

**A GUIDE TO THE ALABAMA JUVENILE JUSTICE ACT OF 2008**

**TITLE 12. COURTS.**

**CHAPTER 15. JUVENILE PROCEEDINGS.**

**ARTICLE 1. GENERAL PROVISIONS.**

**§12-15-101.**

- (a) This chapter shall be known as the Alabama Juvenile Justice Act. The purpose of this chapter is to facilitate the care, protection, and discipline of children who come under the jurisdiction of the juvenile court, while acknowledging the responsibility of the juvenile court to preserve the public peace and security.
- (b) In furtherance of this purpose, the following goals have been established for the juvenile court:
  - (1) To preserve and strengthen the family of the child whenever possible, including improvement of the home environment of the child.
  - (2) To remove the child from the custody of his or her parent or parents only when it is judicially determined to be in his or her best interests or for the safety and protection of the public.
  - (3) To reunite a child with his or her parent or parents as quickly and as safely as possible when the child has been removed from the custody of his or her parent or parents unless reunification is judicially determined not to be in the best interests of the child.
  - (4) To secure for any child removed from parental custody the necessary treatment, care, guidance, and discipline to assist him or her in becoming a responsible, productive member of society.
  - (5) To promote a continuum of services for children and their families from prevention to aftercare, considering wherever possible, prevention, diversion, and early intervention.
  - (6) To promote the use of community-based alternatives as deterrents to acts of juvenile delinquency and as least restrictive dispositional alternatives.
  - (7) To hold a child found to be delinquent accountable for his or her actions to the extent of the age, education, mental and physical condition, and background of the child, and all other relevant factors and to provide a program of supervision, care, and rehabilitation, including restitution by the child to the victim of his or her delinquent acts.
  - (8) To achieve the foregoing goals in the least restrictive setting necessary, with a preference at all times for the preservation of the family and the integration of parental accountability and participation in treatment and counseling programs.

- (c) Judicial procedures through which these goals are accomplished will assure the parties a fair hearing where their constitutional and other statutory rights are recognized and enforced.
- (d) This chapter shall be liberally construed to the end that each child coming under the jurisdiction of the juvenile court shall receive the care, guidance, and control, preferably in his or her own home, necessary for the welfare of the child and the best interests of the state.

**§12-15-102.**

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

- (1) ADULT. An individual 19 years of age or older.
- (2) AFTERCARE. Conditions and supervision as the juvenile court orders after release from the Department of Youth Services.
- (3) CHILD. An individual under the age of 18 years, *or under 21 years of age and before the juvenile court for a delinquency matter arising before that individual's 18th birthday. Where a delinquency petition alleges that an individual, prior to the individual's 18th birthday, has committed an offense for which there is no statute of limitation pursuant to Section 15-3-5, the term child also shall include the individual subject to the petition, regardless of the age of the individual at the time of filing.*<sup>1</sup>
- (4) CHILD IN NEED OF SUPERVISION. A child who has been adjudicated by a juvenile court for doing any of the following and who is in need of care, rehabilitation, or supervision:
  - a. Being subject to the requirement of compulsory school attendance, is habitually truant from school *as defined by the State Board of Education in the Alabama Administrative Code. Notwithstanding the foregoing, a child shall not be found in need of supervision pursuant to this subdivision if the juvenile court determines that the parent, legal guardian, or legal custodian of the child was solely responsible for the nonattendance of the child.*<sup>2</sup>

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<sup>1</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, the Juvenile Code defined “child” as “An individual under the age of 18, or under 19 years of age and before the juvenile court for a matter arising before that individual's 18th birthday.” Ala. Code § 12-15-1(3) (2008). The 2008 Act revised this definition to include an individual who is 19 or 20 years of age, but who is alleged to have committed a delinquent act before his or her 18th birthday.

The revised definition also vests a juvenile court with exclusive, original jurisdiction over delinquency petitions filed against persons who are 21 years of age or older, provided that the petition alleges that the delinquent act was committed before the person's 18th birthday and provided that the offense has no statute of limitation. Where the petition alleges that a delinquent act was committed after the person's 14th birthday, the court may grant a motion to transfer the case to a court handling criminal matters.

<sup>2</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, the Code did not define “habitual truancy.” The 2008 Act codified the State Board of Education's definition of habitual truancy. In addition, this provision now provides an affirmative defense for children whose parent, legal guardian, or legal custodian are “solely responsible” for the child's truancy.

- b. Disobeys the reasonable and lawful demands of his or her parent, legal guardian, or legal custodian and is beyond the control of the parent, legal guardian, or legal custodian.
  - c. Leaves, or remains away from, the home without the permission of the parent, legal guardian, legal custodian, or person with whom he or she resides.
  - d. Commits an offense established by law but not classified as criminal.
- (5) ***CHILD'S ATTORNEY. A licensed attorney who provides legal services for a child, or for a minor in a mental commitment proceeding, and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child or minor as is due an adult client.***<sup>3</sup>
- (6) DELINQUENT ACT. An act committed by a child that is designated a violation, misdemeanor, or felony offense pursuant to the law of the municipality, county, or state in which the act was committed or pursuant to federal law. This term shall not apply to any of the following:
- a. An offense when committed by a child 16 or 17 years of age as follows:
    - 1. ***A nonfelony traffic offense***<sup>4</sup> ***or water safety offense*** other than one charged pursuant to Section 32-5A-191 or ***32-5A-191.3***<sup>5</sup> or a municipal ordinance prohibiting the same conduct.

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<sup>3</sup> This new definition clarifies the role of a child's attorney, who "owes the same duties of undivided loyalty, confidentiality, and competent representation to the child or minor" as would be owed to an adult client, and who is required to "abide by the client's decisions concerning the objectives of the representation." See Alabama Rules of Professional Conduct, Rule 1.2(a). The role of the child's attorney is distinct from the role of a guardian ad litem, who is not bound by the child's expressed interests and who has no duty of confidentiality to the child. See Ala. Code § 12-15-102(10).

<sup>4</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, traffic offenses other than DUIs were excluded from the jurisdiction of the juvenile court if committed by 16- or 17-year-olds. The 2008 Act amended the definition of "delinquent act" to confer juvenile court jurisdiction over certain felony traffic offenses and felony water safety offenses, except where the offense is a "felony which has as an element the use of a deadly weapon," see Ala. Code § 12-15-102(6)(a)(4), or a "felony which has as an element the causing of death or serious physical injury." See Ala. Code § 12-15-102(6)(a)(5). This revision clarifies that the juvenile court has original jurisdiction over felony traffic and water safety offenses, if committed by an individual who meets the statutory definition of "child," including the following:

- 1. Throwing a "rock, stone, brick or piece of iron, steel or other like metal," or any dangerous (but not deadly) missile or fire bomb, "into a motor vehicle that is occupied by one or more persons," see Ala. Code § 32-5-11;
- 2. Using a motor vehicle equipped with a wrongfully-obtained tag or plate for any unlawful or deceptive purpose, see Ala. Code § 32-6-131;
- 3. Altering/forging an insurance card or making/selling an invalid insurance card, see Ala. Code § 32-7A-15;
- 4. Forgery involving a certificate of title, including knowing possession of a fraudulent certificate of title, see Ala. Code § 32-8-12;
- 5. Unauthorized receiving or disposing of a vehicle known to be stolen or unlawfully converted, see Ala. Code § 32-8-82;
- 6. Falsifying/altering a vehicle identification number or receiving/possessing/disposition of a vehicle with an altered identification number, with the intent to conceal or misrepresent the identity of a vehicle, engine, transmission or other identifiable component part of a vehicle, see Ala. Code § 32-8-86(b) & (d);
- 7. Leaving the scene of an accident where someone has been injured (but not seriously injured), see Ala. Code § 32-10-1;

2. A capital offense.
  3. A Class A felony.
  4. A felony which has as an element the use of a deadly weapon.
  5. A felony which has as an element the causing of death or serious physical injury.
  6. A felony which has as an element the use of a dangerous instrument against any person who is one of the following:
    - (i) A law enforcement officer or official.
    - (ii) A correctional officer or official.
    - (iii) A parole or probation officer or official.
    - (iv) A juvenile court probation officer or official.
    - (v) A district attorney or other prosecuting officer or official.
    - (vi) A judge or judicial official.
    - (vii) A court officer or official.
    - (viii) A person who is a grand juror, juror, or witness in any legal proceeding of whatever nature when the offense stems from, is caused by, or is related to the role of the person as a juror, grand juror, or witness.
    - (ix) A teacher, principal, or employee of the public education system of Alabama.
  7. Trafficking in drugs in violation of Section 13A-12-231, or as the same may be amended.
  8. Any lesser included offense of the offenses in subparagraphs 1 to 7, inclusive, charged or any lesser felony offense charged arising from the same facts and circumstances and committed at the same time as the offenses listed in subparagraphs 1 to 7, inclusive.
    - b. Any criminal act, offense, or violation committed by a child under the age of 18 years who has been previously convicted or adjudicated a youthful offender.
- (7) **DELINQUENT CHILD.** A child who has been adjudicated for a delinquent act and is in need of care or rehabilitation.
- (8) **DEPENDENT CHILD**<sup>6</sup>

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8. Obtaining possession of a motor vehicle by trick or false representation, *see* Ala. Code § 32-15-4;
  9. Hiring with the intent to defraud, *see* Ala. Code § 32-15-5;
  10. Failure to redeliver a hired vehicle, *see* Ala. Code § 32-15-6; and
  11. Embezzlement, conversion, etc., of a motor vehicle which is subject of larceny, *see* Ala. Code § 32-5-7.

<sup>5</sup> The offense of boating under the influence pursuant to § 32-5A-191.3 has been added to subsection (6)(a)(1) to bring these offenses within the jurisdiction of the juvenile court when such offenses are committed by 16- and 17-year-olds.

<sup>6</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, the Code defined “dependent child” to include a child “[w]hose custody is the subject of controversy.” *See* Ala. Code § 12-15-1(10)(c) (2008). The 2008 Act

- a. A child who has been adjudicated dependent by a juvenile court and is in need of care or supervision and meets any of the following circumstances:
  1. Whose parent, legal guardian, legal custodian, or other custodian subjects the child or any other child in the household to abuse, as defined in subdivision (2) of Section 12-15-301 or neglect as defined in subdivision (4) of Section 12-15-301, or allows the child to be so subjected.
  2. Who is without a parent, legal guardian, or legal custodian willing and able to provide for the care, support, or education of the child.
  3. Whose parent, legal guardian, legal custodian, or other custodian neglects or refuses, when able to do so or when the service is offered without charge, to provide or allow medical, surgical, or other care necessary for the health or well-being of the child.
  4. Whose parent, legal guardian, legal custodian, or other custodian fails, refuses, or neglects to send the child to school in accordance with the terms of the compulsory school attendance laws of this state.
  5. Whose parent, legal guardian, legal custodian, or other custodian has abandoned the child, as defined in subdivision (1) of Section 12-15-301.
  6. Whose parent, legal guardian, legal custodian, or other custodian is unable or unwilling to discharge his or her responsibilities to and for the child.
  7. Who has been placed for care or adoption in violation of the law.
  8. Who, for any other cause, is in need of the care and protection of the state.
- b. ***The commission of one or more status offenses as defined in subdivision (4) of Section 12-15-201 is not a sufficient basis for an adjudication of dependency.***<sup>7</sup>
- (9) DETENTION. The temporary placement of children alleged or adjudicated to be delinquent in secure custody as defined herein pending juvenile court disposition or transfer to a residential facility for further care of a child adjudicated delinquent.
- (10) ***GUARDIAN AD LITEM. A licensed attorney appointed by a juvenile court to protect the best interests of an individual without being bound by the expressed wishes of that individual.***<sup>8</sup>
- (11) INTAKE OFFICER. ***A juvenile probation officer or an employee of the judicial branch of government,***<sup>9</sup> who is neutral and detached from executive and legislative branch

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deleted this provision to prevent the filing of straight custody disputes in juvenile courts. This change leaves the circuit court with jurisdiction and avoids the possibility of conflicting custody orders.

<sup>7</sup> This provision clarifies that the commission of a status offense is not a sufficient basis, in and of itself, for a court to determine a child to be dependent.

<sup>8</sup> This new definition clarifies the role of a child's guardian ad litem ("GAL") from a child's attorney. A GAL is not bound by the child's decisions and directions, but is required to exercise the GAL's own best judgment regarding the best interests of the child. As required by federal law as a condition of federal funding, state law requires that a GAL be appointed "in every [court] case involving an abused or neglected child." See Ala. Code § 26-14-11 (2008)

<sup>9</sup> This definition substantially codifies Rule 8 of the Alabama Rules of Juvenile Procedure, which requires that an intake officer be either a juvenile probation officer or another employee of the judicial branch of government.

activities, designated by the juvenile court judge to initiate original delinquency, dependency, and child in need of supervision cases, as well as cases designated in Section 12-15-132 before the juvenile court. The juvenile court intake officer shall be appointed a magistrate pursuant to Rule 18, Alabama Rules of Judicial Administration, to issue warrants of arrest for individuals 18 years of age or older committing criminal offenses under the jurisdiction of the juvenile court.

- (12) JUVENILE COURT. The juvenile or family court division of the circuit or district court having jurisdiction over matters as provided by this chapter.
- (13) JUVENILE DETENTION FACILITY. Any facility owned or operated by the state, any county, or other legal entity licensed by and contracted with the Department of Youth Services for the detention of children.
- (14) LAW ENFORCEMENT OFFICER. Any person, however denominated, who is authorized by law to exercise the police powers of the state, a county, or local governments.
- (15) **LEGAL CUSTODIAN.** *A parent, person, agency, or department to whom legal custody of a child under the jurisdiction of the juvenile court pursuant to this chapter has been awarded by order of the juvenile court or other court of competent jurisdiction.*<sup>10</sup>
- (16) LEGAL CUSTODY. A legal status created by order of the juvenile court which vests in a legal custodian ***the right to have physical custody of a child under the jurisdiction of the juvenile court pursuant to this chapter and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, clothing, education, and medical care,***<sup>11</sup> all subject to the powers, rights, duties, and responsibilities of the legal guardian of the person of the child and subject to any residual parental rights and responsibilities. A parent, person, agency, or department granted legal custody shall exercise the rights and responsibilities personally, unless otherwise restricted by the juvenile court.
- (17) LEGAL GUARDIAN. A person who has been appointed by a probate court pursuant to the Alabama Uniform Guardianship and Protective Proceedings Act, Chapter 2A (commencing with Section 26-2A-1) of Title 26 to be a guardian of a person under 19 years of age who has not otherwise had the disabilities of minority removed. This term does not include a guardian ad litem as defined in this section.
- (18) MINOR. An individual who is under the age of 19 years and who is not a "child" within the meaning of this chapter.

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<sup>10</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, the definition of a legal custodian included a party "who is acting in loco parentis." See Ala. Code § 12-15-1(16) (2008). The 2008 Act deleted that phrase to ensure that persons, departments, or agencies are not deemed to have acquired legal custodian status without a court order. This change codified an opinion by the Attorney General that a school is not a legal custodian as the term is used in the Juvenile Code. Because a school is not a legal custodian, there is no statutory authority for a school to file a CHINS petition alleging that a child is "beyond the control" of his or her legal custodian. See Ala. Code § 12-15-101(4)(b) (2009).

<sup>11</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, a legal custodian's rights included the right "to determine where and with whom the child shall live within the state." See Ala. Code § 12-15-1(17) (2008). The 2008 Act deleted that phrase from the definition of "legal custody" to prevent custodians from moving the child without the court's knowledge.

- (19) PARENT. The legal mother or the legal father of a child under the jurisdiction of the juvenile court pursuant to this chapter.
- (20) PICK-UP ORDER. In any case before the juvenile court, an order directing any law enforcement officer or other person authorized by this chapter to take a child into custody and to deliver the child to a place of detention, shelter, or other care designated by the juvenile court.
- (21) PROBATION. The legal status created by order of the juvenile court following an adjudication of delinquency or in need of supervision whereby a child is permitted to remain in a community subject to supervision and return to the juvenile court for violation of probation at any time during the period of probation.
- (22) RESIDENTIAL FACILITY. A dwelling, other than a detention or shelter care facility, providing living accommodations, care, treatment, and maintenance for children, including, but not limited to, institutions, foster family homes, group homes, half-way houses, and forestry camps operated, accredited, or licensed by a federal or state department or agency.
- (23) RESIDUAL PARENTAL RIGHTS AND RESPONSIBILITIES. Those rights and responsibilities remaining with a parent after a transfer of legal custody of a child under the jurisdiction of the juvenile court pursuant to this chapter, including, but not necessarily limited to, the right of visitation, the right to withhold consent to adoption, the right to determine religious affiliation, and the responsibility for support, unless determined by order of the juvenile court not to be in the best interests of the child.
- (24) ***SECURE CUSTODY.*** *As used with regard to juvenile detention facilities and the Department of Youth Services, this term means residential facilities with construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, including rooms and buildings that contain alarm devices that prevent departure, fences, or other physical structures. This term does not include facilities where physical restriction of movement or activity is provided solely through facility staff.*<sup>12</sup>
- (25) SHELTER CARE. The temporary care of children in group homes, foster care, relative placement, or other nonpenal facilities.

**§12-15-103.**

- (a) A circuit or district court judge may be designated as a juvenile court judge.
- (b) The juvenile court shall maintain a separate docketing and case filing system.

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<sup>12</sup> This new definition helps bring Alabama into compliance with the federal Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. § 5633 (2008), which prohibits the use of secure custody for status offenders, non-offenders, and federal wards. The definition in subsection (24) is based on the federal definition. See Office of Juvenile Justice and Delinquency Prevention, *Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002* at 6 (Jan. 2007) (“As used to define a detention or correctional facility, [secure custody] includes residential facilities having construction features designed to physically restrict the movements and activities of persons in custody (e.g., locked rooms and buildings, fences, or other physical structures). It does not include facilities where physical restriction of movement or activity is provided solely through facility staff (i.e., staff secure.)”).

- (c) The Supreme Court of Alabama shall promulgate rules governing procedure in the juvenile court.
- (d) The juvenile court shall issue all writs and processes necessary to the exercise of its jurisdiction and to fulfill the purposes of this chapter.
- (e) The judge of the juvenile court shall issue warrants of arrest, pick-up orders, and writs of habeas corpus to have individuals brought before the juvenile court pursuant to this chapter.
- (f) The juvenile court shall have and exercise equity power.

**§12-15-104.**

- (a) The presiding juvenile court judge may appoint not less than five nor more than 25 citizens of the county, known for their interest in the welfare of children, who shall serve without compensation, to constitute and be the advisory board of the juvenile court in matters relating to the welfare of children. ***The membership of the advisory board shall be inclusive and reflect the racial, gender, geographic, urban or rural, and economic diversity of the county.***<sup>13</sup> The advisory board shall organize by electing officers and by adopting bylaws, rules, and regulations for its government as it shall deem best for the purposes of this chapter. The board shall hold office at the pleasure of the juvenile court or of the judge thereof.
- (b) The duties of the advisory board shall be as follows:
  - (1) To assist the juvenile court in securing the services of volunteer juvenile probation officers when the services of those officers shall be deemed necessary or desirable.
  - (2) To visit institutions which are charged with caring for children and, whenever practicable, other institutions to which the juvenile court from time to time may award legal custody.
  - (3) To advise and cooperate with the juvenile court upon all matters relating to the welfare of children.
  - (4) To recommend to the juvenile court any and all needful measures for the purpose of carrying out the provisions and intent of this chapter and to make themselves familiar with the work of the juvenile court pursuant to this chapter.
  - (5) To make, from time to time, a report to the public of the work of the juvenile court.

**§12-15-105.**

- (a) The district attorney of the judicial circuit in which delinquency or child in need of supervision cases are filed may exercise his or her authority in all delinquency and child in need of supervision cases arising pursuant to this chapter.

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<sup>13</sup> In recognition that the children and minors that come before the juvenile courts are from a wide variety of racial, ethnic, economic and other groups, this provision requires that the advisory boards for the juvenile courts reflect that variety and diversity.

- (b) The juvenile court may call upon the district attorney to assist the juvenile court in any proceeding pursuant to this chapter. It shall be the duty of the district attorney to render this assistance when so requested.
- (c) Notwithstanding Title 36, the district attorney shall represent the state in all delinquency and child in need of supervision cases appealed from the juvenile court.

