

1 SB480  
2 117880-3  
3 By Senators Butler, Mitchell, Orr, Mitchem, Bedford, Denton,  
4 Dunn, Little (T), Keahey, Sanford, Erwin, and Dixon  
5 RFD: Governmental Affairs  
6 First Read: 25-FEB-10

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To establish a kinship guardianships; to establish a  
12 kinship guardianship subsidy program; to provide legislative  
13 intent and purpose; to set procedures for establishing kinship  
14 guardianships and legal authority of kinship guardians; and to  
15 amend Sections 12-15-301, 12-15-314, 12-15-315, 38-12-2, and  
16 38-12-4, Code of Alabama 1975.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

22 (1) There exists in this state a number of children  
23 who cannot reside with their parents, legal guardians, or  
24 legal custodians because of such parents', legal guardians',  
25 or custodians' incapacity or inability to perform the regular  
26 and expected functions of care and support of the children and  
27 family care and who thereby come to the attention of juvenile

1 court and into the care and custody of the Department of Human  
2 Resources.

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

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

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

22 (5) The purposes of kinship guardianships include  
23 the following:

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

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

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

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

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

25 e. Establish a kinship guardianship subsidy program  
26 to help kinship guardians bear the cost of providing care for  
27 their relatives' children outside the foster care system with

1 available federal funds and funds made available from other  
2 sources.

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

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

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

15 (3) COURT. The juvenile court.

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

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

25 (6) PARENTAL INCAPACITY. Abandonment or incapacity  
26 of such a serious nature as to demonstrate that the parent,  
27 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.

25 (b) A child is an eligible child for a kinship  
26 guardianship subsidy if the department determines the  
27 following:

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

7           (2) The department is responsible for the placement  
8 and care of the child.

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

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

13           (5) The child demonstrates a strong attachment to  
14 the prospective kinship guardian and the kinship guardian has  
15 a strong commitment to caring permanently for the child.

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

19           (7) With respect to a child who has attained 14  
20 years of age, the child has been consulted regarding the  
21 kinship guardianship.

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

25           (9) If required for federal funding participation,  
26 the necessary degree of relationship exists between the  
27 prospective kinship guardian and the child.

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

18          Section 7. Provided that federal funding is  
19          available, the kinship guardianship subsidy shall continue  
20          until the following occur:

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

25                         a. Completing secondary education or a program  
26          leading to an equivalent credential.



1           b. Enrolled in an institution which provides  
2 postsecondary or vocational education.

3           c. Participating in a program or activity designed  
4 to promote, or remove barriers to, employment.

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

6           e. Incapable of doing any of these activities  
7 described in paragraphs a. through d. due to a medical  
8 condition, which incapability is supported by regularly  
9 updated information in the case plan of the child, if  
10 applicable.

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

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

16           Section 8. (a) Applications for the program may be  
17 submitted by a prospective kinship guardian. A written  
18 agreement between the prospective kinship guardian entering  
19 into the program and the department shall precede the award of  
20 a kinship guardianship. The kinship guardianship subsidy  
21 agreement and kinship guardianship subsidy shall become  
22 effective only upon entry of an order of a court awarding  
23 kinship guardianship. The agreement shall specify, at a  
24 minimum, the following:

25           (1) The amount of, and manner in which, each kinship  
26 guardianship assistance payment will be provided under the  
27 agreement, and the manner in which the payment may be adjusted

1 periodically, in consultation with the relative guardian,  
2 based on the circumstances of the relative guardian and the  
3 needs of the child.

4 (2) The additional services and assistance that the  
5 child and relative guardian will be eligible for under the  
6 agreement.

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

9 (4) That the department will pay the cost of  
10 nonrecurring expenses associated with obtaining a legal order  
11 of kinship guardianship of the child, to the extent the cost  
12 does not exceed the federally established amount.

13 (b) No kinship guardianship subsidy shall be made  
14 unless satisfactory documentation is submitted by the kinship  
15 guardian showing an eligible child lives in the home of the  
16 kinship guardian. Upon approval by the department that all the  
17 requirements for payment eligibility have been satisfied, the  
18 kinship guardianship subsidy may be retroactive to the date of  
19 the court order appointing kinship guardianship.

20 Section 9. If the subsidy continues for more than  
21 one year, the eligibility for and amount of the subsidy shall  
22 be reviewed at least annually by the department as provided by  
23 rule. The subsidy continues regardless of the state in which  
24 the kinship guardian resides, or the state to which the  
25 kinship guardian moves, if the kinship guardian continues to  
26 be responsible for the child provided funding is available.

