal guardian, or other legal custodian of the child, subject

1 to conditions and limitations as the juvenile court may
2 prescribe.

3 "~~(2)~~b. Place the child under protective supervision
4 under the Department of Human Resources.

5 "~~(3)~~c. Transfer legal custody to any of the
6 following:

7 "~~a.~~1. The Department of Human Resources.

8 "~~b.~~2. A local public or private agency,
9 organization, or facility willing and able to assume the
10 education, care, and maintenance of the child and which is
11 licensed by the Department of Human Resources or otherwise
12 authorized by law to receive and provide care for the child.

13 "~~c.~~3. A relative or other individual who, after
14 ~~study~~ a diligent search by the Department of Human Resources
15 pursuant to subsection (b), is found by the juvenile court to
16 be qualified to receive and care for the child. Unless the
17 juvenile court finds it not in the best interests of the
18 child, a willing, fit, and able relative shall have priority
19 for placement or custody over a non-relative.

20 "~~(4)~~4. Make any other order as the juvenile court in
21 its discretion shall deem to be for the welfare and best
22 interests of the child.

23 "~~(5)~~5. In appropriate cases, award permanent custody
24 to the Department of Human Resources or to a licensed
25 child-placing agency after termination of parental rights and
26 authorization to place for adoption, without appointing a
27 legal guardian, or award temporary custody to the department

1 or a licensed child-placing agency without appointing a legal
2 custodian or legal guardian.

3 "(2) Notwithstanding subdivision (1), if the
4 juvenile court finds that a child found to be dependent has
5 been living in a stable home environment with his or her
6 current caregiver or caregivers for at least 12 months, and
7 that removal of the child from the home environment would be
8 detrimental to the child's emotional well-being, it shall make
9 a finding that continuation of the child's placement with his
10 or her current caregiver or caregivers is in the child's best
11 interests and shall make an order granting permanent custody
12 to the caregiver or caregivers.

13 "(b) (1) A diligent search performed by the
14 Department of Human Resources pursuant to subsection (a) shall
15 include, at a minimum, all of the following:

16 "a. Interviews with the child's parent during the
17 course of an investigation, while child protective services
18 are provided, and while the child is in care.

19 "b. Interviews with the child.

20 "c. Interviews with identified relatives throughout
21 the case.

22 "d. Interviews with any other person who is likely
23 to have information about the identity or location of a person
24 being sought.

25 "e. Comprehensive searches of data bases available
26 to the Department of Human Resources including, but not
27 limited to, searches of employment, residence, utilities,

1 vehicle registration, child support enforcement, law
2 enforcement, corrections records, and any other records likely
3 to result in identifying and locating a person being sought.

4 "f. Appropriate inquiry during the course of
5 hearings in the case.

6 "g. Any other reasonable means that are likely to
7 identify relatives or other persons who have demonstrated an
8 ongoing commitment to the child.

9 "(2) All adult relatives of the child who are
10 identified in a diligent search pursuant to this section and
11 all parents of a sibling of the child, when the parent has
12 legal custody of the sibling, subject to exceptions due to
13 family or domestic violence, shall be provided with notice
14 that does all of the following:

15 "a. Specifies that the child has been or is being
16 removed from his or her parental custody.

17 "b. Explains the options a relative has to
18 participate in the care and placement of the child and any
19 options that may be lost by failing to respond to the notice.

20 "c. Describes the process for becoming an approved
21 foster family home and the additional services and supports
22 available for children placed in approved foster homes.

23 "d. Describes any financial assistance for which a
24 relative may be eligible.

25 "(3) The diligent search required by this section
26 and the notification required by this subsection shall be
27 completed, documented in writing, and filed with the court

1 within 30 days from the date on which the child was removed
2 from his or her home and at each periodic review hearing
3 required by this article.