**§12-15-106.**

- (a) Appointment of Referees. The Administrative Director of Courts may authorize one or more referee positions in any judicial circuit on either a full-time or a part-time basis upon submission of a written request by the presiding juvenile court judge and upon consideration of funding and the juvenile and child-support caseload in the circuit. Once the Administrative Director of Courts approves the request, the presiding judge of the juvenile court may appoint an attorney the judge believes to be qualified to fill the position, subject to the approval of the Administrative Director of Courts. The amount to be paid the referee and the manner of payment shall be determined by the Administrative Director of Courts.
- (b) Cases Handled by Referees. The presiding judge of the juvenile court may direct that the referee handle various kinds of juvenile and child-support cases unless any of the following occurs:
  - (1) The referee has agreed to hear certain juvenile and child-support cases pursuant to an agreement or a contract.
  - (2) The hearing in a particular case is one to determine whether the case will be transferred for criminal prosecution.
  - (3) The hearing involves the termination of parental rights as defined in subdivision (10) of Section 12-15-301.
  - (4) A party objects to a hearing being held by a referee.
- (c) Duties of Referees. Referees shall perform one or more of the following duties in juvenile and child-support cases:
  - (1) Take testimony in hearings.
  - (2) Evaluate evidence and make findings of fact and recommendations to determine paternity and to establish and enforce child-support orders.
  - (3) Accept voluntary acknowledgements of child-support liability or paternity and stipulated agreements setting the amount of child support to be paid.
  - (4) Prepare a default order upon a showing that process has been served on the defendant and that the defendant failed to respond to service in accordance with the Alabama Rules of Juvenile Procedure or the Alabama Rules of Civil Procedure.
  - (5) Order genetic tests in contested paternity cases without the necessity of obtaining an order from a judge.
  - (6) Enter orders relating to the administration of the docket of the juvenile court to which the referee is assigned without the necessity of obtaining a signature of a judge.
  - (7) All other duties as authorized by law or rule.

- (d) **Duty to Inform Parties of Right to Object to Referee.** Before conducting a hearing in a juvenile or child-support case, the referee shall inform all of the parties that the referee is not a judge and that the hearing may be conducted before a judge if any party objects to the hearing being held by the referee.
- (e) **Written Findings and Recommendations of the Referee.**
  - (1) After conducting a hearing in a juvenile or child-support case, if the referee has made a decision at the conclusion of the hearing, the referee shall immediately reduce his or her findings and recommendations to writing and then transmit those written findings and recommendations to the clerk of the juvenile court for filing and to a judge with authority over juvenile matters for his or her signature pursuant to subsection (g). If the parties are present at the hearing, copies of the written findings and recommendations shall be given to the parties in open court. The written findings and recommendations shall contain a notice that any party has a right to request a rehearing within 14 days of the date those findings and recommendations were filed in the office of the clerk of juvenile court.
  - (2) If the referee has not made a decision on the matter at the conclusion of the hearing or if the parties are not present in open court, the referee, within three business days of making his or her decision, shall transmit his or her written findings and recommendations to the clerk of the juvenile court for filing and to a judge with authority over juvenile matters for his or her signature pursuant to subsection (g). Once the clerk files the written findings and recommendations, the clerk shall send to the parties, by first class mail, copies of the findings and recommendations containing a notice informing them that they have the right to request a rehearing within 14 days of the date the findings and recommendations were filed in the office of the clerk of the juvenile court.
  - (3) Notice to a party represented by counsel shall be given to counsel rather than the party and the notice shall be sufficient as notice to the party unless the juvenile court orders otherwise.
- (f) **Rehearing Before the Juvenile Court.** A rehearing before a judge with authority over juvenile court matters concerning the matter heard by the referee shall be scheduled if any party files a written request therefor within the time frames provided in subsection (e). Once a rehearing is scheduled, the parties shall be notified of the date, time, and the place of the rehearing. Notice to a party represented by counsel shall be given to counsel, and this notice shall be sufficient unless the juvenile court orders otherwise. When an adequate record has been made in the proceeding before the referee, the judge shall review the record before rehearing and may admit new evidence at the rehearing. If the record is not adequate, the rehearing shall be de novo.
- (g) **Ratification by the Judge.** The findings and recommendations of the referee shall become the order of the juvenile court when ratified by the original signature of a judge with authority over juvenile matters.
- (h) **Matters Before the Referee Needing Immediate Action.** If a matter before a referee requires immediate action, the referee shall state in his or her written findings and recommendations why the recommendations should be effective immediately. These matters for immediate action may include, but are not limited to, matters of contempt, the physical safety of the child, or the safety of others, or when the personal liberty of the

child may be infringed. In such event, the written recommendations of the referee shall be effective and binding, upon the consent of the parties, for a period not exceeding 72 hours. In the event the parties do not consent to immediate action, the recommendations shall be reviewed immediately by any judge with authority over juvenile matters, who may order an appropriate temporary order based on the findings and recommendations, which order will be effective for a period not exceeding 72 hours. In any event, the findings and recommendations of the referee and any temporary orders in a matter needing immediate attention shall be reviewed by a judge with authority over juvenile matters within 72 hours after being made. Upon such review the judge shall rescind, modify, or continue the order in effect and conduct such further proceedings as may be permitted under subsection (f).

**§12-15-107.**

- (a) For the purpose of carrying out the objectives and purposes of this chapter and subject to the limitations of this chapter or imposed by the juvenile court, a juvenile probation officer shall perform the following duties:
- (1) Make investigations, reports, and recommendations to the juvenile court.
  - (2) Serve as a juvenile court intake officer when designated by the juvenile court judge.
  - (3) Supervise and assist a child placed on probation or aftercare by order of the juvenile court or other authority of law until the terms of probation or aftercare expire or are otherwise terminated.
  - (4) Make appropriate referrals to other private or public departments or agencies of the community if their assistance appears to be needed or desirable.
  - (5) Make predisposition studies and submit reports and recommendations to the juvenile court as required by this chapter.
  - (6) Collect and compile statistical data and file reports as may be required by the Administrative Director of Courts pursuant to subdivision (1) of Section 12-5-10. The reports may include, but shall not be limited to, statistical data, case studies, and research materials.
  - (7) ***Notify the state and either the parent, legal guardian, or legal custodian of a juvenile criminal sex offender, or the child's attorney for the juvenile criminal sex offender, of the pending release of the sex offender and provide them with a copy of the risk assessment pursuant to Section 15-20-28(b).***<sup>14</sup>
  - (8) Perform other functions as are designated by this chapter or directed by the juvenile court.
- (b) For the purposes of this chapter, a juvenile probation officer with the approval of the juvenile court, shall have the power to take into custody and place in shelter or detention, ***subject to Section 12-15-208***<sup>15</sup> a child who is on probation or aftercare under his or her

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<sup>14</sup> This is not a new duty. Juvenile probation officers are already responsible for providing this notice under § 15-20-28(b). The duty has been codified in the Juvenile Code as well for the sake of consistency.

<sup>15</sup> Section 12-15-208 places restrictions upon the authority of courts to place children in secure custody. This language clarifies that the authority to order a child into custody under §12-15-107 is limited by the restrictions

supervision when the juvenile probation officer has reasonable cause to believe that the child has violated the conditions of his or her probation or aftercare, or that he or she may flee from the jurisdiction of the juvenile court. A juvenile probation officer does not have the powers of a law enforcement officer.

**§12-15-108.**

Except as otherwise provided in this chapter, all expenses necessary or appropriate to the carrying out of the purposes and intent of this chapter and all expenses of maintenance and care of children under the jurisdiction of the juvenile court pursuant to this chapter that may be incurred by order of the juvenile court in carrying out the provisions and intent of this chapter (except costs paid by parents, legal guardians, legal custodians, or trustees and court costs as provided by law) shall be valid charges and preferred claims against the county. These claims shall be paid by the county treasurer when itemized and sworn to by the creditor or other persons knowing the facts in the case and when approved by the juvenile court. Notwithstanding the foregoing, a municipality shall reimburse the county the actual costs of housing, maintenance, and medical expenses of those children held in a facility utilized by the county for housing children, or other facility licensed by the Department of Youth Services utilized by the county, as a result of a child being cited or detained for an alleged violation of an ordinance of the municipality that is not based on a state criminal statute adopted by the municipality as a municipal ordinance.

**§12-15-109.**

If, after making a parent or other person legally obligated to care for and support a child a party to the action pursuant to this chapter and the Alabama Rules of Juvenile Procedure and after a hearing, the juvenile court finds that the parent or other person is financially able to pay all or part of the court costs, as provided by law, attorney fees, and expenses with respect to examination, treatment, care, detention, or support of the child incurred from the commencement of the proceeding in carrying out this chapter, the juvenile court shall order them to pay the same and may prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile court for remittance to those to whom compensation is due. If the child shall have an estate in the hands of a legal guardian, conservator, or trustee, the legal guardian, conservator, or trustee may be required to pay in a like manner. ***The juvenile court shall also order the parent or other person legally obligated to care for and support the child to apply for insurance and Medicaid.***<sup>16</sup> If the parent or other legally obligated person willfully fails or refuses to pay the sum, the juvenile court may proceed against him or her ***for civil or criminal contempt***<sup>17</sup> or both, and the order may be filed and shall constitute a civil judgment.

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contained in §12-15-208, many of which are also required by the federal Juvenile Justice and Delinquency Prevention Act. See 42 U.S.C. § 5633 (2008).

<sup>16</sup> This provision helps insure adequate health care for children before the juvenile court and avoids unnecessary expenditure of state funds where the child's health care expenses are covered by insurance or Medicaid.

<sup>17</sup> This provision clarifies that if a parent or other legally obligated person fails to comply with an order to pay court costs, attorney fees, and expenses with respect to the examination, treatment, care, detention, or support of the child, the juvenile court's contempt power includes civil and criminal contempt.

**§12-15-110.**

- (a) Subject to the laws relating to the procedures therefor and the limitations thereon, the juvenile court may punish a person for contempt of court for disobeying an order of the juvenile court or for obstructing or interfering with the proceedings of the juvenile court or the enforcement of its orders.
- (b) Notwithstanding the provisions of subsection (a), the juvenile court shall be limited in the actions it may take with respect to a child violating the terms and conditions of the order of protective supervision as this term is defined in subdivision (5) of Section 12-15-301, to those which the juvenile court could have taken at the time of the original disposition of the juvenile court pursuant to subsection (a) of Section 12-15-314.
- (c) *A finding of indirect contempt not based on a delinquency petition does not constitute an adjudication of delinquency.*<sup>18</sup>

**§12-15-111.**

- (a) It shall be unlawful for any parent, legal guardian, legal custodian, or other person to do any of the following:
  - (1) To willfully aid, encourage, or cause any child to become or remain delinquent, dependent, or in need of supervision.
  - (2) To permit or encourage the employment of any child in violation of any of the provisions of the child labor law.
  - (3) To cause a child to fail to attend school as required by the compulsory school attendance law.
- (b) Whenever, in the course of any proceedings pursuant to this chapter, or when, by affidavit as provided in this subsection, it shall appear to the juvenile court that a parent, legal guardian, legal custodian, or other person having custody, control, or supervision of a child or any other person not standing in any relation to the child has aided, encouraged, or caused the child to become delinquent, dependent, or in need of supervision, the juvenile court, for the protection of the child from these influences, shall have jurisdiction in these matters, as provided in this section. The juvenile court shall cause the parent, legal guardian, legal custodian, or other person to be brought before the juvenile court upon either summons or a warrant, affidavit of probable cause having first been made.
- (c) Whoever violates any provision of this section shall be guilty of a Class A misdemeanor and shall be punished accordingly.
- (d) Upon conviction, the juvenile court may suspend any sentence, remit any fine, or place the person on probation pursuant to such orders, directives, or conditions for his or her discipline and supervision as the juvenile court deems fit.

**§12-15-112.**

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<sup>18</sup> This provision clarifies that in the absence of a delinquency petition, a finding of indirect contempt does not constitute an adjudication of delinquency.

- (a) It shall be unlawful for any person to interfere knowingly with or oppose or otherwise obstruct any juvenile probation officer or representative of the Department of Human Resources in the performance of his or her duties pursuant to this chapter.
- (b) Any person violating any of the provisions of this section shall be guilty of a Class A misdemeanor and shall be punished accordingly.
- (c) The juvenile court, however, shall have the power to suspend any sentence, remit any fine, or place the person on probation pursuant to orders, directives, or conditions for which his or her discipline and supervision as the juvenile court deems fit.

**§12-15-113.**

A juvenile court shall have the authority to make a parent, legal guardian, or legal custodian a party to a juvenile court proceeding pursuant to procedures established by the Alabama Rules of Juvenile Procedure.

**§12-15-114.**

- (a) A juvenile court shall exercise exclusive original jurisdiction of juvenile court proceedings in which a child is alleged to have committed a delinquent act, to be dependent, or to be in need of supervision. ***A dependency action shall not include a custody dispute between parents.***<sup>19</sup> Juvenile cases before the juvenile court shall be initiated through the juvenile court intake office pursuant to this chapter.
- (b) ***A juvenile court shall not have jurisdiction over any delinquent act committed by an individual before his or her 18th birthday for which a petition has not been filed before the individual reaches 21 years of age, except when the delinquent act is an offense having no statute of limitation as provided in Section 15-3-5.***<sup>20</sup>
- (c) A juvenile court shall also exercise exclusive original jurisdiction of proceedings arising out of the above juvenile court proceedings, including, but not limited to each of the following:
  - (1) Proceedings pursuant to the Interstate Compact on Juveniles and the Interstate Compact on Placement of Children pursuant to Chapter 2 of Title 44.
  - (2) Proceedings for termination of parental rights, as this term is defined in subdivision (10) of Section 12-15-301.

**§12-15-115.**

- (a) A juvenile court shall also exercise original jurisdiction of the following civil proceedings:
  - (1) Removal of disabilities of nonage pursuant to Chapter 13 of Title 26.

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<sup>19</sup> This sentence was added to clarify that custody disputes between parents may not be filed as dependency actions in juvenile court. Custody disputes are to be litigated in circuit court.

<sup>20</sup> This provision clarifies that the juvenile court has no jurisdiction over delinquency petitions filed against persons who are 21 years of age or older, except where the petition alleges that a person has committed a delinquent act prior to his or her 18th birthday and where the offense has no statute of limitation.

- (2) Proceedings for judicial consent for a person under the respective legal age to marry, to be employed, withdraw from school, or enlist in military service when this consent is required by law.
  - (3) Proceedings for the commitment of a mentally ill or mentally retarded minor or child to the Department of Mental Health and Mental Retardation, as provided in Article 4 (commencing with Section 12-15-401).
  - (4) Proceedings for the adoption of a child when these proceedings have been removed from probate court on motion of any party to the proceedings.
  - (5) Proceedings for waiver of parental consent for a minor to have an abortion pursuant to Chapter 21 of Title 26.
  - (6) Proceedings to establish paternity or maternity of a child pursuant to the Alabama Uniform Parentage Act, Chapter 17 of Title 26.
  - (7) Proceedings to establish child and spousal support, or both, in cases brought pursuant to Title IV-D of the Social Security Act, including the Alabama Uniform Interstate Family Support Act, commencing at Section 30-3A-101, when an equivalent court of another state issued an order.
  - (8) Proceedings filed pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, commencing at Section 30-3B-101, when an equivalent court of another state issued an order.
  - (9) Proceedings to establish grandparent visitation when filed as part of a juvenile court case involving the same child.
- (b) A juvenile court also shall have original jurisdiction in proceedings concerning any child in either of the following instances:
- (1) The child requires emergency medical treatment in order to preserve his or her life, prevent permanent physical impairment or deformity, or alleviate prolonged agonizing pain.
  - (2) Where it is alleged that the rights of a child are improperly denied or infringed in proceedings resulting in suspension, expulsion, or exclusion from a public school.
- (c) All civil cases before the juvenile court shall be governed by the laws relating thereto and shall be initiated by filing a petition or complaint with the clerk of the juvenile court, with the exception that the proceedings provided in Section 12-15-132 shall be initiated through the juvenile court intake office.

**§12-15-116.**

- (a) A juvenile court shall have exclusive original jurisdiction to try any individual committing any of the following offenses while 18 years of age or older:
- (1) Contributing to the delinquency, in need of supervision, or dependency of a child in violation of Section 12-15-111.
  - (2) Opposing or interfering with a juvenile probation officer or a representative of the Department of Human Resources in violation of Section 12-15-112.
  - (3) Violating any of the confidentiality provisions of Sections 12-15-133, 12-15-134, 12-15-135, or 12-15-217.
  - (4) Nonsupport in violation of Section 13A-13-4.

- (5) Violating any of the juvenile criminal sex offender provisions of Section 15-20-28(g)(1).
- (6) Violating any of the provisions of the compulsory school attendance laws in Section 16-28-12.
- (b) All criminal cases before the juvenile court shall be governed by the laws relating thereto and shall be initiated by complaint made before a judge or magistrate according to criminal procedure.

**§12-15-117.**

- (a) Once a child has been adjudicated dependent, delinquent, or in need of supervision, jurisdiction of the juvenile court shall terminate when the child becomes 21 years of age unless, prior thereto, the judge of the juvenile court terminates its jurisdiction over the case involving the child.
- (b) The jurisdiction of the juvenile court shall terminate when the child is convicted or adjudicated a youthful offender as provided in Section 12-15-203(i) and Section 12-15-204(b). If a person already under the jurisdiction of the juvenile court is convicted or adjudicated a youthful offender in a criminal court of a crime committed at the age of 18 or older, the conviction or adjudication shall terminate the jurisdiction of the juvenile court.
- (c) In any case over which the juvenile court has jurisdiction, the juvenile court shall retain jurisdiction over an individual of any age for the enforcement of any prior orders of the juvenile court requiring the payment of fines, court costs, restitution, or other money ordered by the juvenile court until paid in full.
- (d) For purposes of enforcing any order of the juvenile court requiring the payment of fines, court costs, restitution, or other money ordered by the juvenile court, the remedies with regard to punishment for contempt, including incarceration in jail *of individuals 18 years of age or older*,<sup>21</sup> shall be available to the juvenile court.

**§12-15-118.**

A person employed by the judicial branch of government who is designated by a juvenile court as a juvenile court intake officer shall perform the following duties:

- (1) Receive and examine written complaints or petitions, made under oath, of allegations of delinquency, in need of supervision, or dependency or concerning proceedings filed pursuant to Section 12-15-132.
- (2) Refer to the Department of Human Resources for investigations, reports, and recommendations those complaints and allegations of dependency or other appropriate matters and may refer to the Department of Human Resources for

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<sup>21</sup> This provision was intended to help bring Alabama into compliance with “the separation mandate” of the federal Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. § 5633 (2008). The separation mandate limits the circumstances under which children (defined by Ala. Code § 12-15-101(3)) may be held with adults (defined by Ala. Code § 12-15-102(1)). Federal law incorporates each state’s definition of a child. If an 18-year-old meets the definition of child set forth in Ala. Code § 12-15-102(3), nothing in federal or state law prohibits that child from being held in a juvenile detention center.

investigations, reports, and recommendations those complaints on children in need of supervision.

**§12-15-119.**

After a verified complaint has been filed and before a petition alleging delinquency or in need of supervision is filed, the juvenile court intake officer, subject to the direction of the juvenile court, may give counsel and advice to the parties for the purpose of an informal adjustment pursuant to rules of procedure adopted by the Supreme Court of Alabama.

**§12-15-120.**

- (a) ***Delinquency, child in need of supervision, and dependency cases and proceedings pursuant to Section 12-15-132<sup>22</sup>*** before the juvenile court shall be initiated by the filing of a petition by the juvenile court intake officer who shall receive verified complaints and proceed thereon pursuant to rules of procedure adopted by the Supreme Court of Alabama.
- (b) ***A petition alleging that a child is a delinquent child, dependent child, or a child in need of supervision shall not be filed by a juvenile court intake officer unless the juvenile court intake officer has determined and endorsed upon the petition that the juvenile court has subject matter jurisdiction and venue over the case and that the filing of the petition is in the best interests of the public and the child.<sup>23</sup>***

**§12-15-121.**

- (a) A juvenile petition alleging delinquency, in need of supervision, or dependency may be signed by any person ***18 years of age or older, other than a juvenile court intake officer,<sup>24</sup>*** who has knowledge of the facts alleged or is informed of them and believes that they are true. However, the person signing a dependency petition, in the petition or in an attached affidavit, shall give information, if reasonably ascertainable, as required in Section 30-3B-209.
- (b) A petition shall be entitled "In the matter of \_\_\_\_\_, a child" and shall be made under oath.

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<sup>22</sup> This new language clarifies the specific categories of cases that must be initiated with an intake officer.

<sup>23</sup> This provision codifies Rule 12 of the Alabama Rules of Juvenile Procedure by requiring specific findings by a juvenile court intake officer as conditions precedent to the filing of a delinquency, dependency, or CHINS petition. Before a formal petition may be filed, the intake officer must determine and endorse upon the petition that the court has subject matter jurisdiction and "that the filing of the petition is in the best interests of the public and the child."