1           Section 10. The department shall adopt rules for the  
2 program consistent with this act.

3           Section 11. Except as required by federal law or  
4 regulation, the kinship guardianship subsidy may not be  
5 counted as a resource or income in the determination of the  
6 kinship guardian's or child's eligibility for any public  
7 benefits or assistance. Kinship guardianship subsidy payments  
8 shall be exempt from any tax levied by the state or any  
9 subdivision thereof and shall be exempt from levy,  
10 garnishment, attachment, or any other process whatsoever and  
11 shall be inalienable.

12           Section 12. The department may provide a kinship  
13 guardianship subsidy pursuant to this act to any eligible  
14 child in department custody by court order on the effective  
15 date of this act and to any eligible child placed in  
16 department custody by court order after the effective date of  
17 the act.

18           Section 13. Sections 12-15-301, 12-15-314.  
19 12-15-315, 38-12-2, and 38-12-4, Code of Alabama 1975, are  
20 amended to read as follows:

21           "§12-15-301.

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

24           "(1) ABANDONMENT. A voluntary and intentional  
25 relinquishment of the custody of a child by a parent, or a  
26 withholding from the child, without good cause or excuse, by  
27 the parent, of his or her presence, care, love, protection,

1 maintenance, or the opportunity for the display of filial  
2 affection, or the failure to claim the rights of a parent, or  
3 failure to perform the duties of a parent.

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

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

18 "~~(3)~~(4) CHILD-PLACING AGENCY. The same as the term  
19 is defined in subdivision (3) of Section 38-7-2.

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

25 "(6) KINSHIP GUARDIAN. A caregiver who is willing to  
26 assume care of a child because of parental incapacity of a  
27 parent, legal guardian, or legal custodian, or other

1 dependency reasons, with the intent to raise the child to  
2 adulthood, and who is appointed the kinship guardian of the  
3 child by a juvenile court. A kinship guardian shall be  
4 responsible for the care and protection of the child and for  
5 providing for the health, education, and maintenance of the  
6 child.

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

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

16 "(5)(9) PROTECTIVE SUPERVISION. A legal status  
17 created by order of the juvenile court following an  
18 adjudication of dependency whereby a child is placed with a  
19 parent or other person subject to supervision by the  
20 Department of Human Resources.

21 "(6)(10) REASONABLE EFFORTS. Efforts made to  
22 preserve and reunify families prior to the placement of a  
23 child in foster care, to prevent or eliminate the need for  
24 removing the child from his or her home, and to make it  
25 possible for a child to return safely to his or her home.  
26 Reasonable efforts also refers to efforts made to place the  
27 child in a timely manner in accordance with the permanency

1 plan, and to complete whatever steps are necessary to finalize  
2 the permanency placement of the child. In determining the  
3 reasonable efforts to be made with respect to a child, and in  
4 making these reasonable efforts, the health and safety of the  
5 child shall be the paramount concern.

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

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

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

26 "~~(10)~~(14) TERMINATION OF PARENTAL RIGHTS. A  
27 severance of all rights of a parent to a child.

1                   "§12-15-314.

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

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

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

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

12                   "a. The Department of Human Resources.

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

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

24                   "(4) Make any other order as the juvenile court in  
25 its discretion shall deem to be for the welfare and best  
26 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,  
26 agency, organization, entity, or person pursuant to this  
27 section and when the parent, legal guardian, or legal



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

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

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

25               "a. Facts that if proved will meet the requirements  
26      for a kinship guardianship.

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

3           "c. The legal residence of the child and the place  
4 where he or she resides, if different from the legal  
5 residence.

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

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

10          "f. The relationship between the individual  
11 caregiver sought to be appointed as a kinship guardian and the  
12 child.

13          "g. The names and home and business addresses of the  
14 parents of the child if known.

15          "h. The names and home and business addresses of  
16 legal guardians or legal custodians.

17          "i. The existence of any pending matters involving  
18 the custody of the child.

19          "j. A signed statement from the individual caregiver  
20 sought to be appointed as a kinship guardian that the  
21 individual agrees to accept the duties and responsibilities of  
22 being a kinship guardian.

23          "k. The existence of any other matters pending in  
24 the juvenile court involving the child and, if they exist, a  
25 statement that departments, agencies, individuals, or entities  
26 authorized or involved in the proceedings by law or court  
27 order consent to the relief requested.

