

1 SB480
2 117880-2
3 By Senators Butler, Mitchell, Orr, Mitchem, Bedford, Denton,
4 Dunn, Little (T), Keahey, Sanford, Erwin, and Dixon
5 RFD: Governmental Affairs
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8 SYNOPSIS: There is currently no kinship guardianship
9 or kinship guardianship subsidy law in Alabama. The
10 federal Fostering Connections and Increasing
11 Adoptions Act of 2008 (P.L. 110-351) established
12 kinship guardianship as a permanency option for
13 children qualifying for federal Title IV-E funding
14 and provided for kinship guardianship subsidy
15 payments for relatives granted guardianship of
16 relative children in foster care where certain
17 requirements are met.

18 This bill establishes the legislative intent
19 and purposes for kinship guardianship and kinship
20 guardianship subsidy; provides for kinship
21 guardianship subsidy definitions; establishes a
22 kinship guardianship subsidy program; provides
23 eligibility requirements for kinship guardianship
24 subsidy payments; provides for the amount of the
25 subsidy payments; provides for the duration of the
26 subsidy; provides for the administration of the
27 program by a written agreement between the

1 Department of Human Resources and the kinship
2 guardian; provides for an annual review; provides
3 that subsidy is not a countable resource for public
4 assistance programs; provides for the adoption of
5 rules by the Department of Human Resources; amends
6 Section 12-15-301 of the Code of Alabama 1975, the
7 Alabama Juvenile Justice Act, and provides for
8 definitions; amends Section 12-15-314 of the Code
9 of Alabama 1975, the Alabama Juvenile Justice Act,
10 to provide procedures for appointment of a kinship
11 guardian; provides for payment of child support by
12 parents, legal guardians, or legal custodians who
13 are able to do so; provides for the revocation and
14 modification of kinship guardianships; provides for
15 rights and duties of kinship guardians; provides
16 for the authority of kinship guardians for school
17 and non-school related activities; provides for
18 medical and mental health authority for kinship
19 guardians; amends Section 12-15-315 of the Code of
20 Alabama 1975, the Alabama Juvenile Justice Act, to
21 provide for the appointment of a kinship
22 guardianship as a permanent plan alternative;
23 amends Section 38-12-2, Code of Alabama 1975, to
24 provide for definitions and eligibility consistent
25 with this bill; and amends Section 38-12-4, Code of
26 Alabama 1975, to require that kinship foster
27 parents meet all program and funding requirements.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
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6 To establish a kinship guardianships; to establish a
7 kinship guardianship subsidy program; to provide legislative
8 intent and purpose; to set procedures for establishing kinship
9 guardianships and legal authority of kinship guardians; and to
10 amend Sections 12-15-301, 12-15-314, 12-15-315, 38-12-2, and
11 38-12-4, Code of Alabama 1975.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

15 Section 2. (a) The Legislature finds and declares
16 the following:

17 (1) There exists in this state a number of children
18 who cannot reside with their parents, legal guardians, or
19 legal custodians because of such parents', legal guardians',
20 or custodians' incapacity or inability to perform the regular
21 and expected functions of care and support of the children and
22 family care and who thereby come to the attention of juvenile
23 court and into the care and custody of the Department of Human
24 Resources.

25 (2) An increasing number of relatives, including
26 grandparents, find themselves wanting to provide care to
27 related foster children on a long-term basis to prevent the

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

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

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

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

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

25 b. Provide a child in the legal custody of the
26 Department of Human Resources with a stable and consistent
27 long-term relationship with a kinship guardian that will

1 enable the child to develop physically, mentally, and
2 emotionally to the maximum extent possible when the parents,
3 legal guardians, or legal custodians of the child are not
4 willing or able to do so.

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

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

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

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

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

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

11 (3) COURT. The juvenile court.

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

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

21 (6) PARENTAL INCAPACITY. Abandonment or incapacity
22 of such a serious nature as to demonstrate that the parent,
23 legal guardian, or legal custodian is unable, unavailable, or
24 unwilling to perform the regular and expected functions or
25 care and support of the child.

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

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

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

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

21 (b) A child is an eligible child for a kinship
22 guardianship subsidy if the department determines the
23 following:

24 (1) The child has been removed from the custody of
25 his or her parent or parents, legal guardian, or legal
26 custodian as a result of a judicial determination to the
27 effect that continuation in the custody of the parent or

1 parents, legal guardian, or legal custodian would be contrary
2 to the welfare of the child.

3 (2) The department is responsible for the placement
4 and care of the child.