4 "(4) After the completion of the diligent search
5 required by this section, the Department of Human Resources
6 shall have a continuing duty to search for relatives or other
7 persons who have an ongoing commitment to the child and with
8 whom it may be appropriate to place the child until the
9 relatives or persons are found or until the child is placed
10 for adoption unless the court excuses the Department of Human
11 Resources from conducting a diligent search. If a relative
12 entitled to notice under subsection (c), within six months
13 from the date he or she receives the required notice, fails to
14 demonstrate an interest in and willingness to provide a
15 permanent home for a child, the court may excuse the
16 Department of Human Resources from considering the relative as
17 a placement.

18 ~~(b)~~ (c) Unless a child found dependent shall also be
19 found to be delinquent, the child shall not be confined in an
20 institution established for the care and rehabilitation of
21 delinquent children or in a juvenile detention facility.
22 Nothing in this subsection shall be construed to prohibit the
23 placement of dependent children in any other residential
24 facility as defined in subdivision (22) of Section 12-15-102.

25 ~~(c)~~ (d) There shall be a rebuttable presumption that
26 children cannot be removed from the custody of their parents
27 solely because of a need for emergency housing.

1 "~~(d)~~(e) In providing shelter or other care for
2 children referred to or coming under the jurisdiction of the
3 juvenile court, the juvenile court and the Department of Human
4 Resources shall utilize only those facilities as have been
5 established, licensed, or approved by law, or by agencies
6 pursuant to law, for those purposes.

7 "~~(e)~~(f) When a child is placed in the legal custody
8 of the Department of Human Resources or any other department,
9 agency, organization, entity, or person pursuant to this
10 section and when the parent, legal guardian, or legal
11 custodian of the child has resources for child support, the
12 juvenile court shall order child support in conformity with
13 the Child Support Guidelines as set out in Rule 32, Alabama
14 Rules of Judicial Administration. The child support shall be
15 paid to the Department of Human Resources or department,
16 agency, any other organization, entity, or person in whose
17 legal custody the child is placed and may be expended for
18 those matters that are necessary for the welfare and
19 well-being of those children placed in the Department of Human
20 Resources or any other departments, agencies, organizations,
21 entities, or person. In these cases, the juvenile court shall
22 issue income withholding orders subject to state law. Any
23 petition alleging dependency of a child filed by the
24 Department of Human Resources shall contain a request for
25 child support.

26 "~~(f)~~(1)(g) (1) After a child has been placed in the
27 legal custody of the Department of Human Resources, the

1 department may file with the juvenile court a written request
2 for appointment of a kinship guardian in cases where the
3 juvenile court has entered an order under Section 12-15-315
4 affirming kinship guardianship as the permanent plan for the
5 child.

6 "(2) If the kinship guardian dies or becomes
7 incapacitated, the department or the named prospective
8 successor guardian in the kinship guardian subsidy agreement
9 may file a written request for appointment of the successor
10 guardian. The department or the prospective successor guardian
11 may file for an ex parte order of temporary guardianship
12 pending a hearing on the written request for appointment of a
13 successor guardian.

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

17 "a. Facts that if proved will meet the requirements
18 for a kinship guardianship or successor guardianship.

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

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

24 "d. The marital status of the child, if applicable.

25 "e. The name and home and business addresses of an
26 individual caregiver sought to be appointed as a kinship

1 guardian or successor guardian and all residents of that
2 individual's household.

3 "f. The relationship between the individual
4 caregiver sought to be appointed as a kinship guardian or
5 successor guardian and the child.

6 "g. The names and home and business addresses of the
7 parents of the child, if known.

8 "h. The names and home and business addresses of
9 legal guardians or legal custodians.

10 "i. The existence of any pending matters involving
11 the custody of the child.

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

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

22 "l. The results of a criminal history record
23 background check of the individual caregiver seeking to be
24 appointed as a kinship guardian or successor guardian and all
25 adult residents of the household of the individual caregiver.
26 In addition, the results of a child abuse record check of the
27 individual caregiver seeking to be appointed as a kinship

1 guardian or successor guardian and all residents 14 years or
2 older of the household of the individual caregiver.

3 "m. Whether the child is subject to provisions of
4 the federal Indian Child Welfare Act of 1978, 25 U.S.C. §1901,
5 and, if so:

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

8 "2. The specific actions taken to notify the tribes
9 of the parents, legal guardians, or legal custodians and the
10 results of the contacts.

