

2
3 CHAMBLISS SUBSTITUTE FOR SB34
4
5
6
7

8 SYNOPSIS: Existing law pertaining to the dependency of
9 minor children and the termination of parental
10 rights provides a list of circumstances under which
11 reasonable efforts to preserve and reunify a family
12 prior to the placement of a child in foster care,
13 to prevent or eliminate the need to remove a child
14 from the child's home, and to make it possible for
15 a child to return safely to the child's home, may
16 not be required.

17 Existing law also provides a list of factors
18 for a juvenile court to consider in making a
19 determination of whether to terminate parental
20 rights.

21 This bill would provide that reasonable
22 efforts to preserve and reunify a family prior to
23 the placement of a child in foster care, to prevent
24 or eliminate the need to remove a child from the
25 child's home, and to make it possible for a child
26 to return safely to the child's home, may not be
27 required in a case where a parent has been

1 convicted for the crime against the child of rape
2 in the first degree, sodomy in the first degree, or
3 incest.

4 This bill would also require a juvenile
5 court to find that a parent is unable to properly
6 care for a child and to discharge his or her
7 responsibilities to and for the child in any case
8 where the parent has received a conviction for the
9 crime against the child of rape in the first
10 degree, sodomy in the first degree, or incest, and
11 shall terminate the parental rights of the parent.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 To amend Sections 12-15-312 and 12-15-319, Code of
18 Alabama 1975, to create Jessi's law; to provide that
19 reasonable efforts to preserve and reunify a family prior to
20 the placement of a child in foster care, to prevent or
21 eliminate the need to remove a child from the child's home,
22 and to make it possible for a child to return safely to the
23 child's home, may not be required in a case where a parent has
24 been convicted for the crime against the child of rape in the
25 first degree, sodomy in the first degree, or incest; and to
26 require a juvenile court to find that a parent is unable to
27 properly care for a child and to discharge his or her

1 responsibilities to and for the child in any case where the
2 parent has received a conviction for the crime against the
3 child of rape in the first degree, sodomy in the first degree,
4 or incest, and shall terminate the parental rights of the
5 parent.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. This act shall be known and may be cited
8 as Jessi's Law.

9 Section 2. Sections 12-15-312 and 12-15-319, Code of
10 Alabama 1975, are amended to read as follows:

11 "§12-15-312.

12 "(a) When the juvenile court enters an order
13 removing a child from his or her home and places the child
14 into foster care or custody of the Department of Human
15 Resources pursuant to this chapter, the order shall contain
16 specific findings, if warranted by the evidence, within the
17 following time periods while making child safety the paramount
18 concern:

19 "(1) In the first order of the juvenile court that
20 sanctions the removal, whether continuation of the residence
21 of the child in the home would be contrary to the welfare of
22 the child. This order may be the pick-up order that the
23 juvenile court issues on the filing of a dependency petition.

24 "(2) Within 60 days after the child is removed from
25 the home of the child, whether reasonable efforts have been
26 made to prevent removal of the child or whether reasonable
27 efforts were not required to be made.

1 "(3) Within 12 months after the child is removed
2 from the home of the child and not less than every 12 months
3 thereafter during the continuation of the child in out-of-home
4 care, whether reasonable efforts have been made to finalize
5 the existing permanency plan.

6 "(b) As used in this chapter, reasonable efforts
7 refers to efforts made to preserve and reunify families prior
8 to the placement of a child in foster care, to prevent or
9 eliminate the need for removing the child from the home of the
10 child, and to make it possible for a child to return safely to
11 the home of the child. In determining the reasonable efforts
12 to be made with respect to a child, and in making these
13 reasonable efforts, the health and safety of the child shall
14 be the paramount concern. If continuation of reasonable
15 efforts is determined to be inconsistent with the permanency
16 plan for the child, reasonable efforts shall be made to place
17 the child in a timely manner in accordance with the permanency
18 plan including, if appropriate, through an interstate
19 placement, and to complete whatever steps are necessary to
20 finalize a permanent plan for the child.

