

1 HB401
2 156329-1
3 By Representative Farley
4 RFD: Judiciary
5 First Read: 04-FEB-14

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8 SYNOPSIS: Under existing law, in 2008, the Alabama
9 Juvenile Justice Act provided that a juvenile court
10 must adjudicate a child as delinquent or dependent
11 in a civil proceeding.

12 Under existing law, a parent or guardian who
13 fails to exercise reasonable diligence in the
14 control of a child in order to prevent the child
15 from becoming delinquent or dependent commits the
16 crime of endangering the welfare of a child;
17 however, the juvenile court must adjudicate the
18 child delinquent or dependent in a civil proceeding
19 before a criminal conviction may occur.

20 This bill would clarify the meaning of
21 dependent child for purposes of juvenile
22 proceedings by updating an internal citation.

23 This bill would remove the requirement that
24 a child be adjudicated delinquent or dependent in a
25 civil proceeding before a person may be convicted
26 of endangering the welfare of a child, and provide
27 that a delinquent child and dependent child for

1 purposes of the crime of endangering the welfare of
2 a child is defined using the same criteria that a
3 juvenile court uses to make the determination in a
4 civil proceeding.

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6 A BILL
7 TO BE ENTITLED
8 AN ACT
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10 Relating to delinquent children and children in need
11 of supervision; to amend Sections 12-15-102 and 13A-13-6, Code
12 of Alabama 1975, to provide correct and internal citation in
13 the definition of "dependent child"; and to clarify what
14 constitutes a dependent child and a delinquent child for
15 purposes of the crime of endangering the welfare of a child.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Sections 12-15-102 and 13A-13-6, Code of
18 Alabama 1975, are amended to read as follows:

19 "§12-15-102.

20 "When used in this chapter, the following words and
21 phrases have the following meanings:

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

23 "(2) AFTERCARE. Conditions and supervision as the
24 juvenile court orders after release from the Department of
25 Youth Services.

26 "(3) CHILD. An individual under the age of 18 years,
27 or under 21 years of age and before the juvenile court for a

1 delinquency matter arising before that individual's 18th
2 birthday. Where a delinquency petition alleges that an
3 individual, prior to the individual's 18th birthday, has
4 committed an offense for which there is no statute of
5 limitation pursuant to Section 15-3-5, the term child also
6 shall include the individual subject to the petition,
7 regardless of the age of the individual at the time of filing.

8 "(4) CHILD IN NEED OF SUPERVISION. A child who has
9 been adjudicated by a juvenile court for doing any of the
10 following and who is in need of care, rehabilitation, or
11 supervision:

12 "a. Being subject to the requirement of compulsory
13 school attendance, is habitually truant from school as defined
14 by the State Board of Education in the Alabama Administrative
15 Code. Notwithstanding the foregoing, a child shall not be
16 found in need of supervision pursuant to this subdivision if
17 the juvenile court determines that the parent, legal guardian,
18 or legal custodian of the child was solely responsible for the
19 nonattendance of the child.

20 "b. Disobeys the reasonable and lawful demands of
21 his or her parent, legal guardian, or legal custodian and is
22 beyond the control of the parent, legal guardian, or legal
23 custodian.

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

1 "d. Commits an offense established by law but not
2 classified as criminal.

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

9 "(6) DELINQUENT ACT. An act committed by a child
10 that is designated a violation, misdemeanor, or felony offense
11 pursuant to the law of the municipality, county, or state in
12 which the act was committed or pursuant to federal law. This
13 term shall not apply to any of the following:

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

16 "1. A nonfelony traffic offense or water safety
17 offense other than one charged pursuant to Section 32-5A-191
18 or 32-5A-191.3 or a municipal ordinance prohibiting the same
19 conduct.

20 "2. A capital offense.

21 "3. A Class A felony.

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

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

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

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

5 "(ii) A correctional officer or official.

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

7 "(iv) A juvenile court probation officer or
8 official.

9 "(v) A district attorney or other prosecuting
10 officer or official.

11 "(vi) A judge or judicial official.

12 "(vii) A court officer or official.

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

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

19 "7. Trafficking in drugs in violation of Section
20 13A-12-231, or as the same may be amended.

21 "8. Any lesser included offense of the offenses in
22 subparagraphs 1 to 7, inclusive, charged or any lesser felony
23 offense charged arising from the same facts and circumstances
24 and committed at the same time as the offenses listed in
25 subparagraphs 1 to 7, inclusive.

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

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

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

11 "1. Whose parent, legal guardian, legal custodian,
12 or other custodian subjects the child or any other child in
13 the household to abuse, as defined in subdivision (2) of
14 Section 12-15-301 or neglect as defined in subdivision ~~(4)~~ (7)
15 of Section 12-15-301, or allows the child to be so subjected.

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

19 "3. Whose parent, legal guardian, legal custodian,
20 or other custodian neglects or refuses, when able to do so or
21 when the service is offered without charge, to provide or
22 allow medical, surgical, or other care necessary for the
23 health or well-being of the child.

24 "4. Whose parent, legal guardian, legal custodian,
25 or other custodian fails, refuses, or neglects to send the
26 child to school in accordance with the terms of the compulsory
27 school attendance laws of this state.

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

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

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

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

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

14 "(9) DETENTION. The temporary placement of children
15 alleged or adjudicated to be delinquent in secure custody as
16 defined herein pending juvenile court disposition or transfer
17 to a residential facility for further care of a child
18 adjudicated delinquent.