<sup>24</sup> This new language clarifies that a person must be at least 18 years of age to sign a petition. It also clarifies that a juvenile court intake officer is not authorized to sign a petition on behalf of a party. A juvenile court intake officer is "a juvenile probation officer or an employee of the judicial branch of government, who is neutral and detached from executive and legislative branch activities." *See* Ala. Code § 12-15-102(11) (2009). Juvenile intake officers have the authority and the power to formally charge a juvenile by placing the complainant under oath and hearing testimony. By signing the complaint, an intake officer would effectively become a witness in the case, which would be fundamentally inconsistent with his or her role as a neutral and detached judicial officer.

- (c) The petition shall set forth with specificity all of the following:
  - (1) The facts which bring the child under the jurisdiction of the juvenile court, the facts constituting the alleged dependency, delinquency, or need of supervision and the facts showing that the child is in need of supervision, treatment, rehabilitation, care, or the protection of the state, as the case may be.
  - (2) The name, age, and residence address, if known, of the child on whose behalf the petition is brought.
  - (3) The names and residence addresses, if known to the petitioner, of the parent, legal guardian, or legal custodian of the child. If no parent, legal guardian, or legal custodian resides or can be found within the state or if their respective places of residence are unknown, the name of any known adult relative residing within the county or, if there be none, the known adult relative residing nearest to the location of the juvenile court.
  - (4) The place of detention of the child and the time he or she was taken into custody, if the child in custody is alleged to be delinquent or in need of supervision.
- (d) When any of the facts required by subsection (c) are not known, except the facts required by subdivision (4) of subsection (c), the petition shall so state.

**§12-15-122.**

- (a) After a petition alleging delinquency, in need of supervision, or dependency has been filed, the juvenile court shall direct the issuance of summonses to be directed to the child if he or she is 12 or more years of age, to the parents, legal guardian, or other legal custodian, and to other persons who appear to the juvenile court to be proper or necessary parties to the proceedings, requiring them to appear personally before the juvenile court at the time fixed to answer or testify as to the allegations of the petition. Where the legal custodian is summoned, the parent or legal guardian, or both, shall also be served with a summons.
- (b) A copy of the petition shall be attached to each summons.
- (c) The summons shall direct the parents, legal guardian, or other legal custodian having the custody or control of the child to bring him or her to the hearing.
- (d) An adult who is a party may waive service of the summons by written stipulation or by voluntary appearance at the hearing.

**§12-15-123.**

Service of summonses in cases filed in the jurisdiction of the juvenile court shall be pursuant to rules of procedure adopted by the Supreme Court of Alabama.

**§12-15-124.**

The juvenile court shall make interlocutory and final dispositional orders in those cases in which a party or parties have been served by publication in accordance with rules adopted by the Supreme Court of Alabama.

**§12-15-125.**

- (a) A child *or minor*<sup>25</sup> may be taken into custody for any of the following reasons:
- (1) Pursuant to an order of the juvenile court.
  - (2) By a law enforcement officer having reasonable grounds to believe that the child *or minor* has run away from a juvenile detention, residential, shelter, or other care facility.
  - (3) By a law enforcement officer having reasonable grounds to believe that the child *or minor* is suffering from an illness or injury or is in immediate danger from the surroundings of the child *or minor* and that the immediate removal of the child *or minor* from those surroundings is necessary for the protection of the health and safety of the child *or minor*.
- (b) In addition to the grounds listed in subsection (a), a child may also be taken into custody for any of the following reasons:
- (1) By a law enforcement officer for an alleged delinquent act pursuant to the laws of arrest;
  - (2) By a law enforcement officer who has reasonable grounds to believe that the child has run away from his or her parents, legal guardian, or other legal custodian.
  - (3) By a law enforcement officer who has reasonable grounds to believe that the child has no parent, legal guardian, legal custodian, or other suitable person willing and able to provide supervision and care for the child; or
  - (4) By a juvenile probation officer pursuant to Section 12-15-107.

**§12-15-126.**

If it appears from a sworn statement, written or verbal, presented to the juvenile court that a child needs to be placed in detention or shelter or other care, the juvenile court may issue a pick-up order that a law enforcement officer or other person authorized by this chapter shall at once take the child into custody and take him or her to the place of detention or shelter or other care designated by the juvenile court.

**§12-15-127.**

- (a) A person taking a child into custody without an order of the juvenile court shall, with all possible speed, and in accordance with this chapter and the rules of court pursuant thereto:
- (1) Release the child to the parents, legal guardian, or legal custodian of the child or other suitable person *able to provide supervision and care for the child*<sup>26</sup> and issue verbal counsel and warning as may be appropriate.

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<sup>25</sup> This provision clarifies that in certain circumstances, a law enforcement officer's authority to take a young person into custody for his or her own protection includes minors (18-year-olds) as well as children (generally persons who are under 18 years of age).

<sup>26</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, the Code implied that a child could be detained solely because his or her parent, guardian, or legal custodian was not "willing to provide supervision and care for the child." Ala. Code § 12-15-58(a)(1) (2008). The 2008 Act deleted the word "willing" to avoid that

- (2) Release the child to the parents, legal guardian, or legal custodian of the child upon his or her promise to bring the child before the juvenile court when requested, unless the placement of the child in detention or shelter care appears required. If a parent, legal guardian, or other legal custodian fails, when requested, to bring the child before the juvenile court as provided in this section, the juvenile court may issue an order directing that the child be taken into custody and brought before the juvenile court.
  - (3) Bring the child, if not released, to the place designated by the juvenile court and give written notice of the action taken and the reasons for taking the child into custody to the juvenile court intake officer, to the parent, legal guardian, or other legal custodian of the child, and, in the case of dependency, to the Department of Human Resources.<sup>27</sup>
- (b) Prior to authorizing the admission of the child to detention, shelter, or other care, the juvenile court intake officer, on an allegation of delinquency or in need of supervision or of dependency, shall review the need for detention or shelter care, including reviewing the written notice of the person who took the child into custody without an order of the juvenile court, and shall direct the law enforcement officer or other person currently having the child in custody to release the child unless detention or shelter care is required pursuant to Section 12-15-128. The juvenile court intake officer may allow release with or without electronic or telephone monitoring pending the 72-hour hearing requirement.
- (c) A person taking a child *or minor* into custody pursuant to subdivision (3) of Section 12-15-125 shall bring the child *or minor* to a medical or mental health facility if the child *or minor* is believed to be suffering from a serious mental health condition, illness, or injury which requires either prompt treatment or prompt diagnosis for the welfare of the child *or minor* or for evidentiary purposes, and, in the most expeditious manner possible, give notice of the action taken together with a statement of taking the child *or minor* into custody in writing to the court, the parents, legal guardian or other legal custodian and to the intake office and to the Department of Human Resources in the case of a dependency allegation.<sup>28</sup>

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implication. The fact that a parent, legal guardian, or legal custodian is not willing to assume custody is not a sufficient basis to hold a child in a juvenile detention center.

<sup>27</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, the Alabama Code referred to curfew detention facilities. See Ala. Code § 12-15-58(a)(3) (2008) (“In curfew violation cases, if the child is not released, the child may be taken to a facility which has been previously approved by the court as a curfew detention facility. A child taken to a curfew detention facility shall be released within eight hours.”). These references have been deleted in order to help bring the State into compliance with federal law, which prohibits the detention of curfew violators and other status offenders. See 42 U.S.C. § 5633(a)(11) (2008) (requiring states to provide that “juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult . . . shall not be placed in secure detention facilities or secure correctional facilities”); 28 C.F.R. § 31.304 (defining status offender as a “juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult”).

<sup>28</sup> The addition of the words “or minor” clarifies that the duties set forth in this subsection are also owed to 18-year-olds.

**§12-15-128.**

- (a) An allegedly delinquent child, dependent child, or child in need of supervision lawfully taken into custody shall immediately be released, upon the ascertainment of the necessary facts, to the care, custody, and control of the parent, legal guardian, or legal custodian of the child or other suitable person able to provide supervision and care for the child unless the juvenile court *or juvenile court intake officer, subject to the limitations in Section 12-15-208,*<sup>29</sup> finds any of the following:
- (1) The child has no parent, legal guardian, legal custodian, or other suitable person *able to provide supervision and care for the child.*<sup>30</sup>
  - (2) The release of the child would present a clear and substantial threat of a serious nature to the person or property of others and where the child is alleged to be delinquent.
  - (3) The release of the child would present a serious threat of substantial harm to the child.
  - (4) The child has a history of failing to appear for hearings before the juvenile court.
  - (5) The child is alleged to be delinquent for possessing a pistol, short-barreled rifle, or short-barreled shotgun, in which case the child may be detained in a juvenile detention facility until the hearing required by Section 12-15-207. Pistol as used in this section shall be as defined in subdivision (1) of Section 13A-11-70. Short-barreled rifle and short-barreled shotgun as used in this section shall be as defined in Section 13A-11-62.
- (b) The criteria for continuing the allegedly delinquent child or child in need of supervision in detention or shelter or other care, or for continuing the allegedly dependent child in shelter or other care, as set forth in subsection (a) shall govern the decisions of all persons involved in determining whether the continued detention or shelter care is warranted pending juvenile court disposition and those criteria shall be supported by clear and convincing evidence in support of the decision not to release the child.
- (c) *In releasing a child, a juvenile court or the juvenile court intake officer may impose restrictions on the travel, association, or place of abode of the child or place the child under the supervision of a department, agency, or organization agreeing to supervise him or her, and may place the child under supervision such as electronic or telephone monitoring, if available. A child, once placed in detention, may also be released pursuant to the same conditions should there be a need to release the child from a juvenile detention facility because of an overcrowded population.*<sup>31</sup>

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<sup>29</sup> This provision allows juvenile court intake officers to make the findings necessary to keep a child in custody, subject to the limitations contained in §12-15-208, many of which are required by the federal Juvenile Justice and Delinquency Prevention Act. See 42 U.S.C. § 5633 (2008).

<sup>30</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, the Code implied that a child could be detained solely because his or her parent, guardian, or legal custodian was not “willing to provide supervision and care for the child.” Ala. Code § 12-15-58(a)(1) (2008). The 2008 Act deleted the word “willing” to avoid that implication. The fact that a parent, legal guardian, or legal custodian is not willing to assume custody is not a sufficient basis to hold a child in a juvenile detention center.

<sup>31</sup> This subsection provides explicit authority for the imposition of conditions of release from detention. Under this provision, the court or a juvenile intake officer may order that a child be placed in a detention alternative instead of

**§12-15-129.**

All hearings pursuant to this chapter shall be conducted by the juvenile court without a jury and separate from other proceedings. The general public shall be excluded from delinquency, in need of supervision, or dependency hearings and only the parties, their counsel, witnesses, and other persons requested by a party shall be admitted. Other persons as the juvenile court finds to have a proper interest in the case or in the work of the juvenile court may be admitted by the juvenile court on condition that the persons refrain from divulging any information which would identify the child under the jurisdiction of the juvenile court or family involved. If the juvenile court finds that it is in the best interests of the child under the jurisdiction of the juvenile court, the child may be temporarily excluded from the hearings, except while allegations of delinquency or in need of supervision are being heard.

**§12-15-130.**

- (a) Where there are indications that a child may be physically ill, mentally ill, or mentally retarded, *or an evaluation of a child is needed to help determine issues of competency to understand judicial proceedings, mental state at the time of the offense, or the ability of the child to assist his or her attorney,*<sup>32</sup> the juvenile court, on its own motion or motion by the prosecutor, or that of the child's attorney or guardian ad litem for the child, may order the child to be examined at a suitable place by a physician, psychiatrist, psychologist, or other qualified examiner, under the supervision of a physician, psychiatrist, or psychologist who shall certify the findings of the examiner in writing, or a qualified examiner approved by the Department of Mental Health and Mental Retardation prior to a hearing on the merits of the petition.
- (b) The examinations made prior to a hearing as provided for in subsection (a) shall be conducted on an outpatient basis unless the juvenile court finds that placement in a hospital or other appropriate facility is necessary.
- (c) The juvenile court, after a hearing, may order an examination, as described in subsection (a), of a parent, legal guardian, or legal custodian who gives his or her consent and whose ability to care for or supervise a child before the juvenile court is at issue.
- (d) The juvenile court, either before or after a hearing, may cause any child under the jurisdiction of the juvenile court to be given a physical or mental examination, or both, by a competent physician, psychiatrist, psychologist, or other qualified examiner, under the supervision of a physician, psychiatrist, or psychologist who shall certify to the findings of the examiner in writing, or an examiner approved by the Department of Mental Health and Mental Retardation to be designated by the juvenile court, and the physician,

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secure detention. Detention alternatives include electronic monitoring, as well as alternative forms of supervision such as evening reporting centers, home detention without electronic monitoring, and mentoring/advocacy. This subsection also clarifies that a child who has been admitted to detention may be released to a detention alternative if the detention center is overcrowded. Of course, the court also has inherent authority to release a child from detention for reasons unrelated to overcrowding.

<sup>32</sup> This provision recognizes additional circumstances under which a mental or physical examination of a child may be ordered, based on similar provisions for adult defendants in Rule 11 of the Alabama Rules of Criminal Procedure.

psychiatrist, psychologist, or mental examiner shall certify to the juvenile court the condition in which the child is found.

- (e) If, upon the examination, there is reason to believe that a minor or child is mentally ill or mentally retarded, as defined by the Department of Mental Health and Mental Retardation, a petition for mental commitment of the minor or child may be filed pursuant to Article 4, commencing with Section 12-15-401.
- (f) Upon examination, if it appears that the child is in need of surgery, medical treatment or care, hospital care, or dental care, the juvenile court may cause the child to be treated by a competent physician, surgeon, or dentist or placed in a public hospital or other institution for training or care or in an approved private home, hospital, or institution, which will receive him or her for like purposes. The expense of the treatment shall be a valid charge against the county unless otherwise provided for.
- (g) The juvenile court may grant authority to order emergency medical care to any such person, agency, or department charged with the detention, temporary shelter care, or other care of a child under the jurisdiction of the juvenile court.

**§12-15-131.**

In any proceeding commenced pursuant to this chapter, on motion of the juvenile court or on motion of a party, the juvenile court may make an order restraining the conduct of any party over whom the juvenile court has obtained jurisdiction, if all of the following occur:

- (1) An order of disposition of a delinquent child, dependent child, or child in need of supervision has been made in a proceeding pursuant to this chapter.
- (2) The juvenile court finds that the conduct of the party is or may be detrimental or harmful to the delinquent child, dependent child, or child in need of supervision and will tend to defeat the execution of the order of disposition made.
- (3) Notice of the motion and the grounds therein and an opportunity to be heard thereon have been given to the party against whom the order is directed.

**§12-15-132.**

- (a) A child on probation or aftercare incident to an adjudication as a delinquent child or a child in need of supervision who violates the terms of his or her probation or aftercare may be proceeded against for a revocation of the order.
- (b) A proceeding to revoke probation or aftercare shall be commenced by the filing of a petition entitled "petition to revoke probation" or "petition to revoke aftercare." Except as otherwise provided, these petitions shall be screened, reviewed, and prepared in the same manner and shall contain the same information as provided in Sections 12-15-120 and 12-15-121. The petition shall recite the date that the child was placed on probation or aftercare and shall state the time and manner in which notice of the terms of probation or aftercare was given.
- (c) Probation or aftercare revocation proceedings shall require clear and convincing evidence. In all other respects, proceedings to revoke probation or aftercare shall be governed by the procedures, safeguards, and rights and duties applicable to delinquency and child in need of supervision cases contained in this chapter.

- (d) If a child is found to have violated the terms of his or her probation or aftercare pursuant to a revocation hearing, the juvenile court may extend the period of probation or aftercare or make any other order of disposition specified for a child adjudicated delinquent or in need of supervision.
- (e) ***A violation of probation for a child in need of supervision is not an adjudication of delinquency.***<sup>33</sup>

**§12-15-133.**

- (a) The following records, reports, and information acquired or generated in juvenile courts concerning children shall be confidential and shall not be released to any person, department, agency, or entity, except as provided elsewhere in this section:
  - (1) Juvenile legal files (including formal documents as petitions, notices, motions, legal memoranda, orders, and decrees).
  - (2) Social records, including but not limited to:
    - a. Records of juvenile probation officers.
    - b. Records of the Department of Human Resources.
    - c. Records of the Department of Youth Services.
    - d. Medical records.
    - e. Psychiatric or psychological records.
    - f. Reports of preliminary inquiries and predisposition studies.
    - g. Supervision records.
    - h. Birth certificates.
    - i. Individualized service plans.
    - j. Education records, including, but not limited to, individualized education plans.
    - k. Detention records.
    - l. Demographic information that identifies a child or the family of a child.
  - (3) State Criminal Justice Information System records.
  - (4) Juvenile criminal sex offender notification records.
- (b) The records, reports, and information described in subsection (a) shall be filed separately from other files and records of the court. ***The juvenile legal files described in subdivision (1) of subsection (a) shall be maintained in a separate file from all other juvenile records, reports, and information.***<sup>34</sup>

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<sup>33</sup> Consistent with the definition of “status offender,” in Section 12-15-201, this provision clarifies that a child in need of supervision may not be treated as a delinquent based solely on probation violations. Cf. Ala. Code § 12-15-201(4) (2009) (providing that “[a]n adjudicated status offender who violates the terms of his or her probation or aftercare remains a status offender for purposes of Section 208(a)(1), unless the child is contemporaneously adjudicated for having committed a delinquent act that is not a status offense.”).

<sup>34</sup> This provision prevents inadvertent disclosure of sensitive information by requiring that juvenile legal files be maintained separately from all other juvenile records.

- (c) Subject to applicable federal law, the records, reports, and information described in subsection (a) shall be open to inspection and copying only by the following, under the specified circumstances:
- (1) The judge, juvenile probation officers, and professional staff assigned to serve or contracted for service to the juvenile court.
  - (2) Representatives of a public or private agency or department providing supervision or having legal custody of the child.
  - (3) The parent (except when parental rights have been terminated), the legal guardian of the child, and the legal custodian of the child.
  - (4) The subject of the proceedings and his or her counsel and guardian ad litem. ***As used in this section, the term counsel means a child's attorney and an attorney for a criminal defendant who was formerly a child subject to proceedings in juvenile court.***<sup>35</sup>
  - (5) The judge, probation, and other professional staff serving a court handling criminal cases for investigating or considering youthful offender applications for an individual, who, prior thereto, had been the subject of proceedings in juvenile court.
  - (6) The judge, probation, and other professional staff, including the prosecutor and the attorney for the defendant, serving a court handling criminal cases for ***completing sentencing standards worksheets***<sup>36</sup> and considering the sentence upon a person charged with a criminal offense who, prior thereto, had been the subject of proceedings in juvenile court.
  - (7) The principal of the school in which the child is enrolled, or the representative of the principal, upon written petition to the juvenile court setting forth the reasons why the safety or welfare, or both, of the school, its students, or personnel, necessitate production of the information and without which the safety and welfare of the school, its students, and personnel, would be threatened; provided, however, certain information concerning children adjudicated delinquent of certain offenses shall be provided as set forth in Section 12-15-217.
  - (8) ***The Alabama Sentencing Commission, as set forth in Section 12-25-11.***<sup>37</sup>
- (d) ***Upon determining a legitimate need for access, and subject to applicable federal law, the juvenile court may also grant access to specific records, reports, and information to another person, department, entity, or agency. The determination of legitimate need by the juvenile court shall be based upon a written request filed with the juvenile court stating the following:***

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<sup>35</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, the Alabama Code did not clearly allow an attorney for a criminal defendant to have access to the juvenile court records of an adult client. The 2008 Act amended this provision to clarify that defense attorneys are authorized to review and obtain copies of their clients' juvenile court records.

<sup>36</sup> This provision allows these specified court officials to inspect and copy juvenile court records for the purpose of completing sentencing standards worksheets.

<sup>37</sup> This provision allows the Alabama Sentencing Commission to inspect and copy juvenile court records.

- (1) *The reason the person, department, entity, or agency is requesting the information.*
  - (2) *The use to be made of the information.*
  - (3) *The names of those persons or entities that will have access to the information.*<sup>38</sup>
- (e) Petitions, motions, juvenile court notices, or dispositions shall be open to inspection *and copying*<sup>39</sup> by the victim.<sup>40</sup>
- (f) *Subject to applicable confidentiality disclosure and case restrictions imposed by federal or state law, confidential juvenile legal files, as described in subdivision (1) of subsection (a), may be placed on an automated information sharing system to be shared by those persons, departments, agencies, or entities who are entitled to access pursuant to this section.*<sup>41</sup>
- (g) Except for the purposes permitted and in the manner provided by this section, whoever discloses or makes use of or knowingly permits the use of information identifying a child, or the family of a child, who is or was under the jurisdiction of the juvenile court, where this information is directly or indirectly derived from the records of the juvenile court or acquired in the course of official duties, upon conviction thereof, shall be guilty of a Class A misdemeanor under the jurisdiction of the juvenile court *and also may be subject to civil sanctions.*<sup>42</sup> Provided, however, that nothing in this section shall be construed to prohibit or otherwise limit counsel from disclosing confidential information obtained from the juvenile court file of the child as needed to investigate the case of the client or prepare a defense for that client, provided that the disclosure is in furtherance of counsel's representation of the party.

