

1 HB349  
2 197593-1  
3 By Representatives Collins, Wadsworth, Robertson, Hill,  
4 McMillan, Simpson and Coleman  
5 RFD: Judiciary  
6 First Read: 04-APR-19

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Under existing law, a juvenile court has  
9 exclusive original jurisdiction of juvenile court  
10 proceedings in which a child is alleged to have  
11 committed a delinquent act, to be dependent, or to  
12 be in need of supervision. Also under existing law,  
13 a child is defined as an individual under 18 years  
14 of age, or under 21 years of age and before the  
15 juvenile court for a delinquency matter arising  
16 before that individual's 18th birthday.

17 This bill would further define the term  
18 child to include an individual under 19 years of  
19 age who is before the juvenile court for a child in  
20 need of supervision matter.

21 Under existing law, with exceptions, a child  
22 between the ages of six and 17 is required to  
23 attend a public or private school and may enroll in  
24 public school if the child is less than 19 years of  
25 age on the date school opens.

26 This bill would provide that an individual  
27 who is 18 years of age and otherwise qualified to

1 attend public school may not be denied admittance  
2 to the school based solely on his or her age.

3 Under existing law, a probate court may  
4 order the involuntary commitment of an individual  
5 who is mentally ill to the custody of the  
6 Department of Mental Health. Also under existing  
7 law, a probate court may not order the involuntary  
8 commitment of an individual under the age of 19 who  
9 is mentally ill to the custody of the Department of  
10 Mental Health.

11 This bill would authorize a probate court to  
12 involuntarily commit an individual who is 18 years  
13 old and mentally ill to the custody of the  
14 Department of Mental Health.

15 Under existing law, with exceptions, an  
16 unemancipated minor may only enter into a voidable  
17 contract. Also under existing law, an unemancipated  
18 minor may enter into a binding contract for the  
19 reasonable value of necessities.

20 This bill would provide that an  
21 unemancipated minor who is 18 years old and of  
22 sound mind, notwithstanding his or her minority,  
23 may enter into a binding contract as may be  
24 exercised by an individual of full legal age and  
25 would provide that the minor, by reason of his or  
26 her minority, may not rescind, avoid, or repudiate  
27 the contract or rescind, avoid, or repudiate any

1 exercise of a right or privilege under the  
2 contract.

3 Under existing law, the Department of Human  
4 Resources is required to investigate claims of  
5 child abuse or neglect, and child is defined as a  
6 person under 18 years of age. Also under existing  
7 law, the Department of Human Resources is required  
8 to investigate claims of abuse, neglect, and  
9 exploitation of an adult.

10 This bill would require the Department of  
11 Human Resources to extend the same protections,  
12 rights, services, and privileges that are given a  
13 child to an individual who is 18 years of age if  
14 the individual is in need of protective services  
15 and does not qualify for adult protective services.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT

20  
21 Relating to the age of majority; to amend Sections  
22 12-15-102, 16-28-3, 22-52-16, 26-1-1, and 26-14-1, Code of  
23 Alabama 1975, to provide further for the jurisdiction of the  
24 juvenile court; to provide further for admission to public  
25 school; to provide further for the jurisdiction of the probate  
26 court with regard to involuntary commitments of persons who  
27 are mentally ill; to provide further for an unemancipated

1 minor's right to contract; and to provide further for the  
2 authority of the Department of Human Resources to provide  
3 protective services.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 12-15-102, 16-28-3, 22-52-16,  
6 26-1-1, and 26-14-1, Code of Alabama 1975, are amended to read  
7 as follows:

8 "§12-15-102.

9 "When used in this chapter, the following words and  
10 phrases have the following meanings:

11 "(1) ADULT. An individual 19 years of age or older.

12 "(2) AFTERCARE. Conditions and supervision as the  
13 juvenile court orders after release from the Department of  
14 Youth Services.

15 "(3) CHILD. An individual under the age of 18 years,  
16 or under 21 years of age and before the juvenile court for a  
17 delinquency matter arising before that individual's 18th  
18 birthday, or under 19 years of age and before the juvenile  
19 court for a child in need of supervision matter. Where a  
20 delinquency petition alleges that an individual, prior to the  
21 individual's 18th birthday, has committed an offense for which  
22 there is no statute of limitation pursuant to Section 15-3-5,  
23 the term child also shall include the individual subject to  
24 the petition, regardless of the age of the individual at the  
25 time of filing.