19 "(10) GUARDIAN AD LITEM. A licensed attorney
20 appointed by a juvenile court to protect the best interests of
21 an individual without being bound by the expressed wishes of
22 that individual.

23 "(11) INTAKE OFFICER. A juvenile probation officer
24 or an employee of the judicial branch of government, who is
25 neutral and detached from executive and legislative branch
26 activities, designated by the juvenile court judge to initiate
27 original delinquency, dependency, and child in need of

1 supervision cases, as well as cases designated in Section
2 12-15-132 before the juvenile court. The juvenile court intake
3 officer shall be appointed a magistrate pursuant to Rule 18,
4 Alabama Rules of Judicial Administration, to issue warrants of
5 arrest for individuals 18 years of age or older committing
6 criminal offenses under the jurisdiction of the juvenile
7 court.

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

11 "(13) JUVENILE DETENTION FACILITY. Any facility
12 owned or operated by the state, any county, or other legal
13 entity licensed by and contracted with the Department of Youth
14 Services for the detention of children.

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

18 "(15) LEGAL CUSTODIAN. A parent, person, agency, or
19 department to whom legal custody of a child under the
20 jurisdiction of the juvenile court pursuant to this chapter
21 has been awarded by order of the juvenile court or other court
22 of competent jurisdiction.

23 "(16) LEGAL CUSTODY. A legal status created by order
24 of the juvenile court which vests in a legal custodian the
25 right to have physical custody of a child under the
26 jurisdiction of the juvenile court pursuant to this chapter
27 and the right and duty to protect, train, and discipline the

1 child and to provide the child with food, shelter, clothing,
2 education, and medical care, all subject to the powers,
3 rights, duties, and responsibilities of the legal guardian of
4 the person of the child and subject to any residual parental
5 rights and responsibilities. A parent, person, agency, or
6 department granted legal custody shall exercise the rights and
7 responsibilities personally, unless otherwise restricted by
8 the juvenile court.

9 "(17) LEGAL GUARDIAN. A person who has been
10 appointed by a probate court pursuant to the Alabama Uniform
11 Guardianship and Protective Proceedings Act, Chapter 2A
12 (commencing with Section 26-2A-1) of Title 26 to be a guardian
13 of a person under 19 years of age who has not otherwise had
14 the disabilities of minority removed. This term does not
15 include a guardian ad litem as defined in this section.

16 "(18) MINOR. An individual who is under the age of
17 19 years and who is not a child within the meaning of this
18 chapter.

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

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

1 "(21) PROBATION. The legal status created by order
2 of the juvenile court following an adjudication of delinquency
3 or in need of supervision whereby a child is permitted to
4 remain in a community subject to supervision and return to the
5 juvenile court for violation of probation at any time during
6 the period of probation.

7 "(22) RESIDENTIAL FACILITY. A dwelling, other than a
8 detention or shelter care facility, providing living
9 accommodations, care, treatment, and maintenance for children,
10 including, but not limited to, institutions, foster family
11 homes, group homes, half-way houses, and forestry camps
12 operated, accredited, or licensed by a federal or state
13 department or agency.

14 "(23) RESIDUAL PARENTAL RIGHTS AND RESPONSIBILITIES.
15 Those rights and responsibilities remaining with a parent
16 after a transfer of legal custody of a child under the
17 jurisdiction of the juvenile court pursuant to this chapter,
18 including, but not necessarily limited to, the right of
19 visitation, the right to withhold consent to adoption, the
20 right to determine religious affiliation, and the
21 responsibility for support, unless determined by order of the
22 juvenile court not to be in the best interests of the child.

23 "(24) SECURE CUSTODY. As used with regard to
24 juvenile detention facilities and the Department of Youth
25 Services, this term means residential facilities with
26 construction features designed to physically restrict the
27 movements and activities of persons in custody such as locked

1 rooms and buildings, including rooms and buildings that
2 contain alarm devices that prevent departure; fences; or other
3 physical structures. This term does not include facilities
4 where physical restriction of movement or activity is provided
5 solely through facility staff.

6 "(25) SHELTER CARE. The temporary care of children
7 in group homes, foster care, relative placement, or other
8 nonpenal facilities.

9 "§13A-13-6.

10 "(a) A man or woman commits the crime of endangering
11 the welfare of a child when:

12 "(1) He or she knowingly directs or authorizes a
13 child less than 16 years of age to engage in an occupation
14 involving a substantial risk of danger to his life or health;
15 or

16 "(2) He or she, as a parent, guardian or other
17 person legally charged with the care or custody of a child
18 less than 18 years of age, fails to exercise reasonable
19 diligence in the control of such child to prevent him or her
20 from becoming a "dependent child" or a "delinquent child," as
21 defined in Section ~~12-15-1~~ 12-15-102.

22 "(b) A person does not commit an offense under
23 Section 13A-13-4 or this section for the sole reason he
24 provides a child under the age of 19 years or a dependent
25 spouse with remedial treatment by spiritual means alone in
26 accordance with the tenets and practices of a recognized

1 church or religious denomination by a duly accredited
2 practitioner thereof in lieu of medical treatment.

3 "(c) For the purposes of this section, it is not a
4 requirement that a dependent child or a delinquent child be
5 adjudicated as such by a juvenile court.

6 ~~"(c)~~ (d) Endangering the welfare of a child is a
7 Class A misdemeanor."

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