

1 SB34
2 200102-2
3 By Senator Chambliss
4 RFD: Judiciary
5 First Read: 05-MAR-19
6 PFD: 02/20/2019

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

5 "§12-15-312.

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

13 "(1) In the first order of the juvenile court that
14 sanctions the removal, whether continuation of the residence
15 of the child in the home would be contrary to the welfare of
16 the child. This order may be the pick-up order that the
17 juvenile court issues on the filing of a dependency petition.

18 "(2) Within 60 days after the child is removed from
19 the home of the child, whether reasonable efforts have been
20 made to prevent removal of the child or whether reasonable
21 efforts were not required to be made.

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

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

16 "(c) Reasonable efforts shall not be required to be
17 made with respect to a parent of the child if the juvenile
18 court has determined that the parental rights of the parent to
19 a sibling of the child have been involuntarily terminated or
20 that a parent has done any of the following:

21 "(1) Subjected a child to an aggravated circumstance
22 against the child or a sibling of the child and the risk of
23 child abuse or neglect is too high for the child to remain at
24 home safely or to be returned home. An aggravated circumstance
25 includes, but is not limited to, ~~rape, sodomy, incest,~~
26 aggravated stalking, abandonment, torture, or chronic abuse~~7~~

1 ~~or sexual abuse~~. An aggravated circumstance may also include
2 any of the following:

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

5 "b. Substance misuse or abuse, or both, by a parent
6 or interfering with the ability to keep the child safe and
7 refusal of a parent to participate in or complete treatment,
8 or where treatment has been unsuccessful.

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

11 "1. Not complying with the steps outlined in the
12 individualized service plan or case plan over a period of six
13 months.

14 "2. Repeatedly leaving the child with someone who is
15 unwilling or incapable of providing care and not returning for
16 the child as promised.

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

20 "e. When the parent has an emotional or mental
21 condition and there is clearly no treatment that can improve
22 or strengthen the condition enough to allow the child to
23 remain at home safely or to return home safely.

24 "f. When a parent is incarcerated and the child is
25 deprived of a safe, stable, and permanent parent-child
26 relationship.

1 "(2) Committed murder or manslaughter of another
2 child or murder or manslaughter of the other parent of the
3 child.

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

12 "~~(3)~~(4) Aided or abetted, attempted, conspired, or
13 solicited to commit murder or manslaughter of another child or
14 aided or abetted, attempted, conspired, or solicited to commit
15 murder or manslaughter of the other parent of the child.

16 "~~(4)~~(5) Committed a felony assault which resulted in
17 serious bodily injury to the child or another child or to the
18 other parent of the child. The term serious bodily injury
19 means bodily injury which involves substantial risk of death,
20 extreme physical pain, protracted and obvious disfigurement,
21 or protracted loss or impairment of the function of a bodily
22 member, organ, or mental faculty.

23 "(d) Nothing in the exceptions to making reasonable
24 efforts listed in subsection (c) shall be interpreted to
25 require the reunification of a child with a stepparent or
26 paramour of a parent under similar circumstances. The crimes
27 listed in subsection (c) may include those from other states

1 or federal crimes if the elements of the crimes are
2 substantially similar to those crimes in this state.

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

17 "§12-15-319.

18 "(a) If the juvenile court finds from clear and
19 convincing evidence, competent, material, and relevant in
20 nature, that the parents of a child are unable or unwilling to
21 discharge their responsibilities to and for the child, or that
22 the conduct or condition of the parents renders them unable to
23 properly care for the child and that the conduct or condition
24 is unlikely to change in the foreseeable future, it may
25 terminate the parental rights of the parents. In determining
26 whether or not the parents are unable or unwilling to
27 discharge their responsibilities to and for the child and to

1 terminate the parental rights, the juvenile court shall
2 consider the following factors including, but not limited to,
3 the following:

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

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

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

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

19 "(5) Commission by the parents of any of the
20 following:

21 "a. Murder or manslaughter of another child of that
22 parent.

23 "b. Aiding, abetting, attempting, conspiring, or
24 soliciting to commit murder or manslaughter of another child
25 of that parent.

26 "c. A felony assault or abuse which results in
27 serious bodily injury to the surviving child or another child

1 of that parent. The term serious bodily injury shall mean
2 bodily injury which involves substantial risk of death,
3 extreme physical pain, protracted and obvious disfigurement,
4 or protracted loss or impairment of the function of a bodily
5 member, organ, or mental faculty.

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

10 "(7) That reasonable efforts by the Department of
11 Human Resources or licensed public or private child care
12 agencies leading toward the rehabilitation of the parents have
13 failed.

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

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

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

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

25 "(12) Lack of effort by the parent to adjust his or
26 her circumstances to meet the needs of the child in accordance
27 with agreements reached, including agreements reached with

1 local departments of human resources or licensed child-placing
2 agencies, in an administrative review or a judicial review.

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

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

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

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Senate

Read for the first time and referred to the Senate
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Yeas 32
Nays 0

Patrick Harris,
Secretary.