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<sup>38</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, the Alabama Code allowed the disclosure of confidential information concerning juveniles to otherwise unauthorized parties who demonstrated a "legitimate interest in the case or in the work of the court" in the information at a hearing before the juvenile court. *See* Ala. Code § 12-15-100(a)(3) (2008) (authorizing inspection and copying of confidential records by "[a]ny other person or agency that the juvenile court determines, after a hearing has a legitimate interest in the case or in the work of the court"). This provision replaces the "legitimate interest" standard with a "legitimate need" standard and will facilitate necessary disclosures by replacing the hearing requirement with a written procedure.

<sup>39</sup> This provision allows not only inspection of the specified documents by the victim of an offense, but also copying of the documents.

<sup>40</sup> The phrase "or the victim's representatives" has been deleted to preserve access to certain records by the victim of an offense, but require victims' representatives to satisfy the generally applicable legitimate need standard. Ala. Code § 12-15-100(d) (2008) ("Petitions, motions, court notices, or dispositions shall be open to inspection by the victim *or the victim's representatives.*") (emphasis added).

<sup>41</sup> This provision allows electronic access to juvenile court records by persons, departments or state agencies already authorized to inspect and copy these records in paper form.

<sup>42</sup> This provision authorizes the imposition of civil sanctions against persons who violate the confidentiality provisions of Section 12-15-133.

- (h) *Anytime that a child commits a violent offense and is adjudicated delinquent, if that child as an adult commits the same or a similar offense, the court records pertaining to the juvenile offense may be used in the prosecution of the adult offense.*<sup>43</sup>

**§12-15-134.**

- (a) Law enforcement agencies shall take special precautions to ensure that law enforcement records and files concerning a child will be maintained in a manner and pursuant to those safeguards that will protect against disclosure to any unauthorized person, department, agency, or entity. Unless a charge of delinquency is transferred for criminal prosecution pursuant to Section 12-15-203 or the juvenile court otherwise orders in the interests of the child or of national security, the law enforcement records and files with respect to the child shall not be open to public inspection nor their contents disclosed to the public.
- (b) Law enforcement records and files described in subsection (a) shall be open to inspection and copying by the following:
- (1) A juvenile court having a child currently before it in any proceeding.
  - (2) Personnel of the Department of Human Resources, the Department of Youth Services, public and private institutions or agencies of which the child under the jurisdiction of the juvenile court has been placed into the legal custody and those responsible for his or her supervision after release.
  - (3) Law enforcement officers of other jurisdictions when necessary for the discharge of their current official duties.
  - (4) The probation and other professional staff of a court in which the child is subsequently convicted of a criminal offense or adjudicated as a youthful offender for the purpose of a presentence report or other dispositional proceedings, officials of penal institutions and other penal facilities into which the child is placed or a parole board in considering his or her parole or discharge or in exercising supervision over him or her.
  - (5) The probation and other professional staff serving a court handling criminal cases when investigating or considering youthful offender applications.
  - (6) The parent, except when parental rights have been terminated, or legal guardian of the child and the child's attorney and guardian ad litem.
  - (7) The principal of the school in which the child is enrolled, or the representative of the principal, upon written petition to the juvenile court setting forth the reasons why the safety or welfare, or both, of the school, its students, or personnel necessitate production of the information and without which the safety and welfare of the school, its students, and personnel would be threatened.
- (c) Law enforcement records may be viewed by victims during the investigation of a crime at the discretion of the investigating officer.
- (d) All law enforcement agencies shall report to the Alabama Criminal Justice Information Center that a child has been charged with an act of delinquency along with any pertinent

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<sup>43</sup> Where a defendant in a court exercising criminal jurisdiction is accused of a violent criminal offense, and where the defendant has a juvenile adjudication for the same or a similar offense, the record of the juvenile adjudication may be used in the prosecution of the criminal offense.

identifying information or historical data concerning that child, when either of the following occurs:

- (1) The child is taken into custody and charged with an act of delinquency for an act which would constitute a felony if committed by an adult.
  - (2) The child is taken into custody and charged with an act of delinquency for an act which would constitute a misdemeanor, according to subdivision (2) of Section 41-9-622 if committed by an adult.
- (e) Nothing in this section shall be construed to prohibit or otherwise limit counsel from disclosing confidential law enforcement records relating to a client as needed to investigate the case of the client or prepare a defense for that client, provided that the disclosure is in furtherance of counsel's representation of the party.
- (f) Except as provided in this section, whoever directly or indirectly discloses or makes use of or knowingly permits the use of information described in this section that identifies a child, or the family of a child, who is or was under the jurisdiction of the juvenile court, upon conviction thereof, shall be guilty of a Class A misdemeanor under the jurisdiction of the juvenile court.

**§12-15-135.**

- (a) Fingerprints of a child who has been charged with a delinquent act shall be taken by the law enforcement agency taking the child into custody. The prints may be retained in a local file and a copy shall be filed with the Alabama Bureau of Investigation.
- (b) If latent fingerprints are found during the investigation of a delinquent act and a law enforcement officer has reason to believe that they are those of the child in custody, the officer may fingerprint the child regardless of age or delinquent act for purpose of immediate comparison with the latent fingerprints. The prints may be retained in a local file and copies shall be sent to the Alabama Bureau of Investigation.
- (c) Special precautions shall be taken to ensure that the fingerprints will be maintained in a manner and pursuant to safeguards as to limit their use to inspection for comparison purposes by law enforcement officers or by staff of the depository only in the investigation of a crime.
- (d) A child who is charged with a delinquent act shall be photographed by the law enforcement agency taking the child into custody for criminal identification purposes. A child in custody for any other reason shall not be photographed for criminal identification purposes without the consent of the juvenile court. The photographs shall be retained in a local file with the same safeguards in place as for fingerprints.
- (e) Blood or other samples necessary for DNA testing may be taken for criminal identification purposes from a child who is charged with a delinquent act that would constitute a Class A or B felony if committed by an adult. The samples, if taken, shall be submitted for DNA testing and the DNA records shall be filed with the Department of Forensic Sciences. Special precautions shall be taken to ensure that the DNA records will be maintained in a manner and pursuant to safeguards that will limit their use to inspection for identification purposes by law enforcement officers or by staff of the testing facility only in the investigation of a crime.

- (f) Any person who willfully violates this section, upon conviction thereof, shall be guilty of a Class A misdemeanor under the jurisdiction of the juvenile court.

**§12-15-136.**

- (a) On motion of a person who has been the subject of a delinquency or child in need of supervision petition, the juvenile court may order the sealing of the legal and social files and records of the juvenile court pertaining to the person if it finds that:
- (1) Two years have elapsed since the final discharge of the person from legal custody or supervision or two years after the entry of any other order of the juvenile court not involving custody or supervision; and
  - (2) ***The person has not been convicted or adjudicated delinquent or a youthful offender of any felony or a misdemeanor involving sexual offenses, drugs, weapons, or violence, or threats of violence, prior to the filing of the motion and no proceeding is pending seeking the conviction or adjudication.***<sup>44</sup>
- (b) The motion and the order may include the records, reports, or information specified in Section 12-15-133.
- (c) Notice of the motion shall be given ***by the clerk of the juvenile court***<sup>45</sup> to all of the following:
- (1) The prosecutor.
  - (2) The authority granting the discharge if the final discharge was from an institution, parole, or probation.
  - (3) The law enforcement officers, department, agency, and central depository having custody of the files and records specified in Section 12-15-133 and included in the motion.
- (d) ***Upon the entry of the order, the proceedings in the case shall be sealed. The juvenile court, by order in an individual case, may permit inspection by or release of information in the records to any clinic, hospital, or agency which has the person under care.***<sup>46</sup>

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<sup>44</sup> This provision eliminates the phrase “a felony or misdemeanor involving moral turpitude” by substituting “any felony or a misdemeanor involving sexual offenses, drugs, weapons, or violence, or threats of violence.” The provision also clarifies that a subsequent youthful offender adjudication – like a subsequent delinquency adjudication – for such an offense would bar the filing of a motion to seal.

<sup>45</sup> This provision clarifies that the clerk of the juvenile court is the official charged with providing the notices required by this section.

<sup>46</sup> This provision was amended to eliminate language suggesting that a sealing order effectively nullifies past proceedings. Specifically, the following language has been eliminated from the Code: “[the proceedings in the case shall be] treated as if they never occurred and all index references shall be deleted and the court and law enforcement officers and departments shall reply and the person may reply to any inquiry that no record exists with respect to such person. Inspection of the files and records included in the order may thereafter be permitted by the court only upon motion by the person who is the subject of such records and only to those persons named in the motion.” Ala. Code § 12-15-103(d) (2008).

- (e) Any adjudication of delinquency or youthful offender or conviction of a felony or misdemeanor involving sexual offenses, drugs, weapons, or violence, or threats of violence, subsequent to sealing shall have the effect of nullifying the sealing order.

**§12-15-137.**

- (a) A person who has been the subject of a delinquency petition and has met the conditions stipulated in subdivision (2) of subsection (a) of Section 12-15-136, five years after reaching the age of majority, may file a motion requesting the destruction of all records pertaining to his or her case. If the juvenile court grants the motion, copies of the order shall be sent to all offices, departments, or agencies that are repositories of the records, and all the offices, departments, and agencies shall comply with the order.
- (b) Upon the entry of a destruction order, all references including arrest, complaints, referrals, petitions, reports, and orders shall be removed from all department or agency official and institutional files and destroyed.
- (c) A person who has been the subject of a delinquency petition shall be notified of his or her rights under subsection (a) of Section 12-15-136 and subsection (a) of this section and at the time of his or her final discharge.

**§12-15-138.**

The juvenile court, at any time after a dependency petition has been filed, or on an emergency basis, may enter an order of protection or restraint to protect the health or safety of a child subject to the proceeding.

**§12-15-139.**

A protection or restraint order may be issued by the juvenile court, after notice and a hearing, upon proper showing by a preponderance of the evidence that an order is necessary to protect the health or safety of the child subject to a juvenile court proceeding or is otherwise in the best interests of the child.

**§12-15-140.**

- (a) The protection or restraint order may set forth reasonable conditions of behavior to be observed by a person who is a parent, legal guardian, legal custodian, or other person legally responsible for the care of the child subject to a juvenile court proceeding, or the spouse of the parent, or spouse of any other person legally responsible for the care of the child, or relatives of any of the above, or residents of the home of the child, or any other person.
- (b) The protection or restraint order, among other things, may require any person or persons to do any of the following:
  - (1) Stay away from the home in which the child subject to a juvenile court proceeding resides, the family or the child.
  - (2) Vacate the home in which the child subject to a juvenile court proceeding resides.

- (3) Permit a parent, legal guardian, or legal custodian to visit the child subject to a juvenile court proceeding at stated periods pursuant to stated conditions or deny visitation.
- (4) Deny access to the home in which the child subject to a juvenile court proceeding resides to persons who have been harmful to the child.
- (5) Refrain from acts of commission or omission that tend to make the home in which the child subject to a juvenile court proceeding resides an unsafe place for the child.
- (6) Cooperate with any treatment or Department of Human Resources service plan found necessary to the best interests of the child subject to a juvenile court proceeding.
- (7) Obtain or participate in individual or family counseling.
- (8) Refrain from abusive, disruptive, or harassing behavior toward the child subject to a juvenile court proceeding, the other parent, legal guardian, or legal custodian.
- (9) Limit or refrain from contact or communication with the child subject to a juvenile court proceeding, family, children in the home, or any other child.
- (10) Pay temporary support for the child subject to a juvenile court proceeding or other family members; pay the costs of medical, psychiatric, or physical treatment or care of the child or other family members.

**§12-15-141.**

The juvenile court may enter an ex parte order of protection or restraint on an emergency basis, without prior notice and a hearing, upon a showing of verified written or verbal evidence of abuse or neglect injurious to the health or safety of a child subject to a juvenile court proceeding and the likelihood that the abuse or neglect will continue unless the order is issued. If an emergency order is issued, a hearing, after notice, shall be held within 72 hours of the written evidence or the next judicial business day thereafter, to either dissolve, continue, or modify the order.

**§12-15-142.**

After notice and opportunity for a hearing afforded to a person subject to a protection or restraint order, the order may be modified or extended for a further specified period, or both, or may be terminated if the juvenile court finds that the best interests of the child subject to a juvenile court proceeding will be served thereby.

**§12-15-143.**

- (a) Any person violating an order of protection or restraint shall be punishable for contempt of court, as in other cases, and upon a finding of willful conduct, shall be responsible for the payment of court costs and attorney fees incurred by any person in seeking enforcement of the order.
- (b) Any person may also be charged with a willful violation of a protection order pursuant to Section 30-5A-3(c).

**§12-15-144.**

The provisions of Sections 12-15-138 to 12-15-143, inclusive, shall be construed in pari materia with Sections 30-5-1 to 30-5-11, inclusive, as amended, and other criminal laws relating to child abuse except to the extent that there is conflict herewith.

**ARTICLE 2.**

**DELINQUENCY AND CHILDREN IN NEED OF SUPERVISION.**

**§12-15-201.**

For purposes of this article, the following terms and phrases shall have the following meanings:

- (1) **AVERAGE COST OF DETENTION.** The average cost of detention of children as determined from experience in Alabama and as computed by the Department of Youth Services.
- (2) **CONSENT DECREE.** An order, entered after the filing of a delinquency or child in need of supervision petition and before the entry of an adjudication order, suspending the proceedings and placing the child under supervision pursuant to terms and conditions agreed to between the child and his or her parent, legal guardian, or legal custodian and approved by the juvenile court.
- (3) **NONOFFENDER.** A child who is subject to the jurisdiction of the juvenile court for reasons other than the legally prohibited conduct of the child.
- (4) **STATUS OFFENDER.** *A status offender is an individual who has been charged with or adjudicated for conduct that would not, pursuant to the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. An adjudicated status offender who violates the terms of his or her probation or aftercare remains a status offender for purposes of Section 12-15-208(a)(1), unless the child is contemporaneously adjudicated for having committed a delinquent act that is not a status offense.<sup>47</sup> Status offenses include, but are not limited to, the following:*
  - a. *Truancy.*
  - b. *Violations of municipal ordinances applicable only to children.*
  - c. *Runaway.*
  - d. *Beyond control.*
  - e. *Consumption or possession of tobacco products.*

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<sup>47</sup> This new definition helps bring Alabama into compliance with the federal Juvenile Justice and Delinquency Prevention Act, which restricts the placement of status offenders in secure custody. See 42 U.S.C. § 5633(a)(11) (2008) (requiring states to provide that “juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult . . . shall not be placed in secure detention facilities or secure correctional facilities”); 28 C.F.R. § 31.304 (defining status offender as a “juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult”). Consumption or possession of tobacco products remain under the jurisdiction of the district or municipal court under Ala. Code § 28-11-14 (2008).

The final sentence of subsection (4) clarifies that a status offender who violates the terms of his or her probation may not be treated as a delinquent child unless the child is also adjudicated for committing a delinquent act. .

- f. Possession and consumption of alcohol, which is a status offense by federal law, even though considered a delinquent act by state law.*
  - g. Driving under the influence pursuant to Section 32-5A-191(b), which is a status offense by federal law, even though considered a delinquent act by state law.*
- (5) **VALID COURT ORDER.** *An order given by a juvenile court judge to a child who was brought before the juvenile court and made subject to the order; and who received, before the issuance of the order, the full due process rights guaranteed to the child by the Constitution of the United States.*<sup>48</sup>

**§12-15-202.**

- (a) Rights of the child when taken into custody. When a child is taken into custody, the person taking the child into custody shall inform the child of all of the following, *in language understandable to the child:*<sup>49</sup>
- (1) The reason that the child is being taken into custody.
  - (2) That the child has the right to communicate with his or her parent, legal guardian, or legal custodian whether or not that person is present. If necessary, reasonable means will be provided for the child to do so.
  - (3) The child has the right to communicate with an attorney. If the child does not have an attorney, one will be appointed for him or her. If the child has an attorney who is not present, reasonable means shall be provided for the child to communicate with the attorney.
- (b) Rights of the child before being questioned while in custody. Before the child is questioned about anything concerning the charge on which the child was taken into custody, the person asking the questions shall inform the child of the following rights:
- (1) That the child has the right to a child's attorney.
  - (2) That if the child is unable to pay for a child's attorney and if the parent, legal guardian, or legal custodian of the child has not provided a child's attorney for the child, one will be appointed.
  - (3) That the child is not required to say anything and that anything the child says may be used against the child.
  - (4) That the child has a right to communicate with his or her parent, legal guardian, or legal custodian, whether or not that person is present. If necessary, reasonable means will be provided for the child to do so.
  - (5) That even if the child's attorney is not present or has not yet been appointed, the child has the right to communicate with him or her and that, if necessary, reasonable means will be provided for the child to do so.

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<sup>48</sup> This definition was added to ensure compliance with federal law. See 42 USC § 5603(16) (2008).

<sup>49</sup> This provision requires that communications to a child regarding his or her rights must be made in language that is understandable to the child.

- (c) When a child is brought to the juvenile court intake office or delivered to a juvenile detention facility or shelter care facility, the juvenile court intake officer or person in charge of the facility shall immediately inform the child of the following:
  - (1) The reason for the detention of the child.
  - (2) The right of the child to a hearing to determine if continued detention or shelter care is needed as provided in this article.
  - (3) That the parent, legal guardian, or legal custodian will be informed of the whereabouts of the child and the reason for the detention of the child.
- (d) Rights of the child upon detention in a juvenile court intake office or juvenile detention facility or shelter care facility. When a child is detained pursuant to subsection (c), the person in charge of the juvenile court intake office or the facility shall notify the child of the rights of the child as set out in subsection (b).
  - (1) The person in charge of the juvenile court intake office or the juvenile detention facility, in the most expeditious manner possible, shall ensure that the parent, legal guardian, or legal custodian of the child is notified of the whereabouts of the child and the reason for the detention of the child. Except in the situation provided herein, the person in charge shall also inform the parent, legal guardian, or legal custodian of the child of the rights of the child and of the right of the parent, legal guardian, or legal custodian to be represented by counsel. The parent, legal guardian, or legal custodian shall also be informed of the right of the child to remain silent. However, if the child has been read his or her rights, understands those rights, and knowingly, voluntarily, and intelligently waives those rights, then it is not necessary that the parent, legal guardian, or legal custodian be notified of the rights of the child or be present during the interrogation. This notification to the parent, legal guardian, or legal custodian, if practicable, shall be made in person or by telephone; otherwise, the communication shall be by the best means practicable.
  - (2) A written statement containing the information in subdivision (1) shall be given to the parent, legal guardian, or legal custodian of the child at the first meeting with the juvenile court intake officer or person in charge of the facility. If the parent, legal guardian, or legal custodian does not appear at the facility within 24 hours after the placement of the child in the facility, or if the parent, legal guardian, or legal custodian fails to attend the detention or shelter care hearing, this written statement shall be mailed if an address may reasonably be ascertained.
- (e) Rights of parties once a petition is filed. If a petition has been filed, the parties shall be informed of their rights as set out in subsections (b) and (d). Additionally, the juvenile court judge or referee shall inform the parties at the commencement of the detention or shelter or other care hearing of the contents of the petition and all of the parties shall be given an opportunity to admit or deny the allegations of the petition.
- (f) Additional rights of the child include all of the following:
  - (1) The child has a right to be represented by a child's attorney at all stages of a juvenile court proceeding under this article.
    - a. In any proceeding in which there is a possibility that the child may be placed in an institution in which the freedom of the child may be curtailed,

and in which proceeding a child's attorney has not been retained, a child's attorney shall be appointed for the child.