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

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

9 (5) The child demonstrates a strong attachment to
10 the prospective kinship guardian and the kinship guardian has
11 a strong commitment to caring permanently for the child.

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

15 (7) With respect to a child who has attained 14
16 years of age, the child has been consulted regarding the
17 kinship guardianship.

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

21 (9) If required for federal funding participation,
22 the necessary degree of relationship exists between the
23 prospective kinship guardian and the child.

24 Section 6. The amount of a kinship guardianship
25 subsidy shall be determined according to this section and as
26 provided by rules of the department. The subsidy may be paid
27 monthly and the monthly amount may not exceed the monthly

1 foster care maintenance board payment for the child if the
2 child were to remain in the care or custody of the department,
3 without regard to the sources of the funds. No foster care
4 maintenance board payment and kinship subsidy payment shall be
5 paid for the same child for the same period of time. The
6 kinship guardianship subsidy may only be provided for an
7 eligible child. Subject to rules adopted by the department,
8 the subsidy may include up to the federally established amount
9 for nonrecurring expenses, including attorney's fees, incurred
10 by the kinship guardian to complete the kinship guardianship
11 in court. Subsidy payments are subject to the availability of
12 funds and the allocation of funding by the Department of Human
13 Resources.

14 Section 7. Provided that federal funding is
15 available, the kinship guardianship subsidy shall continue
16 until the following occur:

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

21 a. Completing secondary education or a program
22 leading to an equivalent credential.

23 b. Enrolled in an institution which provides
24 postsecondary or vocational education.

25 c. Participating in a program or activity designed
26 to promote, or remove barriers to, employment.

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

1 e. Incapable of doing any of these activities
2 described in paragraphs a. through d. due to a medical
3 condition, which incapability is supported by regularly
4 updated information in the case plan of the child, if
5 applicable.

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

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

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

20 (1) The amount of, and manner in which, each kinship
21 guardianship assistance payment will be provided under the
22 agreement, and the manner in which the payment may be adjusted
23 periodically, in consultation with the relative guardian,
24 based on the circumstances of the relative guardian and the
25 needs of the child.

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

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

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

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

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

24 Section 10. The department shall adopt rules for the
25 program consistent with this act.

26 Section 11. Except as required by federal law or
27 regulation, the kinship guardianship subsidy may not be

1 counted as a resource or income in the determination of the
2 kinship guardian's or child's eligibility for any public
3 benefits or assistance. Kinship guardianship subsidy payments
4 shall be exempt from any tax levied by the state or any
5 subdivision thereof and shall be exempt from levy,
6 garnishment, attachment, or any other process whatsoever and
7 shall be inalienable.

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

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

17 "§12-15-301.

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

20 "(1) ABANDONMENT. A voluntary and intentional
21 relinquishment of the custody of a child by a parent, or a
22 withholding from the child, without good cause or excuse, by
23 the parent, of his or her presence, care, love, protection,
24 maintenance, or the opportunity for the display of filial
25 affection, or the failure to claim the rights of a parent, or
26 failure to perform the duties of a parent.

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

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

15 "~~(3)~~(4) CHILD-PLACING AGENCY. The same as the term
16 is defined in subdivision (3) of Section 38-7-2.

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

22 "(6) KINSHIP GUARDIAN. A caregiver who is willing to
23 assume care of a child because of parental incapacity of a
24 parent, legal guardian, or legal custodian, or other
25 dependency reasons, with the intent to raise the child to
26 adulthood, and who is appointed the kinship guardian of the
27 child by a juvenile court. A kinship guardian shall be

1 responsible for the care and protection of the child and for
2 providing for the health, education, and maintenance of the
3 child.

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

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

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

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

26 "(5) In appropriate cases, award permanent custody
27 to the Department of Human Resources or to a licensed

1 child-placing agency after termination of parental rights and
2 authorization to place for adoption, without appointing a
3 legal guardian, or award temporary custody to the department
4 or a licensed child-placing agency without appointing a legal
5 custodian or legal guardian.

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

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

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

22 "(e) When a child is placed in the legal custody of
23 the Department of Human Resources or any other department,
24 agency, organization, entity, or person pursuant to this
25 section and when the parent, legal guardian, or legal
26 custodian of the child has resources for child support, the
27 juvenile court shall order child support in conformity with

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

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

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

23 "a. Facts that if proved will meet the requirements
24 for a kinship guardianship.

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

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

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

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

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

11 "g. The names and home and business addresses of the
12 parents of the child if known.

13 "h. The names and home and business addresses of
14 legal guardians or legal custodians.