26 "(4) CHILD IN NEED OF SUPERVISION. A child who has  
27 been adjudicated by a juvenile court for doing any of the

1 following and who is in need of care, rehabilitation, or  
2 supervision:

3 "a. Being subject to the requirement of compulsory  
4 school attendance, is habitually truant from school as defined  
5 by the State Board of Education in the Alabama Administrative  
6 Code. Notwithstanding the foregoing, a child shall not be  
7 found in need of supervision pursuant to this subdivision if  
8 the juvenile court determines that the parent, legal guardian,  
9 or legal custodian of the child was solely responsible for the  
10 nonattendance of the child.

11 "b. Disobeys the reasonable and lawful demands of  
12 his or her parent, legal guardian, or legal custodian and is  
13 beyond the control of the parent, legal guardian, or legal  
14 custodian.

15 "c. Leaves, or remains away from, the home without  
16 the permission of the parent, legal guardian, legal custodian,  
17 or person with whom he or she resides.

18 d. Commits an offense established by law but not  
19 classified as criminal.

20 "(5) CHILD'S ATTORNEY. A licensed attorney who  
21 provides legal services for a child, or for a minor in a  
22 mental commitment proceeding, and who owes the same duties of  
23 undivided loyalty, confidentiality, and competent  
24 representation to the child or minor as is due an adult  
25 client.

26 "(6) DELINQUENT ACT. An act committed by a child  
27 that is designated a violation, misdemeanor, or felony offense

1 pursuant to the law of the municipality, county, or state in  
2 which the act was committed or pursuant to federal law. This  
3 term shall not apply to any of the following:

4 "a. An offense when committed by a child 16 or 17  
5 years of age as follows:

6 "1. A nonfelony traffic offense or water safety  
7 offense other than one charged pursuant to Section 32-5A-191  
8 or 32-5A-191.3 or a municipal ordinance prohibiting the same  
9 conduct.

10 "2. A capital offense.

11 "3. A Class A felony.

12 "4. A felony which has as an element the use of a  
13 deadly weapon.

14 "5. A felony which has as an element the causing of  
15 death or serious physical injury.

16 "6. A felony which has as an element the use of a  
17 dangerous instrument against any person who is one of the  
18 following:

19 "(i) A law enforcement officer or official.

20 "(ii) A correctional officer or official.

21 "(iii) A parole or probation officer or official.

22 "(iv) A juvenile court probation officer or  
23 official.

24 "(v) A district attorney or other prosecuting  
25 officer or official.

26 "(vi) A judge or judicial official.

27 "(vii) A court officer or official.

1           "(viii) A person who is a grand juror, juror, or  
2 witness in any legal proceeding of whatever nature when the  
3 offense stems from, is caused by, or is related to the role of  
4 the person as a juror, grand juror, or witness.

5           "(ix) A teacher, principal, or employee of the  
6 public education system of Alabama.

7           "7. Trafficking in drugs in violation of Section  
8 13A-12-231, or as the same may be amended.

9           "8. Any lesser included offense of the offenses in  
10 subparagraphs 1 to 7, inclusive, charged or any lesser felony  
11 offense charged arising from the same facts and circumstances  
12 and committed at the same time as the offenses listed in  
13 subparagraphs 1 to 7, inclusive.

14           "b. Any criminal act, offense, or violation  
15 committed by a child under the age of 18 years who has been  
16 previously convicted or adjudicated a youthful offender.

17           "(7) DELINQUENT CHILD. A child who has been  
18 adjudicated for a delinquent act and is in need of care or  
19 rehabilitation.

20           "(8) DEPENDENT CHILD. a. A child who has been  
21 adjudicated dependent by a juvenile court and is in need of  
22 care or supervision and meets any of the following  
23 circumstances:

24           "1. Whose parent, legal guardian, legal custodian,  
25 or other custodian subjects the child or any other child in  
26 the household to abuse, as defined in subdivision (2) of



1 Section 12-15-301 or neglect as defined in subdivision (4) of  
2 Section 12-15-301, or allows the child to be so subjected.

3 "2. Who is without a parent, legal guardian, or  
4 legal custodian willing and able to provide for the care,  
5 support, or education of the child.