- b. In all other juvenile court proceedings, the juvenile court may appoint a child's attorney in any case upon request or when it deems the appointment to be in the interests of justice.
- c. ***In addition to those duties referenced in subdivision (5) of Section 12-15-102, the duties of a child's attorney include, but are not limited to, the following:***
  1. ***Irrespective of the age of the child, meet with the child prior to juvenile court hearings, when apprised of emergencies or significant events impacting on the child, and as necessary to prepare for the juvenile court proceeding. The child's attorney shall explain, in terms understandable to the child, what is expected to happen at each stage of the proceedings, as well as the rights of the child at each stage of the proceedings.***
  2. ***Conduct a prompt, thorough, and independent investigation of the facts, the health, family, social history, and educational background of the child, possible defenses, and applicable law, and seek discovery from the prosecution.***
  3. ***Based upon the investigation, advise the child, in terms he or she can understand, as to his or her options for proceeding in the case and the likely outcomes of the various courses of action. Conduct the defense in accordance with the expressed interests of the client regarding whether to seek release from detention, whether to admit or deny the allegations, whether to testify, whether to enter into a negotiated settlement, whether to appeal, whether to accept or oppose a recommended disposition, and the overall goals of the representation.***
  4. ***Attend all hearings scheduled by the juvenile court and file all necessary pleadings and motions to promote the expressed interests of the child and protect his or her rights.***
  5. ***Maintain familiarity with the dispositional resources available through the juvenile court and in the community, and recommend appropriate services to the child and the family. Advocate in the dispositional process to protect the rights of the client, meet the goals of the representation, and ensure that the juvenile court is aware of any special needs of the child that should be addressed in the dispositional process.***<sup>50</sup>

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<sup>50</sup> This provision clarifies the duties owed to a child by his or her counsel. These statutory duties define the components of competent representation, required by Alabama Rule of Professional Conduct 1.1, for lawyers handling CHINS, delinquency, and involuntary commitment cases. The duties listed in Ala. Code § 12-15-202(f) also inform the application of Rule 1.2 (scope of representation), Rule 1.3 (duty of diligence), and Rule 1.4 (duty to communicate). *See generally In re Gault*, 387 U.S. 1, 36 (1967) ("The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child 'requires the guiding hand of counsel at

- (2) The child, through a child's attorney, has the right to cross-examine witnesses.
- (3) The child has the right to confront all witnesses against the child, ***subject to limitations recognized by the United States Supreme Court.***<sup>51</sup>
- (4) The child shall be furnished a transcript on appeal. If the child or the parent, legal guardian, or legal custodian of the child cannot afford a transcript, the juvenile court shall order that the transcript be paid for out of funds set aside for this purpose.

**§12-15-203.**

- (a) A prosecutor, before a hearing on a delinquency petition on its merits and ***after notifying, verbally or in writing, the juvenile probation officer,***<sup>52</sup> may file a motion requesting the juvenile court judge to transfer a child for criminal prosecution to the circuit or district court, if the child was 14 or more years of age at the time of the conduct charged and is alleged to have committed an act which would constitute a criminal offense as defined by this code if committed by an adult.
- (b) The juvenile court judge shall conduct a hearing on all motions for the purpose of determining whether it is in the best interests of the child or the public to grant the motion. Only if there are no reasonable grounds to believe the child is committable to an institution, department, or agency for the mentally retarded or mentally ill, may the juvenile court judge order the case transferred for criminal prosecution.
- (c) When there are grounds to believe that the child is committable to an institution, department, or agency for the mentally retarded or mentally ill, the juvenile court judge shall order an examination pursuant to Section 12-15-130.

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every step in the proceedings against him.”) (footnotes omitted); *id.* at 38 n.65 (“[N]o single action holds more potential for achieving procedural justice for the child in the juvenile court than provision of counsel. The presence of an independent legal representative of the child, or of his parent, is the keystone of the whole structure of guarantees that a minimum system of procedural justice requires. The rights to confront one's accusers, to cross-examine witnesses, to present evidence and testimony of one's own, to be unaffected by prejudicial and unreliable evidence, to participate meaningfully in the dispositional decision, to take an appeal have substantial meaning for the overwhelming majority of persons brought before the juvenile court only if they are provided with competent lawyers who can invoke those rights effectively. The most informal and well-intentioned of judicial proceedings are technical; few adults without legal training can influence or even understand them; certainly children cannot. Papers are drawn and charges expressed in legal language. Events follow one another in a manner that appears arbitrary and confusing to the uninitiated. Decisions, unexplained, appear too official to challenge. But with lawyers come records of proceedings; records make possible appeals which, even if they do not occur, impart by their possibility a healthy atmosphere of accountability. . . . [I]n all cases children need advocates to speak for them and guard their interests, particularly when disposition decisions are made. It is the disposition stage at which the opportunity arises to offer individualized treatment plans and in which the danger inheres that the court's coercive power will be applied without adequate knowledge of the circumstances.”) (citation omitted); National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases 30-31 & 105* (2005) (describing duties of counsel in delinquency proceedings).

<sup>51</sup> This provision ensures that Alabama law is consistent with federal constitutional law. See *Maryland v. Craig*, 497 U.S. 836 (1990); *In re Gault*, 387 U.S. 1, 56 (1967).

<sup>52</sup> This provision replaces the requirement that a prosecutor consult with the juvenile probation officer before filing a motion to transfer with a notice requirement.

- (d) Evidence of the following and other relevant factors shall be considered in determining whether the motion shall be granted:
  - (1) The nature of the present alleged offense.
  - (2) The extent and nature of the prior delinquency record of the child.
  - (3) The nature of past treatment efforts and the nature of the response of the child to the efforts.
  - (4) Demeanor.
  - (5) The extent and nature of the physical and mental maturity of the child.
  - (6) The interests of the community and of the child requiring that the child be placed under legal restraint or discipline.
- (e) Prior to a hearing on the motion by the prosecutor, a written study and report to the juvenile court judge, relevant to the factors listed in subsection (d), shall be made by a juvenile probation officer.
- (f) When a child is transferred for criminal prosecution, the juvenile court judge shall set forth in writing his or her reasons for granting the motion, which shall include a finding of probable cause for believing that the allegations are true and correct.
- (g) The finding of probable cause by the juvenile court judge shall preclude the necessity for a preliminary hearing subsequent to the transfer of the case for criminal prosecution, and the court having jurisdiction of the offense or offenses charged may exercise any authority over the case and the child, subsequent to the transfer, which is otherwise applicable to cases involving adult offenders pursuant to provisions of laws or rules of procedure adopted by the Supreme Court of Alabama.
- (h) A child who is transferred to a court for criminal prosecution shall be tried as an adult for the offense charged and all lesser included offenses of the offense charged.
- (i) A conviction or adjudication as a youthful offender of a child of a criminal offense, with the exception of a nonfelony traffic offense, shall terminate the jurisdiction of the juvenile court over that child with respect to any future delinquent acts and with respect to any pending allegations of delinquency which have not been disposed of by the juvenile court at the time of the criminal conviction or adjudication as a youthful offender. Any pending or future criminal acts committed by the child shall be prosecuted as other criminal charges are prosecuted. Termination of the jurisdiction of the juvenile court over the child with respect to future criminal charges and pending allegations of delinquency, as provided herein, shall not affect the jurisdiction of the juvenile court over the child with respect to any other matter provided in this chapter, specifically including any prior allegations of delinquency which, at the time of the criminal conviction, has been disposed of by the juvenile court either through informal adjustment, consent decree, or adjudication. The juvenile court is specifically authorized, to the extent practicable, to continue exercising its jurisdiction over the child with respect to such previously disposed delinquency cases after the termination of its jurisdiction with respect to other criminal charges, including jurisdiction to enforce its order requiring the

payment of fines, costs, restitution, or other money ordered by the juvenile court pursuant to Section 12-15-117.<sup>53</sup>

**§12-15-204.**

- (a) Notwithstanding any other provision of law, any person who has attained the age of 16 years at the time of the conduct charged and who is charged with the commission of any act or conduct, which if committed by an adult would constitute any of the following, shall not be subject to the jurisdiction of juvenile court but shall be charged, arrested, and tried as an adult:
- (1) A capital offense.
  - (2) A Class A felony.
  - (3) A felony which has as an element thereof the use of a deadly weapon.
  - (4) A felony which has as an element thereof the causing of death or serious physical injury.
  - (5) A felony which has as an element thereof the use of a dangerous instrument against any person who is one of the following:
    - a. A law enforcement officer or official.
    - b. A correctional officer or official.
    - c. A parole or probation officer or official.
    - d. A juvenile court probation officer or official.
    - e. A district attorney or other prosecuting officer or official.
    - f. A judge or judicial official.
    - g. A court officer or official.
    - h. A person who is a grand juror, juror, or witness in any legal proceeding of whatever nature when the offense stems from, is caused by, or is related to the role of the person as a juror, grand juror, or witness.
    - i. A teacher, principal, or employee of the public education system of Alabama.
  - (6) Trafficking in drugs in violation of Section 13A-12-231, or as the same may be amended.
  - (7) Any lesser included offense of the above offenses charged or any lesser felony offense charged arising from the same facts and circumstances and committed at the same time as the offenses listed above. ***Provided, however, that the juvenile court shall maintain original jurisdiction over these lesser included offenses if***

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<sup>53</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, the Alabama Code provided that “[a] child whose case is transferred for criminal prosecution shall not be granted youthful offender status.” Ala. Code § 12-15-34(h) (2008). The 2008 Act deleted this language because it created an unfair and probably unconstitutional disparity in the rights of two similarly situated groups: (a) persons aged 18-20 who are charged with an offense listed in § 203, and (b) persons aged 14 or older who are charged with the same offense and transferred from juvenile court to a court handling criminal matters. Under the revised Code, both groups are eligible for youthful offender status.

*the grand jury fails to indict for any of the offenses enumerated in subsections (a)(1) to (a)(6), inclusive. The juvenile court shall also maintain original jurisdiction over these lesser included offenses, subject to double jeopardy limitations, if the court handling criminal offenses dismisses all charges for offenses enumerated in subsections (a)(1) to (a)(6), inclusive.*<sup>54</sup>

- (b) Notwithstanding any other provision of law, any person who has been convicted or adjudicated a youthful offender in a court handling criminal offenses pursuant to the provisions of this section shall not thereafter be subject to the jurisdiction of juvenile court for any *pending or* subsequent offense.<sup>55</sup> Provided, however, pursuant to Section 12-15-117, the juvenile court shall retain jurisdiction over an individual of any age for the enforcement of any prior orders of the juvenile court requiring the payment of fines, court costs, restitution, or other money ordered by the juvenile court until paid in full.
- (c) This section shall apply to all cases in which the alleged criminal conduct occurred after April 14, 1994. All conduct occurring before April 14, 1994, shall be governed by pre-existing law.

#### **§12-15-205.**

If delinquency or in need of supervision is alleged, proceedings shall be commenced in the county where the acts constituting the allegation occurred.

#### **§12-15-206.**

If a child resides in a county of the state and the delinquency or child in need of supervision proceeding is commenced in a juvenile court of another county, the juvenile court in the county in which the proceeding was commenced, on its own motion or a motion of a party *and after consultation with the receiving juvenile court*,<sup>56</sup> may transfer the proceeding to the county of the residence of the child for such further action or proceedings as the juvenile court receiving the transfer may deem proper.

A transfer may also be made if the residence of the child changes pending the proceeding.

The proceeding shall be so transferred if the child has been adjudicated delinquent or in need of supervision and other proceedings involving the child are pending in the juvenile court of the county of his or her residence.

Certified copies of all legal and social records pertaining to the case shall accompany the transfer.

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<sup>54</sup> This provision corrects a gap in the law by clarifying that the juvenile court maintains jurisdiction over lesser included offenses when the basis for circuit court jurisdiction disappears due to either: (1) a failure to indict on enumerated charges or (2) dismissal of enumerated charges.

<sup>55</sup> The Alabama Juvenile Justice Act of 2008 added the words "pending or," thereby making this subsection consistent with § 12-15-203(i), which provides that the jurisdiction of the juvenile court shall terminate as to any subsequent or pending offenses after a person has been convicted or adjudicated a youthful offender in the adult court.

<sup>56</sup> The Alabama Juvenile Justice Act of 2008 added language requiring consultation between juvenile courts prior to transfer, thereby facilitating transfers and preventing unnecessary delays and costs.

**§12-15-207.**

- (a) When a child is not released from detention or shelter care as provided in Section 12-15-127, a petition shall be filed and a hearing held within 72 hours of placement in detention or shelter care, Saturdays, Sundays, and holidays included, **to determine probable cause**<sup>57</sup> and to determine whether or not continued detention or shelter care is required.
- (b) Notice of the detention or shelter care hearing, either verbal or written, stating the date, time, place, and purpose of the hearing and the right to counsel shall be given **by a juvenile probation officer**<sup>58</sup> to the parent, legal guardian, or legal custodian if they can be found and to the child if the child is over 12 years of age.
- (c) At the commencement of the detention or shelter care hearing, the juvenile court shall advise the parent, legal guardian, legal custodian, and the parties of the right to counsel and shall appoint counsel if the juvenile court determines they are indigent. The parties shall be informed of the right of the child to remain silent. The parent, legal guardian, legal custodian, and the parties shall also be informed of the contents of the petition and, except as provided herein, shall be given an opportunity to admit or deny the allegations of the petition. Prior to the acceptance of an admission of the allegations of the petition, the juvenile court shall:
  - (1) Verify if the child was previously convicted or adjudicated a youthful offender pursuant to Section 12-15-203 or
  - (2) rule on any motion of the prosecutor requesting the juvenile court to transfer the child for criminal prosecution.

The juvenile court shall not accept a plea of guilt or an admission to the allegations of the petition in any case in which the child will be transferred for prosecution as an adult, either by grant of the motion of the prosecutor to transfer or pursuant to Section 12-15-203.

- (d) All relevant and material evidence helpful in determining the need for detention or shelter care may be admitted by the juvenile court even though not admissible in subsequent hearings.
- (e) If the child is not released and no parent, legal guardian, or other legal custodian has been notified and none appeared or waived appearance at the hearing, upon the filing of an affidavit by the parent, legal guardian, or legal custodian stating these facts and requesting a hearing, the juvenile court shall rehear the matter within 24 hours.
- (f) ***If a person 18 years of age or older is alleged to have violated a condition of probation or aftercare after the person was adjudicated to be delinquent, the juvenile court may***

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<sup>57</sup> The Alabama Juvenile Justice Act of 2008 added the phrase “to determine probable cause” to clarify that a child may not be detained beyond 72 hours unless the court finds probable cause to believe that the allegations in the petition are true.

<sup>58</sup> The Alabama Juvenile Justice Act of 2008 added language to clarify that the juvenile probation officer is the party responsible for providing notice of the detention or shelter care hearing to the parent, legal guardian, or legal custodian, as well as to children over 12 years old.

*order that the person be confined in the appropriate jail or lockup for adults as ordered by the juvenile court.*<sup>59</sup>

**§12-15-208.**

(a) *Persons who shall not be detained or confined in secure custody include all of the following:*

(1) *Status offenders. Effective October 1, 2009, status offenders, as defined in this article, shall not be detained or confined in secure custody, except that a status offender who is charged with or who commits a violation of a valid court order may be detained in secure custody in a juvenile detention facility for up to 72 hours in any six-month period, provided that all conditions set forth in subdivision (3) of subsection (b) are satisfied.*<sup>60</sup> *Short-term secure custody of accused status offenders may be necessary, such as detention in a juvenile detention facility for a brief period, not exceeding 24 hours, prior to formal juvenile court action, for investigative purposes, for identification purposes, or for the purpose of allowing return of a status offender to the parent, legal guardian, or legal custodian. Detention for a brief period of time pursuant to juvenile court authority may also be necessary in order to arrange for appropriate shelter care placement.*<sup>61</sup> *If a petition regarding an alleged status offender is filed in juvenile court and if it is determined that the alleged status offender is at imminent risk of being placed in the legal or physical custody of the Department of Human Resources, the case shall be referred to the county children's services facilitation team, and the procedures in Article 5 shall be followed. Upon referral to the county children's services facilitation team, the juvenile probation officer shall continue to provide case management to the status offender unless the county children's services facilitation team appoints another person to act as case manager. The juvenile probation officer shall participate in county children's services facilitation team meetings and share*

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<sup>59</sup> Under the federal Juvenile Justice and Delinquency Prevention Act, adults may not be held in juvenile detention centers. *See* 42 U.S.C. § 5633(a)(12) (2008). However, juvenile court jurisdiction in Alabama does not terminate until a person reaches the age of 21. This subsection enables courts to use the threat of confinement in jail, not detention, as a means of enforcing probation or aftercare orders against persons who are 18, 19, or 20 years old, while ensuring compliance with federal law.

<sup>60</sup> Effective October 1, 2009, subsection (a)(1) limits the authority of courts to incarcerate children who have not committed a delinquent act. This new subsection brings Alabama into compliance with the federal Juvenile Justice and Delinquency Prevention Act, which prohibits the use of secure facilities for status offenders and establishes specific procedural requirements that must be followed when a status offender is detained on the basis of an alleged violation of a valid court order. *See* 42 U.S.C. § 5633(a)(11) (2008); *see also* Office of Juvenile Justice and Delinquency Prevention, *Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002* (Jan. 2007).

<sup>61</sup> This provision recognizes that it will sometimes be necessary to detain an accused status offender for a brief period of time, not to exceed 24 hours, in order to investigate, to identify the child, to arrange the return of custody to the child's legal guardian or custodian, or to arrange for shelter care.

*records information and reports on the status offender with the county children's services facilitation team.*<sup>62</sup>

- (2) *Federal wards. Federal wards held beyond 24 hours in secure custody in state and local juvenile detention facilities pursuant to a written contract or agreement with a federal agency and for the specific purpose of affecting a jurisdictional transfer or appearance as a material witness or for return to their lawful residence or country of citizenship shall be reported as violations of the deinstitutionalization of status offender requirement.*<sup>63</sup>
  - (3) *Nonoffenders. Nonoffenders, as defined in this article, shall not be detained or confined in secure custody.*<sup>64</sup>
  - (4) *Children 10 years of age and younger. Children 10 years of age and younger shall not be detained or confined in secure custody, unless the children are charged with offenses causing death or serious bodily injury to persons or offenses that would be classified as Class A felonies if committed by adults. Children 11 or 12 years of age may only be detained or confined in secure custody by orders of juvenile courts, unless the children are charged with offenses causing death or serious bodily injury to persons or offenses that would be classified as Class A felonies if committed by adults.*<sup>65</sup>
- (b) *Persons who may be detained or confined in secure custody include all of the following:*<sup>66</sup>

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<sup>62</sup> Under this provision, if a child who is the subject of a CHINS petition or a petition alleging another status offense is at imminent risk of being placed in the custody of the Department of Human Resources, the child must first be referred to the county children's services facilitation team. The probation officer assigned to the child will serve as the case manager during the facilitation team process and will present the child's case to the team, unless the team determines that it would be more appropriate for another individual to serve as case manager. This provision does not apply to a child who is the subject of a dependency petition.

<sup>63</sup> As required by the mandate to deinstitutionalize status offenders in the federal Juvenile Justice and Delinquency Prevention Act, subsection (a)(2) prohibits the use of juvenile detention facilities to hold juvenile aliens who have not been charged with any offense but are being held solely to secure appearance as a witness or pending deportation. See 42 U.S.C. § 5633(a)(11)(B)(ii)(I) (2008) (“[J]uveniles . . . (i) who are not charged with any offense; and (ii) who are . . . (I) aliens . . . shall not be placed in secure detention facilities or secure correctional facilities.”).

<sup>64</sup> As required by the mandate to deinstitutionalize status offenders in the federal Juvenile Justice and Delinquency Prevention Act, subsection (a)(3) prohibits the use of juvenile detention facilities to hold juveniles who have not been charged with an offense. See 42 U.S.C. § 5633(a)(11)(B)(ii)(II) (2008) (“[J]uveniles . . . (i) who are not charged with any offense; and (ii) who are . . . (II) alleged to be dependent, neglected, or abused . . . shall not be placed in secure detention facilities or secure correctional facilities.”).

<sup>65</sup> Subsection (a)(4) restricts the placement of children under the age of 13 in juvenile detention facilities, unless the child is charged with a Class A felony or another offense that has resulted in death or serious bodily injury. Subject to subsection (a)(1), children aged 11 or 12 years of age may be detained by order of the juvenile court, even if the offense does not fall within either exception.

<sup>66</sup> Subsection (b) codifies three exceptions to the federal mandate to deinstitutionalize status offenders. All of the exceptions described in subsection (b) are permitted by federal law. See 42 U.S.C. § 5633(a)(11)(A) (2008).

