

1 HB157
2 204629-2
3 By Representatives Lee, Collins, Robertson and Moore (P)
4 RFD: Children and Senior Advocacy
5 First Read: 06-FEB-20

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2 ENROLLED, An Act,

3 Relating to juveniles; to amend Sections 12-15-319
4 and 26-10A-17, Code of Alabama 1975; to require a juvenile
5 court to consider a child's relationship with his or her
6 current foster parents and the child's best interests when
7 making a determination of whether to terminate parental
8 rights; to provide that a juvenile court is not required to
9 consider a relative for candidacy to be a child's legal
10 guardian if the relative has not met certain requirements; and
11 to provide that service on an individual whose parental rights
12 have been terminated are not entitled to receive notice of
13 pendency regarding an adoption proceeding involving a child
14 for whom the individual's parental rights have been
15 terminated.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Sections 12-15-319 and 26-10A-17, Code of
18 Alabama 1975, are amended to read as follows:

19 "§12-15-319.

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

1 is unlikely to change in the foreseeable future, it may
2 terminate the parental rights of the parents. In a hearing on
3 a petition for termination of parental rights, the court shall
4 consider the best interests of the child. In determining
5 whether or not the parents are unable or unwilling to
6 discharge their responsibilities to and for the child and to
7 terminate the parental rights, the juvenile court shall
8 consider the following factors including, but not limited to,
9 the following:

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

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

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

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

1 "(5) Commission by the parents of any of the
2 following:

3 "a. Murder or manslaughter of another child of that
4 parent.

5 "b. Aiding, abetting, attempting, conspiring, or
6 soliciting to commit murder or manslaughter of another child
7 of that parent.

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

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

19 "(7) That reasonable efforts by the Department of
20 Human Resources or licensed public or private child care
21 agencies leading toward the rehabilitation of the parents have
22 failed.

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

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

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

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

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

15 "(13) The existence of any significant emotional
16 ties that have developed between the child and his or her
17 current foster parent or parents, with additional
18 consideration given to the following factors:

19 "a. The length of time that the child has lived in a
20 stable and satisfactory environment.

21 "b. Whether severing the ties between the child and
22 his or her current foster parent or parents is contrary to the
23 best interest of the child.

24 "c. Whether the juvenile court has found at least
25 one other ground for termination of parental rights.

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

8 "(c) The juvenile court is not required to consider
9 a relative to be a candidate for legal guardian of the child
10 in a proceeding for termination of parental rights if both of
11 the following circumstances exist:

12 "(1) The relative did not attempt to care for the
13 child or obtain custody of the child within four months of the
14 child being removed from the custody of the parents or placed
15 in foster care, if the removal was known to the relative.

16 "(2) The goal of the current permanency plan
17 formulated by the Department of Human Resources is adoption by
18 the current foster parents.

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

1 "§26-10A-17.

2 "(a) Unless service has been previously waived,
3 notice of pendency of the adoption proceeding shall be served
4 by the petitioner on:

5 "(1) Any person, agency, or institution whose
6 consent or relinquishment is required by Section 26-10A-7,
7 unless ~~service has been previously waived or consent has been~~
8 implied parental rights have been terminated pursuant to
9 Section 12-15-319.

10 "(2) The legally appointed custodian or guardian of
11 the adoptee.

12 "(3) The spouse of any petitioner who has not joined
13 in the petition.

14 "(4) The spouse of the adoptee.

15 "(5) The surviving parent or parents of a deceased
16 parent of the adoptee unless parental rights have been
17 terminated pursuant to Section 12-15-319.

18 "(6) Any person known to the petitioners as
19 currently having physical custody of the adoptee, excluding
20 ~~licensed foster care~~ parents or other private licensed
21 agencies or having visitation rights with the adoptee under an
22 existing court order.

23 "(7) The agency or individual authorized to
24 investigate the adoption under Section 26-10A-19.

25 "(8) Any other person designated by the court.

1 "(9) The State of Alabama Department of Human
2 Resources.

3 "(10) The father and putative father of the adoptee
4 if made known by the mother or otherwise known by the court
5 unless the court finds that the father or putative father has
6 given implied consent to the adoption, as defined in Section
7 26-10A-9 or unless parental rights have been terminated
8 pursuant to Section 12-15-319.

9 "(b) The notice shall specifically state that the
10 person served must respond to the petitioner within 30 days if
11 he or she intends to contest the adoption. A copy of the
12 petition for adoption shall be delivered to those individuals
13 or agencies in subdivisions (a) (2) through (a) (10). Any notice
14 required by this chapter may be served on a natural parent
15 prior to birth.

16 "(c) Service of the notice shall be made in the
17 following manner:

18 "(1) Service of process shall be made in accordance
19 with the Alabama Rules of Civil Procedure except as otherwise
20 provided by the Alabama Rules of Juvenile Procedure. If the
21 identity or whereabouts of the parent is unknown, or if one
22 parent fails or refuses to disclose the identity or
23 whereabouts of the other parent, the court shall then issue an
24 order providing for service by publication, by posting, or by
25 any other substituted service.

1 "(2) As to the agency or individual referred to in
2 subdivisions (a) (7) and (a) (9) ~~above~~, notice shall be by
3 certified mail.

4 "(3) As to any other person for whom notice is
5 required under subsection (a) ~~of this section~~, service by
6 certified mail, return receipt requested, shall be sufficient.
7 If such service cannot be completed after two attempts, the
8 court shall issue an order providing for service by
9 publication, by posting, or by any other substituted service.

10 "(d) The notice required by this section may be
11 waived in writing by the person entitled to receive notice.

12 "(e) Proof of service of the notice on all persons
13 for whom notice is required by this section must be filed with
14 the court before the adjudicational hearing, provided in
15 Section 26-10A-24."

16 Section 2. This act shall become effective
17 immediately following its passage and approval by the
18 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 25-FEB-20.

Jeff Woodard
Clerk

Senate

05-MAR-20

Passed