6 "3. Whose parent, legal guardian, legal custodian,  
7 or other custodian neglects or refuses, when able to do so or  
8 when the service is offered without charge, to provide or  
9 allow medical, surgical, or other care necessary for the  
10 health or well-being of the child.

11 "4. Whose parent, legal guardian, legal custodian,  
12 or other custodian fails, refuses, or neglects to send the  
13 child to school in accordance with the terms of the compulsory  
14 school attendance laws of this state.

15 "5. Whose parent, legal guardian, legal custodian,  
16 or other custodian has abandoned the child, as defined in  
17 subdivision (1) of Section 12-15-301.

18 "6. Whose parent, legal guardian, legal custodian,  
19 or other custodian is unable or unwilling to discharge his or  
20 her responsibilities to and for the child.

21 "7. Who has been placed for care or adoption in  
22 violation of the law.

23 "8. Who, for any other cause, is in need of the care  
24 and protection of the state.

25 "b. The commission of one or more status offenses as  
26 defined in subdivision (4) of Section 12-15-201 is not a  
27 sufficient basis for an adjudication of dependency.

1           "(9) DETENTION. The temporary placement of children  
2 alleged or adjudicated to be delinquent in secure custody as  
3 defined herein pending juvenile court disposition or transfer  
4 to a residential facility for further care of a child  
5 adjudicated delinquent.

6           "(10) GUARDIAN AD LITEM. A licensed attorney  
7 appointed by a juvenile court to protect the best interests of  
8 an individual without being bound by the expressed wishes of  
9 that individual.

10           "(11) INTAKE OFFICER. A juvenile probation officer  
11 or an employee of the judicial branch of government, who is  
12 neutral and detached from executive and legislative branch  
13 activities, designated by the juvenile court judge to initiate  
14 original delinquency, dependency, and child in need of  
15 supervision cases, as well as cases designated in Section  
16 12-15-132 before the juvenile court. The juvenile court intake  
17 officer shall be appointed a magistrate pursuant to Rule 18,  
18 Alabama Rules of Judicial Administration, to issue warrants of  
19 arrest for individuals 18 years of age or older committing  
20 criminal offenses under the jurisdiction of the juvenile  
21 court.

22           "(12) JUVENILE COURT. The juvenile or family court  
23 division of the circuit or district court having jurisdiction  
24 over matters as provided by this chapter.

25           "(13) JUVENILE DETENTION FACILITY. Any facility  
26 owned or operated by the state, any county, or other legal

1 entity licensed by and contracted with the Department of Youth  
2 Services for the detention of children.

3 "(14) LAW ENFORCEMENT OFFICER. Any person, however  
4 denominated, who is authorized by law to exercise the police  
5 powers of the state, a county, or local governments.

6 "(15) LEGAL CUSTODIAN. A parent, person, agency, or  
7 department to whom legal custody of a child under the  
8 jurisdiction of the juvenile court pursuant to this chapter  
9 has been awarded by order of the juvenile court or other court  
10 of competent jurisdiction.

11 "(16) LEGAL CUSTODY. A legal status created by order  
12 of the juvenile court which vests in a legal custodian the  
13 right to have physical custody of a child under the  
14 jurisdiction of the juvenile court pursuant to this chapter  
15 and the right and duty to protect, train, and discipline the  
16 child and to provide the child with food, shelter, clothing,  
17 education, and medical care, all subject to the powers,  
18 rights, duties, and responsibilities of the legal guardian of  
19 the person of the child and subject to any residual parental  
20 rights and responsibilities. A parent, person, agency, or  
21 department granted legal custody shall exercise the rights and  
22 responsibilities personally, unless otherwise restricted by  
23 the juvenile court.

24 "(17) LEGAL GUARDIAN. A person who has been  
25 appointed by a probate court pursuant to the Alabama Uniform  
26 Guardianship and Protective Proceedings Act, Chapter 2A  
27 (commencing with Section 26-2A-1) of Title 26 to be a guardian

1 of a person under 19 years of age who has not otherwise had  
2 the disabilities of minority removed. This term does not  
3 include a guardian ad litem as defined in this section.

4 "(18) MINOR. An individual who is under the age of  
5 19 years and who is not a child within the meaning of this  
6 chapter.

7 "(19) PARENT. The legal mother or the legal father  
8 of a child under the jurisdiction of the juvenile court  
9 pursuant to this chapter.