- (1) *Persons who violate the federal law, which prohibits possession of a handgun by a child under the age of 18 years, or who violate a similar state or municipal law, may be placed in secure custody in juvenile detention facilities.*
  - (2) *Persons in custody pursuant to the Interstate Compact on Juveniles, contained in Section 44-2-1, et seq., may be placed in secure custody in juvenile detention facilities.*
  - (3) *Status offenders who violate a valid court order. A status offender who is charged with or has committed a violation of a valid court order may be detained in secure custody in a juvenile detention facility for up to 72 hours in any six-month period. Status offenders who violate valid court orders shall not be committed to the Department of Youth Services, nor shall they be held in jails or lockups for adult offenders. For this valid court order exception to apply, the following actions must occur whenever a status offender is taken into custody for violating a valid court order:*
    - a. *The juvenile detention facility shall immediately notify the juvenile court intake or probation officer that the child is being held in secure custody for violating a valid court order. The notice shall include the date and time the child entered the juvenile detention facility.*
    - b. *Within the first 24 hours during which a status offender is held in secure custody for violating a valid court order, not including weekends or holidays, a juvenile court intake or probation officer, or an authorized representative of the department or agency having custody or supervision of the child, shall interview the child, in person.*
    - c. *Within 48 hours of the admission of the status offender to secure custody for violating a valid court order, not including weekends or holidays:*
      - (1) *The individual who interviewed the child shall submit a written assessment report to the juvenile court regarding the immediate needs of the child; and*
      - (2) *If the juvenile court has not yet determined whether the child has, in fact, violated the order, the juvenile court shall conduct a hearing to determine whether there is reasonable cause to believe that the child violated the order and the appropriate placement of the child pending disposition of the alleged violation.<sup>67</sup>*
- (c) *Compliance with jail removal. No person under the age of 18 years shall be detained or confined in any jail or lockup for adults except for the following exceptions:*

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<sup>67</sup> The procedural requirements described in this subdivision are mandated by federal law. See 42 U.S.C. § 5633(a)(23) (2008).

- (1) *A child may be detained in a jail or lockup for adults for up to six hours while processing the case of the child.*
- (2) *A child transferred for criminal prosecution pursuant to Section 12-15-203 may be detained in a jail or lockup for adults.*
- (3) *A person charged pursuant to Section 12-15-204 may be detained in a jail or lockup for adults.*

*When a case is transferred to another court for criminal prosecution, the person shall be transferred to the appropriate officer or jail or lockup in accordance with the law governing the detention of the person charged with the crime. Jails and lockups used for holding adults shall not hold status offenders in secure custody at any time. An accused status offender may be detained in a nonsecure area of a jail or lockup for processing while waiting transportation to a nonsecure shelter care facility or a juvenile detention facility or while waiting for release to a parent, legal guardian, or legal custodian.<sup>68</sup>*

*Nothing in this subsection shall prohibit a circuit court judge exercising criminal jurisdiction from recommending that a child described in subdivision (2) or (3) should be placed in a juvenile detention center instead of an adult jail or lockup.<sup>69</sup>*

- (d) *Compliance with separation. Accused or adjudicated delinquent children or status offenders shall not have contact with adult inmates, including trustees. Contact is defined to include any physical or sustained sight and sound contact. Sight contact is defined as clear visual contact between adult inmates and accused or adjudicated delinquent children or status offenders within close proximity to each other. Sound contact is defined as direct verbal communication between adult inmates and accused or adjudicated delinquent children or status offenders.*

*No child shall enter pursuant to public authority, for any amount of time, in secure custody in a secure section of a jail, lockup, or correctional facility for adults as a disposition of an offense or as a means of modifying his or her behavior (e.g., Shock Incarceration or Scared Straight).<sup>70</sup>*

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<sup>68</sup> As required by the mandate to remove juveniles from adult jails in the federal Juvenile Justice and Delinquency Prevention Act, subsection (c) prohibits the placement of children in jails or other locked facilities for adults, subject to three exceptions. *See* 42 U.S.C. § 5633(a)(13) (2008); *see also* Office of Juvenile Justice and Delinquency Prevention, *Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002* (Jan. 2007). Subsection (c) is subject to three exceptions, each of which is permitted by federal law.

<sup>69</sup> There may be circumstances where the circuit court exercising criminal jurisdiction over a youth may recommend that in light of a particular youth's size, immaturity, or some other factor, the youth should be held in a juvenile detention center instead of an adult jail pending trial. This section acknowledges the circuit court's authority to make such a recommendation, but the actual placement of such a youth in a juvenile detention center is left to the discretion of the juvenile court.

<sup>70</sup> As required by the mandate to ensure that juveniles housed with adult offenders are separated from adults in terms of sight and in terms of sound in the federal Juvenile Justice and Delinquency Prevention Act, subsection (d) prohibits accused or adjudicated children from having any contact with adult inmates. *See* 42 U.S.C. § 5633(a)(12) (2008). This provision expressly prohibits shock incarceration programs like "Scared Straight," which involve bringing juveniles into adult facilities for the purpose of scaring them into modifying their behavior. Such programs are impermissible under federal law. *See* Office of Juvenile Justice and Delinquency Prevention, *Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002* at 15 (Jan. 2007)

- (e) Except as provided above, in providing detention and shelter or other care for children referred to or coming under the jurisdiction of the juvenile court, the juvenile court shall utilize only those facilities as have been established, licensed, or approved by the Department of Youth Services or Department of Human Resources for those purposes.
- (f) After October 1, 1991, the Department of Youth Services shall accept all children committed to it within seven days of notice of disposition.
- (g) Except as provided above, the official in charge of a jail or lockup for the detention of adult offenders or persons charged with crimes shall inform the juvenile court immediately when a child, who is or appears to be a child as defined by this chapter, is received at the jail or lockup. Upon request, the official shall deliver the child to the juvenile court or transfer him or her to a juvenile detention facility designated by the juvenile court.
- (h) The Department of Youth Services shall continue to develop and implement a statewide system of juvenile detention facilities which shall be licensed by the Department of Youth Services for the detention of children.
- (i) The Department of Youth Services shall subsidize the detention of children in the juvenile detention facilities in an amount up to one half the average cost of detention, which term is defined in this article, the amount depending on the provision of funds by the Legislature to the Department of Youth Services. Juvenile detention facilities may contract with the Department of Youth Services or other counties for the detention of children.
- (j) When a case is transferred to another court for criminal prosecution, the child shall be transferred to the appropriate officer or jail or lockup in accordance with the law governing the detention of the person charged with criminal offenses.
- (k) Any law enforcement officer, at the direction of the juvenile court, shall provide security and transportation services for the juvenile court in transporting children to and from juvenile detention facilities.

**§12-15-209.**

- (a) When the juvenile court finds that full-time detention or shelter care of a child is not required, the juvenile court shall order the release of the child, and in so doing, may impose one or more of the following conditions:
  - (1) Place the child in the custody of a parent, legal guardian, legal custodian, or any other person whom the juvenile court deems proper, or place the child with a department, agency, or organization agreeing to supervise the child.
  - (2) Place restrictions on the travel, association, or place of abode of the child during the period of his or her release, or place the child under electronic or telephone monitoring, if available.

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(“[T]he state must assure that no juvenile offender shall enter under public authority, for any amount of time, into a secure setting or secure section of an adult jail, lockup, or correctional facility as a disposition of an offense or as a means of modifying their behavior (e.g., Shock Incarceration or Scared Straight).”).

- (3) Impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children specified in Section 12-15-128, including a condition requiring that the child return to custody as required.
- (b) An order releasing a child on any conditions specified in subsection (a) may at any time be amended to impose additional or different conditions of release or to return the child to custody for failure to conform to the conditions originally imposed.

**§12-15-210.**

- (a) In delinquency and child in need of supervision cases, a child and his or her parent, legal guardian, or legal custodian shall be advised by the juvenile court or its representative at intake that the child has the right to be represented at all stages of the proceedings by a child's attorney retained by them or, if they are unable to afford a child's attorney, by a child's attorney appointed by the juvenile court.
- (b) If a child's attorney is not retained by the child or a party in a juvenile court proceeding in which there is a reasonable likelihood such may result in a placement in an institution in which the freedom of the child is curtailed, a child's attorney shall be appointed to defend the child.
- (c) ***In delinquency and child in need of supervision proceedings, a juvenile court may appoint a guardian ad litem in addition to the child's attorney described in this section.***<sup>71</sup>
- (d) The juvenile court may appoint counsel in any case when it deems such in the interests of justice.

**§12-15-211.**

- (a) The juvenile court may suspend delinquency or child in need of supervision proceedings pursuant to a consent decree. The terms and conditions of the consent decree shall be

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<sup>71</sup> This provision confirms the juvenile court's authority to appoint a guardian ad litem (in addition to a child's attorney) to advocate for a child with a pending CHINS or delinquency matter. Such appointments are infrequent, but may sometimes be necessary. For example, a child who is the subject of simultaneous delinquency and dependency petitions must be represented by a child's attorney as well as a separate guardian ad litem.

However, the appointment of a GAL is not sufficient to overcome competency issues and should not be used for that purpose. If the court is concerned that a child in CHINS or delinquency proceedings is too young to meaningfully participate in his or her own defense, the court must consider whether the child is competent to stand trial/enter a plea. The standard for determining whether an individual is competent to stand trial was established in *Dusky v. United States*, 362 U.S. 402 (1960). The test is "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has a rational as well as factual understanding of the proceedings against him." *Id.* at 402; *see also Godinez v. Moran*, 509 U.S. 389, 402 (1993) (declining to adopt a different competency standard for entering a plea). State courts all over the country have held that the *Dusky* standard protects a fundamental right and applies with equal force in adult and juvenile proceedings. *See, e.g., In re W.A.F.*, 573 A.2d 1264, 1266-67 (D.C. 1990); *In the Interest of A.B.*, No. 5-791 / 05-0868, 2006 Iowa App. LEXIS 189 (Iowa Ct. App. Mar. 1, 2006); *People v. Carey*, 241 Mich. App. 222, 231 (Mich. Ct. App. 2000); *In re Williams*, 687 N.E.2d 507, 510-11 (Ohio Ct. App. 1997); *In re Welfare of T.*, 277 N.W.2d 507, 511 (Minn. 1979).

agreed to by the child and his or her parent, legal guardian, or legal custodian. The consent decree shall be entered at any time after the filing of a delinquency or child in need of supervision petition and before the entry of an adjudication order. The child and his or her parent, legal guardian, or legal custodian shall be advised of their rights, including the right to counsel.

- (b) Where an objection is made by the prosecutor, the juvenile court, after considering the objection and the reasons therefor, shall proceed to determine whether it is appropriate to enter a consent decree.
- (c) A consent decree shall remain in force for six months unless the child is discharged sooner by the juvenile court. Upon application of a juvenile probation officer or other department or agency supervising the child, made before the expiration of the six-month period, a consent decree may be extended by the juvenile court for an additional six months.
- (d) If prior to discharge by the juvenile probation officer or expiration of the consent decree, a new delinquency or child in need of supervision petition is filed against the child, or the child otherwise fails to fulfill express terms and conditions of the decree, the petition under which the child was continued under supervision may be reinstated after a hearing and the case may proceed to adjudication.
- (e) Upon satisfaction by the child of the conditions of the consent decree or upon the child being otherwise discharged by the juvenile court, the petition shall be dismissed with prejudice.

**§12-15-212.**

- (a) If the allegations are denied, the juvenile court shall proceed to hear evidence on the petition. If the juvenile court finds on proof beyond a reasonable doubt, based upon competent, material, and relevant evidence, that the child committed the acts by reason of which the child is alleged to be delinquent or in need of supervision, the juvenile court shall record its findings and proceed to determine whether the child is in need of care or rehabilitation. If the juvenile court finds that the allegations in the petition have not been established, the juvenile court shall dismiss the petition and order the child discharged from any detention or temporary care, theretofore ordered in the proceedings.
- (b) If the child admits to the allegations contained in the petition, the juvenile court shall record its findings and proceed to determine whether the child is in need of care or rehabilitation.
- (c) When the allegations have been proven pursuant to subsections (a) or (b), the juvenile court may proceed immediately to hear evidence as to whether the child is in need of care or rehabilitation and to file its findings thereon. In the absence of evidence to the contrary, a finding that the child has committed an act that constitutes a felony is sufficient to sustain a finding that the child is in need of care or rehabilitation. If the juvenile court finds that the child is not in need of care or rehabilitation, it shall dismiss the proceedings and discharge the child from any detention or other temporary care. If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that the child is in need of care or rehabilitation in the absence of objection showing good cause or at a postponed hearing, the juvenile court may make proper disposition of the case.

- (d) In dispositional hearings, all relevant and material evidence helpful in determining the questions presented, including verbal and written reports, may be received by the juvenile court and may be relied upon to the extent of its probative value, even though not competent in a hearing on the petition. The parties or their counsel shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports.
- (e) On its own motion or that of a party, the juvenile court may continue the dispositional hearing for a reasonable period to receive reports and other evidence bearing on the disposition or need for care or rehabilitation. In this event, the juvenile court shall make an appropriate order for detention or temporary care for the child, or the release of the child from detention or temporary care during the period of the continuance, subject to those conditions as the juvenile court may impose.

**§12-15-213.**

- (a) A child charged with a delinquent act or who is alleged to be in need of supervision shall be accorded the rights and privileges afforded by the Constitution of the United States and the Constitution of Alabama of 1901.
- (b) An extrajudicial statement which would be constitutionally inadmissible in a criminal proceeding may not be received in evidence over objection. Evidence illegally seized or obtained may not be received in evidence over objection to establish the allegations against the child. An extrajudicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence.
- (c) Criminal proceedings and other juvenile proceedings based upon the offense alleged in the petition or an offense based upon the same conduct are barred where the juvenile court has begun taking evidence or where the juvenile court has accepted from the child a plea of guilty to the petition.

**§12-15-214.**

The juvenile court may direct that a juvenile probation officer conduct a study and submit a written report to the juvenile court with recommendations concerning a child, his or her family, his or her environment, and other matters relevant to the need for treatment or disposition of the case. *The recommendations may indicate that the child needs further mental health evaluation, especially, in some cases, for the purpose of determining whether the child is competent to stand trial. The recommendations may also include a request that the juvenile court proceed pursuant to Section 12-15-130.*<sup>72</sup>

**§12-15-215.**

- (a) If the juvenile court finds on proof beyond a reasonable doubt, based upon competent, material, and relevant evidence, that a child committed the acts by reason of which the

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<sup>72</sup> This new language clarifies that a juvenile probation officer is authorized to recommend further inquiry into the child's mental health needs. Cf. Alabama Rules of Criminal Procedure, Rule 11.

child is alleged to be delinquent or in need of supervision, it may proceed immediately to hear evidence as to whether the child is in need of care or rehabilitation and to file its findings thereon. In the absence of evidence to the contrary, a finding that the child has committed an act which constitutes a felony is sufficient to sustain a finding that the child is in need of care or rehabilitation. If the juvenile court finds that the child is not in need of care or rehabilitation, it shall dismiss the proceedings and discharge the child from any detention or other temporary care theretofore ordered. If the juvenile court finds that the child is in need of care or rehabilitation, it may make any of the following orders or dispositions, ***subject to the limitations and prohibitions on secure custody contained in Section 12-15-208.***<sup>73</sup>

- (1) Permit the child to remain with the parent, legal guardian, or other legal custodian of the child, subject to the conditions and limitations the juvenile court may prescribe.
- (2) Place the child on probation pursuant to conditions and limitations the juvenile court may prescribe.
- (3) Transfer legal and physical custody to any of the following:
  - a. The Department of Youth Services, with or without an order to a specific institution.
  - b. In the case of a child in need of supervision, the Department of Youth Services, or the Department of Human Resources; ***provided however (i.) that prior to any transfer of custody to the Department of Human Resources, the case shall first be referred to the county children's services facilitation team, which must proceed according to Article 5;***<sup>74</sup> ***and (ii.) that the child's commission of one or more status offenses shall not constitute a sufficient basis for transfer of legal or physical custody to the Department of Human Resources.***<sup>75</sup> ***Upon referral to the county children's services facilitation team, the juvenile probation officer shall continue to provide case management to the status offender unless the county children's services facilitation team appoints another person to act as case manager. The juvenile probation officer shall participate in county children's services facilitation team meetings and share records information and reports on the status offender with the county children's services facilitation team.***<sup>76</sup> ***When the juvenile court transfers***

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<sup>73</sup> Section 12-15-208 places restrictions upon the authority of courts to place children in secure custody. This language clarifies that the court's dispositional authority is subject to the restrictions contained in §12-15-208.

<sup>74</sup> This language ensures that children in need of supervision ("CHINS") are not inappropriately placed in the custody of the Department of Human Resources ("DHR") by requiring a review by the county children's services facilitation team prior to any transfer of custody to DHR. This provision applies only to CHINS proceedings where the court is considering a transfer of custody to DHR. Nothing in this provision would prohibit the county team from recommending, after a review, that a particular child be placed in DHR custody.

<sup>75</sup> This language ensures that status offenders are not inappropriately placed in the custody of the Department of Human Resources.

<sup>76</sup> When a status offender is referred to the county children's services facilitation team prior to a transfer of custody to the Department of Human Resources, this provision requires that the juvenile probation officer continue to

***legal and physical custody to the Department of Human Resources, all requirements which shall be met for a child to be eligible for federal funding shall apply, including, but not limited to, the requirements set out in Sections 12-15-312, 12-15-315, and 12-15-317.***<sup>77</sup>

- c. A local, public, or private agency, organization, or facility willing and able to assume the education, care, and maintenance of the child and which is licensed or otherwise authorized by law to receive and provide care for children.
  - d. During the term of supervision, a relative or other individual who is found by the juvenile court to be qualified to receive and care for the child.
- (4) Make any other order as the juvenile court in its discretion shall deem to be for the welfare and best interests of the child, including random drug screens, assessment of fines not to exceed two hundred fifty dollars (\$250), and restitution against the parent, legal guardian, legal custodian, or child, as the juvenile court deems appropriate. Costs for juvenile court-ordered drug screening may be ordered paid for by the state out of moneys appropriated as "court costs not otherwise provided for." Restitution against the parent, legal guardian, legal custodian, or child shall be governed by the same principles applicable in the Restitution to Victims of Crime Act, commencing with Section 15-18-65.
- (5) Direct the parent, legal guardian, or legal custodian of the child to perform reasonable acts as are deemed necessary to promote the best interests of the child.
- (6) In any case where a child is adjudicated delinquent for possessing a pistol, short-barreled rifle, or short-barreled shotgun, any pistol, short-barreled rifle, or short-barreled shotgun possessed by that child is forfeited and shall be ordered to be destroyed by the juvenile court.
- (b) No child by virtue of a disposition pursuant to this section shall be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of a crime.
- (c) No child in need of supervision, unless also a delinquent child, shall be ordered to be placed in an institution or facility established for the care and rehabilitation of delinquent children unless ***the juvenile probation officer submits a written recommendation*** and the juvenile court finds upon a further hearing that the child is not amenable to treatment or rehabilitation pursuant to any prior disposition.

***In determining if a child is not amenable to treatment or rehabilitation, the juvenile court shall consider evidence of the following and other relevant factors:***

- (1) ***Prior treatment efforts, such as, but not limited to:***
  - a. ***Mental health counseling, if any.***
  - b. ***Individualized educational plans, if any.***

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provide case management services for the child, unless and until the team determines that another person should serve as case manager.

<sup>77</sup> This new language ensures compliance with all procedural requirements necessary to protect the child's eligibility for federal funding when the child is placed with the Department of Human Resources.

- c. Other educational records.*
- d. Individualized service plans, if any.*

- (2) *The age of the child.*
- (3) *The history of the child being involved with the juvenile court, including, but not limited to, informal adjustments, consent decrees, adjudications, and prior placements.*
- (4) *Other factors contributing to the behavioral difficulties of the child.*

*The written recommendations of the juvenile probation officer shall include evidence of the foregoing and other relevant factors.*<sup>78</sup>

- (d) When a delinquent child may be committable to the Department of Mental Health and Mental Retardation, the juvenile court shall proceed as provided in Article 4, commencing with Section 12-15-401.
- (e) Whenever the juvenile court vests legal custody in an agency or department, it shall transmit with the order copies of the clinical reports, predisposition study, and other information it has pertinent to the care and treatment of the child.
- (f) When a child is placed in the legal custody of a department, agency, organization, entity, or person as provided in this section, when the parent, legal guardian, or legal custodian of the child has resources for child support, the juvenile court shall order child support in conformity with the child support guidelines as set out in Rule 32, Alabama Rules of Judicial Administration. The child support shall be paid to the department, agency, organization, entity, or person in whose legal custody the child is placed and may be expended for those matters that are necessary for the welfare and well-being of those children placed in the departments, agencies, organizations, entities, or persons. In these cases, the juvenile court shall issue income withholding orders subject to state law.
- (g) Whenever the juvenile court commits a child to a state or local department or agency or orders a state or local department or agency to provide services or treatment for a child, that department or agency shall accept the child for commitment, ordered services, or treatment within seven days of the order of the juvenile court. Notwithstanding the foregoing, if compliance with the order of the juvenile court within seven days would place a department or agency in violation of either a state statute or standard, then compliance is not required.<sup>79</sup>

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<sup>78</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, the Alabama Code provided no guidance to courts considering whether a child was “not amenable to treatment,” leading to significant variations in its application statewide. The 2008 Act amended this provision to specify a procedure to be followed in these cases, including several factors that must be considered in determining whether a child in need of supervision is “not amenable to treatment.” The amended provision is modeled on the transfer statute and requires that the juvenile probation officer submit a written recommendation that includes evidence of each factor listed in the statute. The court must consider evidence of each factor as part of its determination.