1           "l. The results of a criminal history record  
2 background check and a child abuse record check of the  
3 individual caregiver seeking to be appointed as a kinship  
4 guardian and all adult residents of the household of the  
5 individual caregiver.

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

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

11           "2. The specific actions taken to notify the tribes  
12 of the parents, legal guardians, or legal custodians and the  
13 results of the contacts.

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

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

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

26           "a.1. A parent, legal guardian, or legal custodian  
27 of the child is living and has consented in writing to the

1 appointment of a kinship guardian and the consent has not been  
2 withdrawn; or

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

8 "b.1. The child has resided with the individual  
9 caregiver seeking to be appointed as a kinship guardian  
10 without the parent, legal guardian, or legal custodian for a  
11 period of six months or more immediately preceding the date  
12 the written request is filed, and a parent, legal guardian, or  
13 legal custodian having legal custody of the child is currently  
14 unwilling or unable to provide adequate care, maintenance, and  
15 supervision for the child or there are extraordinary  
16 circumstances; and

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

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

25 "(6) As part of a kinship guardianship order, the  
26 juvenile court may order a parent, legal guardian, or legal  
27 custodian to pay the reasonable costs of support and

1 maintenance of the child that the parent, legal guardian, or  
2 legal custodian is financially able to pay. The juvenile court  
3 shall use the Child Support Guidelines established by Rules of  
4 the Alabama Supreme Court to calculate a reasonable payment.

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

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

22 "b. If the juvenile court finds that a petition for  
23 revocation of the kinship guardianship filed by the Department  
24 of Human Resources meets the standard in paragraph a. above,  
25 it shall grant the petition, and the child shall be placed in  
26 the legal custody of the Department of Human Resources. If the  
27 juvenile court finds that a petition for modification of the

1 kinship guardianship filed by the Department of Human  
2 Resources meets the standard in paragraph a. above, it shall  
3 grant the petition, and the child shall remain with the  
4 kinship guardian but shall be under the protective supervision  
5 of the department.

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

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

1 protection of the child, and further provided, that the  
2 appointment of the kinship guardian terminates the education  
3 rights of the parent in favor of the kinship guardian and the  
4 kinship guardian shall be deemed the parent for federal IDEA  
5 and other educational purposes.

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

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

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

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

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

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

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

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

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

26           "§12-15-315.



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

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

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

25           "(3) Permanently placed with a relative with a  
26 transfer of legal and physical custody to the relative or with

1 a transfer of physical custody to the relative but with the  
2 Department of Human Resources retaining legal custody.

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

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

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

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

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

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

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

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

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

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

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

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

20 "(d) The Department of Human Resources shall provide  
21 a copy of available health and education records of the foster  
22 child to the foster parent or foster care provider at the time  
23 of placement and provide a copy of available health and  
24 education records to the foster child, at no cost, at the time  
25 the child is emancipated or released from foster care by  
26 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.

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

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

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

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

1 blood relationship will continue to be recognized in defining  
2 relative after termination of parental rights.

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

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

13 "§38-12-4.

14 "(a) The department shall determine whether the  
15 person is able to care effectively for the foster child by the  
16 following methods:

17 "(1) Reviewing personal and professional references.

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

20 "(3) Interviewing the kinship foster parent.

21 "(b) The department and the kinship foster parent  
22 shall develop ~~a case~~ an individualized service plan for the  
23 foster care of the child. The plan shall be periodically  
24 reviewed and updated. If the plan includes the use of an  
25 approved daycare center or family daycare home, the department  
26 shall pay for child care arrangements, according to  
27 established rates.

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

6           "(d) Whether appointed kinship guardian by the  
7 juvenile court or awarded a kinship guardianship subsidy, the  
8 kinship foster parent shall meet and continue to meet all  
9 subsidy program and funding requirements."

10           Section 14. The provisions of this act are  
11 severable. If any part of this act is declared invalid or  
12 unconstitutional, that declaration shall not affect the part  
13 which remains.

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



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Senate

Read for the first time and referred to the Senate  
committee on Governmental Affairs ..... 25-FEB-10

Read for the second time and placed on the calen-  
dar 2 amendments ..... 09-MAR-10

Read for the third time and passed as amended ... 06-APR-10

Yeas 25  
Nays 0  
Abstaining 1

McDowell Lee  
Secretary