15 "i. The existence of any pending matters involving
16 the custody of the child.

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

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

26 "l. The results of a criminal history record
27 background check and a child abuse record check of the

1 individual caregiver seeking to be appointed as a kinship
2 guardian and all adult residents of the household of the
3 individual caregiver.

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

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

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

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

14 "(3) After the juvenile court finds that an
15 individual caregiver qualifies to be appointed as a kinship
16 guardian, the requirements of subdivision (5) 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 "(4) A kinship guardian may be appointed by the
23 juvenile court only if:

24 "a.1. A parent, legal guardian, or legal custodian
25 of the child is living and has consented in writing to the
26 appointment of a kinship guardian and the consent has not been
27 withdrawn; or

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

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

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

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

23 "(6) As part of a kinship guardianship order, the
24 juvenile court may order a parent, legal guardian, or legal
25 custodian to pay the reasonable costs of support and
26 maintenance of the child that the parent, legal guardian, or
27 legal custodian is financially able to pay. The juvenile court

1 shall use the Child Support Guidelines established by Rules of
2 the Alabama Supreme Court to calculate a reasonable payment.

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

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

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

1 grant the petition, and the child shall remain with the
2 kinship guardian but shall be under the protective supervision
3 of the department.

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

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

1 rights of the parent in favor of the kinship guardian and the
2 kinship guardian shall be deemed the parent for federal IDEA
3 and other educational purposes.

4 "b. A kinship guardian may not consent to the
5 adoption of the child or a name change for the child. The
6 parent of the child shall retain the authority to consent to
7 the adoption of the child or a name change for the 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 has the authority to make all decisions
13 regarding appropriate visitation between the parent, legal
14 guardian, or legal custodian and the child.

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

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

25 "g. A certified copy of the court order appointing a
26 kinship guardian shall be satisfactory proof of the authority

1 of the kinship guardian, and letters of guardianship need not
2 be issued.

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

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

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

23 "§12-15-315.

24 "(a) Within 12 months of the date a child is removed
25 from the home and placed in out-of-home care, and not less
26 frequently than every 12 months thereafter during the
27 continuation of the child in out-of-home care, the juvenile

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

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

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

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

25 "(4) Permanently placed with a kinship guardian
26 pursuant to a written request filed by the Department of Human
27 Resources for appointment of an individual as a kinship

1 guardian. In addition to the allegations set forth in this
2 section, the written request shall further contain the
3 following:

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

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

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

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

23 "e. That the child has been in foster care in the
24 care of the prospective kinship guardian for a period of not
25 less than six consecutive months preceding the filing of the
26 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
26 appropriate and in the best interests of the child. In the
27 case of a child who has attained the age of 16 years, at the

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

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

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

23 "(e) If the permanency plan for a child is placement
24 with a kinship guardian, the individualized service plan must
25 contain the following:

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

4 "(2) The reasons for any separation of siblings
5 during placement.

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

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

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

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

22 "§38-12-2.

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

25 "(b) When a child has been removed from his or her
26 home and is in the care, custody, or guardianship of the
27 department, the department shall attempt to place the child

1 with a relative for kinship foster care. If the relative is
2 approved by the department to provide foster care services, in
3 accordance with rules and regulations adopted by the
4 department regarding foster care services, and a placement
5 with the relative is made, the relative may receive payment
6 for the full foster care rate only as provided by federal law
7 for the care of the child and any other benefits that might be
8 available to foster parents, whether in money or in services.
9 Foster care payments shall cease upon the effective date of
10 the kinship subsidiary payments or as provided by the
11 department.

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

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

26 "(2) The kinship foster parent shall be 21 years of
27 age or older, ~~except that if the spouse or partner of the~~

1 ~~relative is 21 years of age or older and living in the home,~~
2 ~~and the relative is between 18 and 21 years of age, the~~
3 ~~department may waive the age requirement~~ unless the department
4 provides otherwise by rule to carry out the provisions of this
5 chapter.

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

9 "§38-12-4.

10 "(a) The department shall determine whether the
11 person is able to care effectively for the foster child by the
12 following methods:

13 "(1) Reviewing personal and professional references.

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

16 "(3) Interviewing the kinship foster parent.

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

24 "(c) The kinship foster parent shall cooperate with
25 any activities specified in the ~~case~~ individualized service
26 plan for the foster child, such as counseling, therapy, court

1 sessions, or visits with the foster child's parents or other
2 family members.

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

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

11 Section 15. This act shall become effective October
12 1, 2010.