<sup>79</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, the Code required that several broad categories of children be placed in alternative schools by operation of law. *See* Ala. Code § 12-15-71(k) – (o) (2008). The 2008 Act deleted those sections, thereby restoring the discretion of local school boards to determine the appropriate educational setting and placement of students on an individualized basis, as required by federal law. *See* 20 U.S.C. § 1414(d) (2008); 20 U.S.C. § 1412(a)(5)(B) (2008).

**§12-15-216.**

The Legislature reaffirms its belief that juvenile court records, in general, should be confidential. However, it is the intent of the Legislature by Act 99-433, 1999 Regular Session, to provide for limited exceptions to juvenile court record confidentiality to promote more effective communication among juvenile courts, law enforcement agencies, and schools to aid in the rehabilitation of children as well as to lessen the potential for drug use, violence, and other forms of delinquency.

**§12-15-217.**

- (a) Notwithstanding subsection (a) of Section 12-15-133, written notice that a child enrolled in a school, kindergarten to grade 12, has been found delinquent of an act which if committed by an adult would be a Class A or B felony or any other crime, at the discretion of the juvenile court, shall be provided within seven days to the superintendent of the school district of attendance, or, if the child attends a private school, to the principal of the school. The juvenile court shall provide the notice using whatever method it deems appropriate or otherwise as decided by the Administrative Office of Courts. The prosecutor may recommend to the juvenile court that notice be given to the school for any delinquent act. Written notice shall include only the offenses, enumerated by the appropriate code section and brief description, found to have been committed by the child and the disposition of the case involving the child. Where applicable, this notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the child. In addition, the principal may disseminate the information to any teacher, administrator, or other school employee directly supervising or reporting on the behavior or progress of the child whom the principal believes needs the information to work with the pupil in appropriate fashion or to protect other students and staff.
- (b) Any information received by a teacher, counselor, administrator, or other school employee pursuant to this section shall be received in confidence for the limited purpose of rehabilitating the child and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the child, his or her parent, legal guardian, legal custodian, law enforcement personnel, and the juvenile probation officer of the child is necessary to effectuate the rehabilitation of the child or to protect students and staff.
- (c) An intentional violation of the confidentiality provisions of this section is a Class A misdemeanor under the jurisdiction of the juvenile court.

**§12-15-218.**

- (a) In all cases where a child has been granted probation, the juvenile court, as a condition of granting probation to the child, may order the parent, legal guardian, or legal custodian of the child, if he or she is made a party to the proceedings, to assist the juvenile court in ensuring that the child complies with the terms of his or her probation.
- (b) Prior to granting probation, the juvenile court shall explain to the parent, legal guardian, or legal custodian and the child the terms of his or her probation, including the

responsibility and the penalty which may be imposed on all parties for failure to comply with the terms of the probation.

- (c) A parent, legal guardian, or legal custodian, who after being made a party fails to assist the child in complying with the terms of the probation, may be held in *civil or* criminal contempt of court, *or both*.<sup>80</sup>
- (d) This section shall not apply to the parent, legal guardian, or legal custodian of a child who initiated a case by filing a petition alleging delinquency of the child.

**§12-15-219.**

- (a) The juvenile court may find a child to be a serious juvenile offender if:
  - (1) The child is adjudicated delinquent and the delinquent act or acts charged in the petition would constitute any of the following if committed by an adult:
    - a. A Class A felony.
    - b. A felony resulting in serious physical injury as defined in subdivision (14) of Section 13A-1-2.
    - c. A felony involving deadly physical force as defined in subdivision (6) of Section 13A-1-2; or a deadly weapon as defined in subdivision (7) of Section 13A-1-2; or a dangerous instrument as defined in subdivision (5) of Section 13A-1-2.
  - (2) The child has been adjudicated delinquent for an act which would constitute a Class A or B felony or burglary in the third degree involving a residence and the child has previously been adjudicated delinquent of two previous acts which would have been a Class A or B felony or burglary in the third degree involving a residence if the acts had been committed by an adult.
- (b) A child found to be a serious juvenile offender shall be committed to the custody of the Department of Youth Services, where he or she shall remain for a minimum of one year.
- (c) A serious juvenile offender review panel shall be created by the Board of the Department of Youth Services. The serious juvenile offender review panel shall review quarterly the progress of each serious juvenile offender and determine at the end of the one-year term served by each child, a further treatment plan for that child. The panel may extend the commitment, order alternative treatment, or release the child. The serious juvenile offender review panel shall provide the juvenile court with all reports and recommendations, and notify the judge in writing of the decision to release the child at least 30 days in advance of the release.
- (d) The Department of Youth Services shall maintain and staff a separate, secure facility and implement programs for serious juvenile offenders. The minimum one-year term required by this section shall be served at the facility and the review panel may extend the period of confinement in the facility as determined necessary.

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<sup>80</sup> This provision authorizes the juvenile court to hold a parent, legal guardian, or legal custodian in civil contempt (in addition to or instead of criminal contempt) for failing to assist a child in complying with the terms of the child's probation.

- (e) Nothing in this section shall be construed to prevent the juvenile court from transferring a child for criminal prosecution pursuant to Section 12-15-203.

**§12-15-220.**

- (a) An order of disposition or other adjudication in a proceeding pursuant to subsection (a) of Section 12-15-114 shall not be considered to be a conviction or impose any civil disabilities ordinarily resulting from a conviction of a crime or operate to disqualify the child in any civil service application or appointment.
- (b) The disposition of a child and evidence given in a hearing in the juvenile court shall not be admissible as evidence against him or her in any case or proceeding in any other court, whether before or after reaching majority, except in a dispositional hearing in a juvenile court or in sentencing proceedings after conviction of a crime for the purposes of a presentence study and report or for consideration of an application for youthful offender status.

**§12-15-221.**

- (a) An order awarding legal custody or an order of probation made by the juvenile court in the case of a child may be modified, revoked, or extended on motion by:
  - (1) A child, whose legal custody has been transferred to a department, institution, agency, or person, requesting the juvenile court for a modification or termination of the order, alleging that the child is no longer in need of placement or probation and the department, institution, agency, or person has denied application for release of the child or has failed to act upon the application within a reasonable time; or
  - (2) A department, institution, agency, or person vested with legal custody or responsibility for probation, requesting the juvenile court for a modification, an extension, or a termination of the order on the grounds that the action is in the best interests of the child or necessary to safeguard the welfare of the child or the public interests.
- (b) The juvenile court may dismiss the motions filed pursuant to subsection (a) if, after preliminary investigation, it finds that they are without substance. If the juvenile court is of the opinion that the order should be reviewed, upon due notice to all necessary parties as prescribed by rules of court, it may proceed to a hearing in the same manner and under the same safeguards provided for in this chapter for the issuance of the original order. It may thereupon terminate the order if it finds the child is no longer in need of care or rehabilitation or it may enter an order extending or modifying the original order if it finds this action necessary to safeguard the child or the public interests.

**ARTICLE 3.**

**DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS.**

**§12-15-301.**

For purposes of this article, the following words and phrases have the following meanings:

- (1) **ABANDONMENT.** A voluntary and intentional relinquishment of the custody of a child by a parent, or a withholding from the child, without good cause or excuse, by the parent, of his or her presence, care, love, protection, maintenance, or the opportunity for the display of filial affection, or the failure to claim the rights of a parent, or failure to perform the duties of a parent.
- (2) **ABUSE.** Harm or the risk of harm to the emotional, physical health, or welfare of a child. Harm or the risk of harm to the emotional, physical health, or welfare of a child can occur through nonaccidental physical or mental injury, sexual abuse, or attempted sexual abuse or sexual exploitation or attempted sexual exploitation.
- (3) **CHILD-PLACING AGENCY.** The same as the term is defined in subdivision (3) of Section 38-7-2.
- (4) **NEGLECT.** Negligent treatment or maltreatment of a child, including, but not limited to, the failure to provide adequate food, medical treatment, supervision, education, clothing, or shelter.
- (5) **PROTECTIVE SUPERVISION.** A legal status created by order of the juvenile court following an adjudication of dependency whereby a child is placed with a parent or other person subject to supervision by the Department of Human Resources.
- (6) **REASONABLE EFFORTS.** Efforts made to preserve and reunify families prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from his or her home, and to make it possible for a child to return safely to his or her home. Reasonable efforts also refers to efforts made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanency placement of the child. In determining the reasonable efforts to be made with respect to a child, and in making these reasonable efforts, the health and safety of the child shall be the paramount concern.
- (7) ***RELATIVE.*** *An individual who is legally related to the child by blood, marriage, or adoption within the fourth degree of kinship, including only a brother, sister, uncle, aunt, first cousin, grandparent, great grandparent, great aunt, great uncle, great great grandparent, niece, nephew, grand niece, grand nephew, or a stepparent.*<sup>81</sup>
- (8) **SEXUAL ABUSE.** Sexual abuse includes the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any person to engage in, any sexually explicit conduct or any simulation of the conduct for the purpose of producing any visual depiction of the conduct. Sexual abuse also includes rape, molestation, prostitution, or other forms of sexual exploitation or abuse of children, or incest with children, as those acts are defined in this article or by Alabama law.
- (9) **SEXUAL EXPLOITATION.** Sexual exploitation includes allowing, permitting, or encouraging a child to engage in prostitution and allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child.
- (10) **TERMINATION OF PARENTAL RIGHTS.** A severance of all rights of a parent to a child.

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<sup>81</sup> This new definition of “relative,” which only applies in Article 3, specifies the individuals who are legally related to a child by blood, marriage, or adoption within the fourth degree of kinship. This narrow list is needed to guide courts, social workers, and other stakeholders in making relative placement decisions for children.

**§12-15-302.**

- (a) Dependency proceedings shall be commenced in the county where the child resides, in the county where the child is present when the proceedings are commenced, ***or in the county where the acts that are the basis of the dependency petition occurred.***<sup>82</sup>
- (b) ***Regardless of the county where the child currently resides, when a petition is filed seeking to modify an award of custody or visitation pursuant to an adjudication of dependency, and one of the individuals who was a party to the original proceeding still resides in the county of the juvenile court of original jurisdiction, the petition shall be filed in the juvenile court of the original jurisdiction.***<sup>83</sup>
- (c) ***When a petition is filed seeking to modify an award of custody or visitation pursuant to an adjudication of dependency in which all parties to the original action, including the child, no longer reside in the county of original jurisdiction, the petition shall be filed in the county where the child resides at the time the petition is filed. The petition shall be accompanied by a certified copy of the most recent order to be modified.***<sup>84</sup>
- (d) ***For purposes of this section, county where the child resides means the county in which the child and legal custodian have established legal residence or have resided for six or more months of a calendar year. This term shall not include placements by a state department or agency.***<sup>85</sup>

**§12-15-303.**

- (a) If a dependency proceeding is commenced in a county other than the county of the residence of the child, the juvenile court in which the proceedings were commenced, on its own motion or a motion of a party ***and after consultation with the receiving juvenile court,***<sup>86</sup> may transfer the proceeding before or after adjudication to the county of the residence of the child for the purpose of adjudication, disposition, supervision, or review as mandated by federal and state law for children in foster care or in the custody of the state, or any combination thereof.
- (b) ***For purposes of this section, county of the residence of the child means the county in which the child and legal custodian have established legal residence or have resided***

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<sup>82</sup> This new language provides that venue in dependency cases may be in the county where the acts that are the basis of the dependency petition occurred.

<sup>83</sup> Subsection (b) promotes continuity in dependency matters by providing for continued venue in the court of original jurisdiction where a party seeks to modify a custody or visitation award and where at least one of the original parties still resides in that county.

<sup>84</sup> Subsection (c) provides for venue in the child's county of residence where a petition to modify an award of custody or visitation is filed and where all parties have left the county of original jurisdiction.

<sup>85</sup> Subsection (d) defines "county where the child resides" to standardize the interpretation of this phrase.

<sup>86</sup> This new language requires consultation between juvenile courts prior to transfer, thereby facilitating transfers and preventing unnecessary delays and costs.

*for six or more months of a calendar year. This term shall not include placements by a state department or agency.*<sup>87</sup>

- (c) Certified copies of all legal and social records pertaining to the case shall accompany the transfer.

**§12-15-304.**

- (a) In all dependency and termination of parental rights proceedings, the juvenile court shall appoint a guardian ad litem for a child who is a party to the proceedings *and whose primary responsibility shall be to protect the best interests of the child.*<sup>88</sup>
- (b) *The duties of the guardian ad litem include, but shall not be limited to, the following:*
  - (1) *Irrespective of the age of the child, meet with the child prior to juvenile court hearings and when apprised of emergencies or significant events impacting the child. In addition, the guardian ad litem shall explain, in terms understandable to the child, what is expected to happen before, during, and after each juvenile court hearing.*
  - (2) *Conduct a thorough and independent investigation.*
  - (3) *Advocate for appropriate services for the child and the family.*
  - (4) *Attend all juvenile court hearings scheduled by the juvenile court and file all necessary pleadings to facilitate the best interests of the child.*<sup>89</sup>
- (c) *Before being appointed by the juvenile court, every guardian ad litem appointed in juvenile dependency or termination of parental rights cases shall receive training appropriate to their role.*<sup>90</sup>

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<sup>87</sup> Subsection (b) defines “county of the residence of the child” to standardize the interpretation of this phrase.

<sup>88</sup> This subsection mandates that guardians ad litem be appointed to represent children in all dependency and termination of parental rights cases and clarifies that the responsibility of a guardian ad litem is to protect the best interests of the child, as required by federal and state law. *See* 42 U.S.C. § 5106a(b)(2)(A)(xiii) (2008) (providing that in order to receive federal funding for child abuse and neglect prevention and treatment programs, a State must provide a certification by the chief executive officer that the State has “provisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, . . . , shall be appointed to represent the child in such proceedings . . . (II) to make recommendations to the court concerning the best interests of the child”); Ala. Code § 26-14-11 (2008) (“In every case involving an abused or neglected child which results in a judicial proceeding, an attorney shall be appointed to represent the child in such proceedings. Such attorney will represent the rights, interests, welfare and well-being of the child, and serve as guardian ad litem for said child.”).

<sup>89</sup> This subsection provides some minimum duties for guardians ad litem based on standards promulgated by the American Bar Association. *See* American Bar Association, *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (1996), at Stds. C-1, C-2, C-3, C-4, and D-1.

<sup>90</sup> As required by federal law, this subsection provides that guardians ad litem representing children must receive training appropriate to their role. *See* 42 U.S.C. § 5106a(b)(2)(A)(xiii) (2008) (requiring, as a condition of eligibility for federal funding, that “in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings”).

- (d) *Nothing in this section shall prohibit the juvenile court from appointing trained volunteers in addition to guardians ad litem in promoting the best interests of the child.*<sup>91</sup>
- (e) *A guardian ad litem may be appointed to protect the best interests of more than one child of the same parent. A guardian ad litem also may be appointed to protect the best interests of both a minor (or otherwise incapacitated) parent and the child.*<sup>92</sup>

**§12-15-305.**

- (a) *Upon request and a finding of indigency, the juvenile court may appoint an attorney to represent the petitioner and may order recoupment of the fees of the attorney to be paid to the State of Alabama.*<sup>93</sup>
- (b) In dependency *and termination of parental rights* cases, the *respondent* parent, legal guardian, or legal custodian shall be informed of his or her right to be represented by counsel and, if the juvenile court determines that he or she is indigent, counsel shall be appointed where the respondent parent, legal guardian, or legal custodian is unable for financial reasons to retain his or her own counsel.<sup>94</sup>

**§12-15-306.**

- (a) A child may be removed by a law enforcement officer from the custody of a parent, legal guardian, or legal custodian if there are reasonable grounds to believe any of the following:
  - (1) The child is suffering from an illness or injury or is in imminent danger from the surroundings of the child and that the removal of the child is necessary for the protection of the health and safety of the child.
  - (2) The child has no parent, legal guardian, legal custodian, or other suitable person able to provide supervision and care for the child.
- (b) *The person removing the child shall immediately deliver the child to the Department of Human Resources.*<sup>95</sup>

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<sup>91</sup> This subsection confirms that a juvenile court may appoint trained volunteers, such as Court Appointed Special Advocates (“CASAs”), to assist a guardian ad litem in promoting the best interests of a child.

<sup>92</sup> This subsection clarifies that a single guardian ad litem (“GAL”) may be appointed to protect the best interests of more than one child of the same parent. A single GAL may also be appointed to protect the best interests of both a minor (or otherwise incapacitated) parent as well as his or her child.

<sup>93</sup> This subsection recognizes the juvenile court’s discretion to grant a request by an indigent petitioner for an appointed attorney in a dependency case.

<sup>94</sup> This subsection codifies *W.C. v. State Dept. of Human Resources*, 887 So.2d 251 (Ala. Civ. App. 2003), in which the court recognized that an indigent parent in a termination of parental rights (“TPR”) matter has a due process right under the Alabama Constitution to the assistance of appointed counsel. Under this amended provision, a parent, legal guardian, or legal custodian who is a respondent in a TPR matter is automatically entitled to appointed counsel, even if counsel is not requested.

<sup>95</sup> This subsection fills a gap in the law by imposing an obligation to immediately deliver a child who has been removed from his or her home to the Department of Human Resources. *Cf.* Ala. Code § 12-15-56(4) & (6) (2008).

**§12-15-307.**

Relative caregivers, preadoptive parents, and foster parents of a child in foster care under the responsibility of the state shall be given notice, ***verbally or in writing, of the date, time, and place***<sup>96</sup> of any juvenile court proceeding being held with respect to a child in their care.

Foster parents, preadoptive parents, and relative caregivers of a child in foster care under the responsibility of the state have a right to be heard in any juvenile court proceeding being held with respect to a child in their care.

No foster parent, preadoptive parent, and relative caregiver of a child in foster care under the responsibility of the state shall be made a party to a juvenile court proceeding solely on the basis of this notice and right to be heard pursuant to this section.

**§12-15-308.**

- (a) When a child alleged to be dependent has been removed from the custody of the parent, legal guardian, or legal custodian and has not been returned to same, a hearing shall be held within 72 hours from the time of removal, Saturdays, Sundays, and holidays included, to determine whether continued shelter care is required.
- (b) Notice of the 72-hour hearing requirement, either verbal or written, stating the date, time, place, and purpose of the hearing and the right to counsel shall be given to the parent, legal guardian, or legal custodian if he or she can be found.
- (c) At the commencement of the 72-hour hearing requirement, the juvenile court shall advise the parent, legal guardian, or legal custodian of the right to counsel and shall appoint counsel if the juvenile court determines he or she is indigent. If the juvenile court already has not done so, it shall appoint a guardian ad litem for a child who is a party to the proceeding. ***It is the responsibility of the guardian ad litem to present evidence supporting the best interests of the child.***<sup>97</sup> The parent, legal guardian, or legal custodian shall also be informed of the contents of the petition and, except as provided herein, shall be given an opportunity to admit or deny the allegations of the petition.
- (d) All relevant and material evidence helpful in determining the need for shelter care may be admitted by the juvenile court, even though not admissible in subsequent hearings.
- (e) If the child is not released and no parent, legal guardian, or other legal custodian has been notified and none appeared or waived appearance at the hearing, upon the filing of an affidavit by the parent, legal guardian, or legal custodian stating these facts and requesting a hearing, the juvenile court shall hear the matter within 24 hours.

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<sup>96</sup> This language brings the Alabama Code into compliance with federal law by requiring that the State provide “for a case review system which meets the requirements described in section 675(5)(B).” 42 U.S.C. § 671(a)(16) (2008); *see also* 42 U.S.C. § 675(5)(G) (2008) (requiring that case review system include a procedure for assuring that “the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of . . . any proceeding to be held with respect to the child”).

<sup>97</sup> This language explicitly confirms the responsibility of the guardian ad litem to present evidence supporting the best interests of the child.

- (f) *If the child is not released, the juvenile court, at the earliest opportunity in the case, including the 72-hour hearing requirement or the adjudicatory hearing, may order the parent, legal guardian, or legal custodian to provide a list of names and, if possible, addresses and telephone numbers, of known paternal and maternal relatives to the juvenile court.*<sup>98</sup>

**§12-15-309.**

- (a) When the juvenile court finds that continued shelter care is not required for a child, the juvenile court shall order the return of the child, and in so doing, may impose one or more of the following conditions singly or in combination:
- (1) Return the child to the custody of the parent, legal guardian, or legal custodian and, if necessary, place the child under the supervision of the Department of Human Resources.
  - (2) Place restrictions on travel, associations, or living conditions of the child pending the adjudicatory hearing.
- (b) An order releasing a child on any conditions specified may at any time be amended to impose additional or different conditions.