21 "(c) Reasonable efforts shall not be required to be
22 made with respect to a parent of the child if the juvenile
23 court has determined that the parental rights of the parent to
24 a sibling of the child have been involuntarily terminated or
25 that a parent has done any of the following:

26 "(1) Subjected a child to an aggravated circumstance
27 against the child or a sibling of the child and the risk of

1 child abuse or neglect is too high for the child to remain at
2 home safely or to be returned home. An aggravated circumstance
3 includes, but is not limited to, ~~rape, sodomy, incest,~~
4 aggravated stalking, abandonment, torture, or chronic abuse,
5 ~~or sexual abuse~~. An aggravated circumstance may also include
6 any of the following:

7 "a. Allowing a child to use alcohol or illegal drugs
8 to the point of abuse, neglect, or substantial risk of harm.

9 "b. Substance misuse or abuse, or both, by a parent
10 or interfering with the ability to keep the child safe and
11 refusal of a parent to participate in or complete treatment,
12 or where treatment has been unsuccessful.

13 "c. A parent demonstrating extreme disinterest in
14 the child by doing either of the following:

15 "1. Not complying with the steps outlined in the
16 individualized service plan or case plan over a period of six
17 months.

18 "2. Repeatedly leaving the child with someone who is
19 unwilling or incapable of providing care and not returning for
20 the child as promised.

21 "d. Abandoning an infant or young child when the
22 identity of the child is unknown and the parent is unknown or
23 unable to be located after a diligent search.

24 "e. When the parent has an emotional or mental
25 condition and there is clearly no treatment that can improve
26 or strengthen the condition enough to allow the child to
27 remain at home safely or to return home safely.

1 "f. When a parent is incarcerated and the child is
2 deprived of a safe, stable, and permanent parent-child
3 relationship.

4 "(2) Committed murder or manslaughter of another
5 child or murder or manslaughter of the other parent of the
6 child.

7 "(3) Been convicted of rape in the first degree
8 pursuant to Section 13A-6-61, sodomy in the first degree
9 pursuant to Section 13A-6-63, or incest pursuant to Section
10 13A-13-3. The juvenile court shall make a finding that the
11 crime of rape, sodomy, incest, or other sexual abuse actually
12 occurred by the parent against a child in any instance where
13 the parent has been convicted as described in this
14 subdivision.

15 "~~(3)~~(4) Aided or abetted, attempted, conspired, or
16 solicited to commit murder or manslaughter of another child or
17 aided or abetted, attempted, conspired, or solicited to commit
18 murder or manslaughter of the other parent of the child.

19 "~~(4)~~(5) Committed a felony assault which resulted in
20 serious bodily injury to the child or another child or to the
21 other parent of the child. The term serious bodily injury
22 means bodily injury which involves substantial risk of death,
23 extreme physical pain, protracted and obvious disfigurement,
24 or protracted loss or impairment of the function of a bodily
25 member, organ, or mental faculty.

26 "(d) Nothing in the exceptions to making reasonable
27 efforts listed in subsection (c) shall be interpreted to

1 require the reunification of a child with a stepparent or
2 paramour of a parent under similar circumstances. The crimes
3 listed in subsection (c) may include those from other states
4 or federal crimes if the elements of the crimes are
5 substantially similar to those crimes in this state.

6 "(e) If reasonable efforts are not made with respect
7 to a child as a result of a determination made by a juvenile
8 court in situations as described above, a permanency hearing,
9 as provided in Section 12-15-315, in which in-state or
10 out-of-state placement options for the child are considered,
11 shall be held for the child within 30 days after the
12 determination. Reasonable efforts shall be made to place the
13 child in a timely manner in accordance with the permanency
14 plan and to complete whatever steps are necessary to finalize
15 permanent placement of the child. Reasonable efforts to place
16 a child for adoption or with a legal guardian or legal
17 custodian, including identifying appropriate in-state and
18 out-of-state placements, may be made concurrently with other
19 reasonable efforts.

20 "§12-15-319.

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

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

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

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

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

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

22 "(5) Commission by the parents of any of the
23 following:

24 "a. Murder or manslaughter of another child of that
25 parent.

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

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

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

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

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

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

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

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

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

8 "(b) If a parent has been convicted of rape in the
9 first degree pursuant to Section 13A-6-61, sodomy in the first
10 degree pursuant to Section 13A-6-63, or incest pursuant to
11 Section 13A-13-3, the juvenile court shall make a finding that
12 the parent is unable to properly care for a child and to
13 discharge his or her responsibilities to and for a child, and
14 shall terminate the parental rights of the parent.

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

22 Section 3. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.