10 "(20) PICK-UP ORDER. In any case before the juvenile  
11 court, an order directing any law enforcement officer or other  
12 person authorized by this chapter to take a child into custody  
13 and to deliver the child to a place of detention, shelter, or  
14 other care designated by the juvenile court.

15 "(21) PROBATION. The legal status created by order  
16 of the juvenile court following an adjudication of delinquency  
17 or in need of supervision whereby a child is permitted to  
18 remain in a community subject to supervision and return to the  
19 juvenile court for violation of probation at any time during  
20 the period of probation.

21 "(22) RESIDENTIAL FACILITY. A dwelling, other than a  
22 detention or shelter care facility, providing living  
23 accommodations, care, treatment, and maintenance for children,  
24 including, but not limited to, institutions, foster family  
25 homes, group homes, half-way houses, and forestry camps  
26 operated, accredited, or licensed by a federal or state  
27 department or agency.

1                   "(23) RESIDUAL PARENTAL RIGHTS AND RESPONSIBILITIES.

2       Those rights and responsibilities remaining with a parent  
3       after a transfer of legal custody of a child under the  
4       jurisdiction of the juvenile court pursuant to this chapter,  
5       including, but not necessarily limited to, the right of  
6       visitation, the right to withhold consent to adoption, the  
7       right to determine religious affiliation, and the  
8       responsibility for support, unless determined by order of the  
9       juvenile court not to be in the best interests of the child.

10                   "(24) SECURE CUSTODY. As used with regard to

11       juvenile detention facilities and the Department of Youth  
12       Services, this term means residential facilities with  
13       construction features designed to physically restrict the  
14       movements and activities of persons in custody such as locked  
15       rooms and buildings, including rooms and buildings that  
16       contain alarm devices that prevent departure; fences; or other  
17       physical structures. This term does not include facilities  
18       where physical restriction of movement or activity is provided  
19       solely through facility staff.

20                   "(25) SHELTER CARE. The temporary care of children

21       in group homes, foster care, relative placement, or other  
22       nonpenal facilities.

23                   "§16-28-3.

24                   "(a) Except as otherwise provided in subsection (b),

25       every child between the ages of six and 17 years shall be  
26       required to attend a public school, private school, church  
27       school, or be instructed by a competent private tutor for the

1 entire length of the school term in every scholastic year  
2 except that, prior to attaining his or her 16th birthday every  
3 child attending a church school as defined in Section 16-28-1  
4 is exempt from the requirements of this section, provided such  
5 child complies with enrollment and reporting procedure  
6 specified in Section 16-28-7. Admission to public school shall  
7 be on an individual basis on the application of the parents,  
8 legal custodian, or guardian of the child to the local board  
9 of education at the beginning of each school year, under such  
10 rules ~~and regulations~~ as the board may prescribe; provided, a  
11 person who is 18 years of age and otherwise qualified to  
12 attend a public school may not be denied admission to public  
13 school solely on account of his or her age. The parent, legal  
14 custodian, or guardian of a child who is six years of age, may  
15 opt out of enrolling ~~their~~ his or her child in school at the  
16 age of six years by notifying the local school board of  
17 education, in writing, that the child will not be enrolled in  
18 school until he or she is seven years of age.

19 "(b) (1) If a child withdraws from a public school,  
20 upon verification of enrollment in a Southern Association of  
21 Colleges and Schools or any entity with accreditation status  
22 as determined by one of the agencies identified on the United  
23 States Department of Education's list of Recognized National  
24 and Regional Accrediting Agencies or their affiliates  
25 accredited and recognized online school which has been  
26 authorized by the Alabama State Department of Education to

1 provide instruction in lieu of in-person instruction, the  
2 child shall be counted as a transfer student.

3 "(2) If a child returns to a public school, semester  
4 exams shall be given to the child to determine grade  
5 placement.

6 "(3) This subsection does not and should not be  
7 interpreted to create ~~on-line~~ online schools. However, if a  
8 student chooses to attend an accredited, state authorized  
9 ~~on-line~~ online school, that student's former school should not  
10 be penalized by the student being classified as a dropout.

11 "§22-52-16.

12 "~~The provisions of this~~ This article ~~shall~~ does not  
13 apply to commitment to the custody of the State Department of  
14 Mental Health of individuals under the age of 18 years who are  
15 mentally ill ~~minors or children~~.