11 "n. Other relevant facts in support of the written
12 request to be appointed as a kinship guardian or successor
13 guardian.

14 "(4) After the juvenile court finds that an
15 individual caregiver qualifies to be appointed as a kinship
16 guardian, the requirements of subdivision (5) or (6) have been
17 proved, and the best interests of the child will be served by
18 the requested appointment, it may make the appointment. After
19 a kinship guardianship appointment, the juvenile court may
20 make any other disposition of the matter that will serve the
21 best interests of the child.

22 "(5) A kinship guardian may be appointed by the
23 juvenile court only if:

24 "a. A parent of the child is living but all parental
25 rights in regard to the child have been terminated or
26 restricted by a prior court order, provided that for this

1 purpose only, the blood relationship with the child will
2 continue to be recognized in defining relative caregiver;

3 "b. The child has resided with the individual
4 caregiver seeking to be appointed as a kinship guardian
5 without the parent, legal guardian, or legal custodian for a
6 period of six months or more immediately preceding the date
7 the written request is filed, and a parent, legal guardian, or
8 legal custodian having legal custody of the child is currently
9 unwilling or unable to provide adequate care, maintenance, and
10 supervision for the child or there are extraordinary
11 circumstances; and

12 "c. No legal guardian of the child is currently
13 appointed pursuant to the Alabama Uniform Guardianship and
14 Protective Proceedings Act, Chapter 2A of Title 26.

15 "(6) A successor guardian may be appointed by the
16 juvenile court only if all of the following requirements have
17 been met:

18 "a. The original kinship guardian subsidy agreement
19 or amendments to ~~such~~ the agreement names the prospective
20 successor guardian as the person to become the legal guardian
21 of the child in the event of the death or incapacitation of
22 the kinship guardian.

23 "b. The department has completed a criminal history
24 record check on the prospective successor guardian and all
25 adult residents of the household of the prospective successor
26 guardian. The department also has completed a child abuse
27 record check on the prospective successor guardian and all

1 residents 14 years or older of the household of the individual
2 caregiver.

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

6 "d. A child that is 14 years of age or older must be
7 consulted as to his or her position regarding the prospective
8 successor guardianship and if the child is 18 years or older,
9 he or she has consented to the successor guardianship if
10 capable of giving effective consent.

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

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

24 "(9) The juvenile court may order visitation between
25 a parent, legal guardian, or legal custodian and the child to
26 maintain or rebuild a parent-child relationship if the
27 visitation is in the best interests of the child.

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

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

1 "c. This subsection does not preclude a parent,
2 other person, entity, department, or agency, including the
3 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 or successor guardianship, including,
6 but not limited to, visitation, which shall be decided, after
7 notice to the department, on the basis of what is in the best
8 interests of the child.

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

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

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

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

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

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

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

1 "g. A certified copy of the court order appointing a
2 kinship guardian or successor guardian shall be satisfactory
3 proof of the authority of the kinship guardian or successor
4 guardian, and letters of guardianship need not be issued.

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

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

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

1 "~~(g) (1)~~(h) (1) A caregiver shall have the authority,
2 without prior approval of the department, juvenile court, or
3 circuit court, to allow a child in his or her care that is in
4 foster care to participate in activities that are age or
5 developmentally appropriate for the child based on a
6 reasonable and prudent parent standard, provided the
7 activities are consistent with provisions of any existing
8 court order, individualized service plan, or promulgated
9 policy of the department that provides guidance to caregivers
10 concerning the reasonable and prudent parent standard. The
11 guidance shall include factors for the caregiver to consider
12 prior to allowing a child to participate in age or
13 developmentally appropriate normal childhood activities.

14 "(2) A caregiver shall be immune from liability in a
15 civil action to recover damages for injury, death, or loss to
16 person or property that results from a caregiver's decisions
17 using a reasonable and prudent parent standard. This
18 subsection shall not be construed to remove or limit any
19 existing liability protection provided by law."

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