16 "§26-1-1.

17 "(a) Any person in this state, at the arrival at the  
18 age of 19 years, shall be relieved of his or her disabilities  
19 of minority and thereafter shall have the same legal rights  
20 and abilities as persons over 21 years of age. No law of this  
21 state shall discriminate for or against any person between and  
22 including the ages of 19 and 21 years solely on the basis of  
23 age.

24 "(b) This section shall also apply to any person who  
25 arrived at the age of 19 and 20 years before July 22, 1975,  
26 but shall not abrogate any defense or abridge any remedy  
27 available to him or her prior to such date.

1           "(c) All laws or parts of laws which read "under the  
2 age of 21 years" hereafter shall read "under the age of 19  
3 years." Wherever the words "under the age of 21 years" appear  
4 in any law limiting the legal rights and abilities of persons  
5 under such age, such words shall be construed to mean under  
6 the age of 19 years.

7           "(d) Notwithstanding subsection (c), nothing in this  
8 section shall be deemed to repeal any provision of Chapter 19  
9 of Title 15.

10           ~~"(e) Notwithstanding subsection (a), an honorably  
11 discharged veteran who is under the age of 19 shall be  
12 permitted to enter into a contract for the purchase of a motor  
13 vehicle.~~

14           "~~(f)~~ (e) Notwithstanding subsection (a), or any  
15 other provision of law to the contrary, a person who is 18  
16 years of age or older may consent to participate in research  
17 conducted by a college or university that is accredited by a  
18 federally recognized accrediting agency if the research has  
19 been approved by the Institutional Review Board of the  
20 institution.

21           "(f) Notwithstanding subsection (a), an  
22 unemancipated minor who is 18 years old and of sound mind,  
23 notwithstanding his or her minority, may enter into a binding  
24 contract as may be exercised by an individual of full legal  
25 age. The minor, by reason of his or her minority, may not  
26 rescind, avoid, or repudiate the contract or rescind, avoid,



1 or repudiate any exercise of a right or privilege under the  
2 contract.

3 "§26-14-1.

4 "For the purposes of this chapter, the following  
5 terms shall have the meanings respectively ascribed to them by  
6 this section:

7 "(1) ABUSE. Harm or threatened harm to a child's  
8 health or welfare. Harm or threatened harm to a child's health  
9 or welfare can occur through nonaccidental physical or mental  
10 injury, sexual abuse or attempted sexual abuse, or sexual  
11 exploitation or attempted sexual exploitation. "Sexual abuse"  
12 includes the employment, use, persuasion, inducement,  
13 enticement, or coercion of any child to engage in, or having a  
14 child assist any other person to engage in, any sexually  
15 explicit conduct or any simulation of the conduct for the  
16 purpose of producing any visual depiction of the conduct; or  
17 the rape, molestation, prostitution, or other form of sexual  
18 exploitation of children, or incest with children as those  
19 acts are defined by Alabama law. "Sexual exploitation"  
20 includes allowing, permitting, or encouraging a child to  
21 engage in prostitution and allowing, permitting, encouraging,  
22 or engaging in the obscene or pornographic photographing,  
23 filming, or depicting of a child for commercial purposes.

24 "(2) NEGLECT. Negligent treatment or maltreatment of  
25 a child, including the failure to provide adequate food,  
26 medical treatment, supervision, clothing, or shelter.

27 "(3) CHILD. Either of the following:

1                   "a. A person under the age of 18 years.

2                   "b. A person under the age of 19 years who is in  
3 need of protective services and does not qualify for adult  
4 protective services under Chapter 9 of Title 38.

5                   "(4) DULY CONSTITUTED AUTHORITY. The chief of police  
6 of a municipality or municipality and county; or the sheriff,  
7 if the observation of child abuse or neglect is made in an  
8 unincorporated territory; or the Department of Human  
9 Resources; or any person, organization, corporation, group, or  
10 agency authorized and designated by the Department of Human  
11 Resources to receive reports of child abuse and neglect;  
12 provided, that a "duly constituted authority" shall not  
13 include an agency involved in the acts or omissions of the  
14 reported child abuse or neglect."

15                   Section 2. This act shall become effective on the  
16 first day of the third month following its passage and  
17 approval by the Governor, or its otherwise becoming law.