**§12-15-310.**

- (a) An adjudicatory hearing is a hearing at which evidence is presented for a juvenile court to determine if a child is dependent. At the commencement of the hearing, if the parties are not represented by counsel, they shall be informed of the specific allegations in the petition. The parties shall be permitted to admit or deny the allegations prior to the taking of testimony.
- (b) If the allegations are denied by the parties or if they fail to respond, the juvenile court shall proceed to hear evidence on the petition. The juvenile court shall record its findings on whether the child is dependent. If the juvenile court finds that the allegations in the petition have not been proven by clear and convincing evidence, the juvenile court shall dismiss the petition.
- (c) A statement made by a child under the age of 12 describing any act of sexual conduct performed with or on the child by another, not otherwise admissible by statute or court rule, is admissible in all dependency cases brought by the State of Alabama acting by and through a local department of human resources if:
- (1) The statement was made to a social worker, child sexual abuse therapist or counselor, licensed psychologist, physician, or school or kindergarten teacher or instructor; and
  - (2) The juvenile court finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability. In making its determination, the juvenile court may consider the physical and mental age and maturity of the child, the

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<sup>98</sup> This language codifies the juvenile court's authority to order that a parent, legal guardian, or legal custodian provide a list of relatives in order to expedite the process of identifying a child's relative resources.

nature and duration of the abuse or offense, the relationship of the child to the offender, and any other factor deemed appropriate.

- (d) A statement may not be admitted pursuant to this section unless the proponent of the statement makes known to the adverse party the intention of the proponent to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to rebut the statement. This child hearsay exception applies to all hearings involving dependency including, but not limited to, the 72-hour hearing requirement, the adjudicatory hearing, and the dispositional hearing. The exception contained in this subsection shall not apply to a criminal proceeding or charge.

**§12-15-311.**

- (a) If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that a child is dependent, the juvenile court may proceed immediately, in the absence of objection showing good cause or at a postponed hearing, to make proper disposition of the case.
- (b) In dispositional hearings, all relevant and material evidence helpful in determining the best interests of the child, including verbal and written reports, may be received by the juvenile court even though not admissible in the adjudicatory hearing. The parties or their counsel shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports.
- (c) On its own motion or that of a party, the juvenile court may continue the dispositional hearing pursuant to this section for a reasonable period to receive reports and other evidence bearing on the disposition or need for care or rehabilitation. In this event, the juvenile court shall make an appropriate order for temporary care for the child, or the release of the child from temporary care during the period of the continuance, subject to those conditions as the juvenile court may impose.

**§12-15-312.**

- (a) *When the juvenile court enters an order removing a child from his or her home and places the child into foster care or custody of the Department of Human Resources pursuant to this chapter, the order shall contain specific findings, if warranted by the evidence, within the following time periods while making child safety the paramount concern:*
  - (1) *In the first order of the juvenile court that sanctions the removal, whether continuation of the residence of the child in the home would be contrary to the welfare of the child. This order may be the pick-up order that the juvenile court issues on the filing of a dependency petition.*
  - (2) *Within 60 days after the child is removed from the home of the child, whether reasonable efforts have been made to prevent removal of the child or whether reasonable efforts were not required to be made.*
  - (3) *Within 12 months after the child is removed from the home of the child and not less than every 12 months thereafter during the continuation of the child in out-*

*of-home care, whether reasonable efforts have been made to finalize the existing permanency plan.*<sup>99</sup>

- (b) As used in this chapter, reasonable efforts refers to efforts made to preserve and reunify families prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the home of the child, and to make it possible for a child to return safely to the home of the child. In determining the reasonable efforts to be made with respect to a child, and in making these reasonable efforts, the health and safety of the child shall be the paramount concern. If continuation of reasonable efforts is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan including, if appropriate, through an interstate placement, and to complete whatever steps are necessary to finalize a permanent plan for the child.
- (c) Reasonable efforts shall not be required to be made with respect to a parent of the child if the juvenile court has determined that the parental rights of the parent to a sibling have been involuntarily terminated or that a parent has done any of the following:
  - (1) Subjected a child to an aggravated circumstance against the child or a sibling of the child and the risk of child abuse or neglect is too high for the child to remain at home safely or to be returned home. An aggravated circumstance includes, but is not limited to, rape, sodomy, incest, aggravated stalking, abandonment, torture, chronic abuse, or sexual abuse. An aggravated circumstance may also include any of the following:
    - a. Allowing a child to use alcohol or illegal drugs to the point of abuse, neglect, or substantial risk of harm.
    - b. Substance misuse or abuse, or both, by a parent or interfering with the ability to keep the child safe and refusal of a parent to participate in or complete treatment, or where treatment has been unsuccessful.
    - c. A parent demonstrating extreme disinterest in the child by doing either of the following:
      - 1. Not complying with the steps outlined in the individualized service plan or case plan over a period of six months.
      - 2. Repeatedly leaving the child with someone who is unwilling or incapable of providing care and not returning for the child as promised.
    - d. Abandoning an infant or young child when the identity of the child is unknown and the parent is unknown or unable to be located after a diligent search.
    - e. When the parent has an emotional or mental condition and there is clearly no treatment that can improve or strengthen the condition enough to allow the child to remain at home safely or to return home safely.

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<sup>99</sup> This subsection codifies the federal requirements set forth in 45 C.F.R. §§ 1336.21(c), (b)(1)(i), and (b)(2)(i) (2008), which condition the receipt of Title IV-E moneys (for foster care maintenance payments) on certain specific findings of fact.

- f. When a parent is incarcerated and the child is deprived of a safe, stable, and permanent parent-child relationship.
- (2) Committed murder or manslaughter of another child *or murder or manslaughter of the other parent of the child.*<sup>100</sup>
- (3) Aided or abetted, attempted, conspired, or solicited to commit murder or manslaughter of another child *or aided or abetted, attempted, conspired, or solicited to commit murder or manslaughter of the other parent of the child.*<sup>101</sup>
- (4) Committed a felony assault which resulted in the serious bodily injury to the child or another child *or to the other parent of the child.*<sup>102</sup> The term serious bodily injury means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- (d) Nothing in the exceptions to making reasonable efforts listed in subsection (c) shall be interpreted to require the reunification of a child with a stepparent or paramour of a parent under similar circumstances. The crimes listed in subsection (c) may include those from other states or federal crimes if the elements of the crimes are substantially similar to those crimes in this state.
- (e) If reasonable efforts are not made with respect to a child as a result of a determination made by a juvenile court in situations as described above, a permanency hearing, as provided in Section 12-15-315, in which in-state or out-of-state placement options for the child are considered, shall be held for the child within 30 days after the determination. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize permanent placement of the child. Reasonable efforts to place a child for adoption or with a legal guardian or legal custodian, including identifying appropriate in-state and out-of-state placements, may be made concurrently with other reasonable efforts.

### §12-15-313.

- (a) After a petition alleging dependency has been filed, the juvenile court may direct that a study and report to the juvenile court be made by the Department of Human Resources with recommendations concerning the child, his or her family, his or her environment, and other matters relevant to the need for treatment or disposition of the case.
- (b) Where there are indications that the child may be physically ill, mentally ill, or mentally retarded, the juvenile court, on its own motion or motion of a party, may order the child to be examined at a suitable place by a physician, psychiatrist, psychologist, or other qualified examiner under the supervision of a physician, psychiatrist, or psychologist who

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<sup>100</sup> This language expands the types of criminal offenses which, if committed by a parent of a child in foster care, excuses the state from making reasonable efforts as defined in this section.

<sup>101</sup> This language expands the types of criminal offenses which, if committed by a parent of a child in foster care, excuses the state from making reasonable efforts as defined in this section.

<sup>102</sup> This language expands the types of criminal offenses which, if committed by a parent of a child in foster care, excuses the state from making reasonable efforts as defined in this section.

shall certify the findings of the examiner in writing prior to a hearing on the merits of the petition.

**§12-15-314.**

- (a) If a child is found to be dependent, the juvenile court may make any of the following orders of disposition to protect the welfare of the child:
- (1) Permit the child to remain with the parent, legal guardian, or other legal custodian of the child, subject to conditions and limitations as the juvenile court may prescribe.
  - (2) Place the child under protective supervision under the Department of Human Resources.
  - (3) Transfer legal custody to any of the following:
    - a. The Department of Human Resources.<sup>103</sup>
    - b. A local public or private agency, organization, or facility willing and able to assume the education, care, and maintenance of the child and which is licensed by the Department of Human Resources or otherwise authorized by law to receive and provide care for the child.
    - c. A relative or other individual who, after study by the Department of Human Resources, is found by the juvenile court to be qualified to receive and care for the child. ***Unless the juvenile court finds it not in the best interests of the child, a willing, fit, and able relative shall have priority for placement or custody over a non-relative.***<sup>104</sup>
  - (4) Make any other order as the juvenile court in its discretion shall deem to be for the welfare and best interests of the child.
  - (5) In appropriate cases, award permanent custody to the Department of Human Resources or to a licensed child-placing agency after termination of parental rights and authorization to place for adoption, without appointing a legal guardian, or award temporary custody to the department or a licensed child-placing agency without appointing a legal custodian or legal guardian.
- (b) Unless a child found dependent shall also be found to be delinquent, the child shall not be confined in an institution established for the care and rehabilitation of delinquent children or in a juvenile detention facility. Nothing in this subsection shall be construed to prohibit the placement of dependent children in any other residential facility as defined in subdivision (22) of Section 12-15-102.

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<sup>103</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, the Alabama Code provided that the court may “[t]ransfer legal custody [of a dependent child] to . . . The Department of Human Resources; *provided, that the department is equipped to care for the child.*” Ala. Code § 12-15-71(a)(3)(a) (2008) (emphasis added). The 2008 Act deleted the italicized language in order to clarify that it is the Department’s responsibility to provide services for dependent children in the agency’s custody.

<sup>104</sup> This new language recognizes that a willing, fit, and able relative has priority for placement over a non-relative, unless the juvenile court finds it not in the best interests of the child. See *J.S. v. S.C.*, 959 So.2d 664 (Ala. Civ. App. 2006).

- (c) There shall be a rebuttable presumption that children cannot be removed from the custody of their parents solely because of a need for emergency housing.
- (d) In providing shelter or other care for children referred to or coming under the jurisdiction of the juvenile court, the juvenile court and the Department of Human Resources shall utilize only those facilities as have been established, licensed, or approved by law, or by agencies pursuant to law, for those purposes.
- (e) When a child is placed in the legal custody of the Department of Human Resources or any other department, agency, organization, entity, or person pursuant to this section and when the parent, legal guardian, or legal custodian of the child has resources for child support, the juvenile court shall order child support in conformity with the child support guidelines as set out in Rule 32, Alabama Rules of Judicial Administration. The child support shall be paid to the Department of Human Resources or department, agency, any other organization, entity, or person in whose legal custody the child is placed and may be expended for those matters that are necessary for the welfare and well-being of those children placed in the Department of Human Resources or any other departments, agencies, organizations, entities, or person. In these cases, the juvenile court shall issue income withholding orders subject to state law. Any petition alleging dependency of a child filed by the Department of Human Resources shall contain a request for child support.

**§12-15-315.**

- (a) ***Within 12 months of the date a child is removed from the home and placed in out-of-home care, and not less frequently than every 12 months thereafter during the continuation of the child in out-of-home care, the juvenile court shall hold a permanency hearing.***<sup>105</sup> The Department of Human Resources shall present to the juvenile court at the hearing a permanent plan for the child. The juvenile court shall consult with the child, in an age-appropriate manner, regarding the permanency plan and any transition plan to independent living. If a permanent plan is not presented to the juvenile court at this hearing, there shall be a rebuttable presumption that the child should be returned home. This provision is intended to ensure that a permanent plan is prepared by the Department of Human Resources and presented to the juvenile court within 12 months of the placement of any child in foster care and no less frequently than every 12 months thereafter. The purpose of the permanency hearing shall be to determine the permanency plan for the child which may include whether, and, if applicable, when, the child shall be: (1) Returned home on a specific date; (2) placed for adoption with no identified resource or with the current foster parent wherein the Department of Human Resources shall file a petition for termination of parental rights; (3) permanently placed with a relative with a transfer of legal and physical custody to the relative or with a transfer of physical custody to the relative but with the Department of Human Resources

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<sup>105</sup> This language brings the Alabama Code into compliance with federal law requiring that the State provide “for a case review system which meets the requirements described in section 675(5)(B).” 42 U.S.C. § 671(a)(16) (2008); *see also* 42 U.S.C. § 675(5)(C) (2008) (providing that the case review system require that “procedural safeguards will be applied . . . to assure each child in foster care under the supervision of the State of a permanency hearing to be held . . . no later than 12 months after the date the child is considered to have entered foster care [and not less frequently than every 12 months thereafter during the continuation of foster care]).

retaining legal custody; (4) placed in adult custodial care; or (5) placed in another planned permanent living arrangement. In the case of a child who will not be returned home, at the permanency hearing, the juvenile court shall consider in-state and out-of-state placement options. If the juvenile court determines the permanent plan shall be placement in another planned permanent living arrangement, the Department of Human Resources must document to the juvenile court a compelling reason for determining that it would not be in the best interests of the child to return home, be placed for adoption with no identified resource or with the current foster parent, or be permanently placed with a relative, with a transfer of legal and physical custody to the relative or with a transfer of physical custody to the relative but with the Department of Human Resources retaining legal custody, or be placed in adult custodial care. If the child has been placed in foster care outside the State of Alabama, at the permanency hearing, the juvenile court shall determine whether the out-of-state placement continues to be appropriate and in the best interests of the child. ***In the case of a child who has attained the age of 16 years, at the permanency hearing, the juvenile court shall consider the services needed to assist the child to make the transition from foster care to independent living.***<sup>106</sup> In any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the juvenile court shall consult, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child. Permanency plans may be concurrent and the Department of Human Resources may make reasonable efforts concurrently towards multiple permanency goals.

- (b) ***The permanency hearing order of the juvenile court shall address whether the Department of Human Resources has made reasonable efforts to finalize any existing permanency plan for the child.***<sup>107</sup>
- (c) ***The Department of Human Resources shall provide a copy of available health and education records of the foster child to the foster parent or foster care provider at the time of placement and provide a copy of available health and education records to the foster child, at no cost, at the time the child is emancipated or released from foster care by reason of attaining the age of majority.***<sup>108</sup>

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<sup>106</sup> This language brings the Alabama Code into compliance with federal law requiring that the State provide “for a case review system which meets the requirements described in section 675(5)(B).” 42 U.S.C. § 671(a)(16) (2008); *see also* 42 U.S.C. § 675(5)(C) (2008) (requiring that the case review system include permanency hearings during which the court shall consider, “in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living”).

<sup>107</sup> This language brings the Alabama Code into compliance with federal Title IV-E requirement that “[t]he State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect.” 45 C.F.R. §1356.21(b)(2)(i).

<sup>108</sup> This language brings the Alabama Code into compliance with federal law requiring that the State provide “for a case review system which meets the requirements described in section 675(5)(B).” 42 U.S.C. § 671(a)(16) (2008); *see also* 42 U.S.C. § 675(5)(D) (2008) (providing that the case review system must require that “a child’s health and education record. . . is reviewed and updated, and a copy of the record is supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care, and is supplied to the child at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority under State law”).

**§12-15-316.**

An order awarding legal custody or an order of protective supervision made by the juvenile court in the case of a child may be modified, terminated, or extended on motion by any of the following:

- (1) A child, whose legal custody has been transferred to a department, institution, agency, or person, requesting the juvenile court for a modification or termination of the order, alleging that the child is no longer dependent or that protective supervision is no longer necessary.
- (2) A department, institution, agency, or person vested with legal custody or responsibility for protective supervision, requesting the juvenile court for a modification, an extension, or a termination of the order on the grounds that this action is in the best interests of the child.

**§12-15-317.**

The Department of Human Resources, any public or private licensed child-placing agency, parent, child, or any interested person may file a petition to terminate the parental rights of a parent or parents of a child.

- (1) Mandatory filing of petition by the Department of Human Resources. The Department of Human Resources shall be required to file a petition to terminate the parental rights of a parent or parents of a child, or if the petition has been filed by another party, shall seek to be joined as a party to the petition, and, concurrently, to identify, recruit, process, and approve a qualified family for adoption, in the following circumstances:
  - a. In the case of a child who has been in foster care in the custody of the Department of Human Resources for 15 of the most recent 22 months.
  - b. If a child has been abandoned.<sup>109</sup>
  - c. If the parent has committed murder of another child of that parent.
  - d. If the parent has committed manslaughter of another child of that parent.
  - e. If the parent has aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of another child of that parent.
  - f. If the parent has committed a felony assault that has resulted in serious bodily injury, as defined in Section 12-15-319(a)(5)c., to the child, to another child of the parent, or to the other parent of the child.
- (2) Exceptions to mandatory filing shall include any of the following factors:

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<sup>109</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, the Alabama Code provided a specific time period within which a state or private agency having custody of an abandoned child must petition the juvenile court to terminate parental rights to the child. Ala. Code § 26-18-6 (2008) (“Within 14 calendar days following the period required under Section 26-18-7, the state agency or private agency having custody of the abandoned child shall petition the juvenile court having jurisdiction over the child to terminate parental rights to the abandoned child.”). The 2008 Act amended this section to allow greater discretion, subject to the federal requirement that “[t]he petition to terminate parental rights *must* be filed within 60 days of the judicial determination that the child is an abandoned infant.” 45 C.F.R. § 1356.21(i)(1)(ii) (emphasis added). Under the amended statute, the Department of Human Resources is still required to file a petition to terminate parental rights in abandonment cases, but the 14-day requirement has been deleted.

- a. The child is being cared for by a relative.
- b. The Department of Human Resources has documented in the individualized service plan, which shall be available for review by the juvenile court, a compelling reason for determining that filing a petition would not be in the best interests of the child.
- c. The Department of Human Resources has not provided to the family of the child, consistent with the time period in the individualized service plan of the Department of Human Resources, such services as the Department of Human Resources deems necessary for the safe return of the child to his or her home, if reasonable efforts are required to be made with respect to the child.

**§12-15-318.**

- (a) Except as otherwise provided by the Alabama Rules of Juvenile Procedure and this section, service of process of termination of parental rights actions shall be made in accordance with the Alabama Rules of Civil Procedure.
- (b) If service of process has not been completed within 90 days of the filing of the termination of parental rights petition, the petitioner shall request service by publication.
- (c) Service of process by publication may not be ordered by the juvenile court unless the following conditions are met:
  - (1) The child who is the subject of the proceedings was abandoned in the state.
  - (2) The state or private department or agency having custody of the child has established, by evidence presented to the juvenile court, that the absent parent or parents are avoiding service of process or their whereabouts are unknown and cannot be ascertained with reasonable diligence.
- (d) Service shall be made by publication in a newspaper of general circulation in the county of the juvenile court having jurisdiction and in the county of the last known address of the parent or parents of the abandoned child, at least once a week for four consecutive weeks.

**§12-15-319.**

- (a) If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that the parents of a child are unable or unwilling to discharge their responsibilities to and for the child, or that the conduct or condition of the parents renders them unable to properly care for the child and that the conduct or condition is unlikely to change in the foreseeable future, it may terminate the parental rights of the parents. In determining whether or not the parents are unable or unwilling to discharge their responsibilities to and for the child and to terminate the parental rights, the juvenile court shall consider the following factors including, but not limited to, the following:
  - (1) That the parents have abandoned the child, provided that in these cases, proof shall not be required of reasonable efforts to prevent removal or reunite the child with the parents.
  - (2) Emotional illness, mental illness, or mental deficiency of the parent, or excessive use of alcohol or controlled substances, of a duration or nature as to render the parent unable to care for needs of the child.

- (3) That the parent has tortured, abused, cruelly beaten, or otherwise maltreated the child, or attempted to torture, abuse, cruelly beat, or otherwise maltreat the child, or the child is in clear and present danger of being thus tortured, abused, cruelly beaten, or otherwise maltreated as evidenced by the treatment of a sibling.
  - (4) Conviction of and imprisonment for a felony.
  - (5) Commission by the parents of any of the following:
    - a. Murder or manslaughter of another child of that parent.
    - b. Aiding, abetting, attempting, conspiring, or soliciting to commit murder or manslaughter of another child of that parent.
    - c. A felony assault or abuse which results in serious bodily injury to the surviving child or another child of that parent. The term serious bodily injury means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
  - (6) Unexplained serious physical injury to the child under those circumstances as would indicate that the injuries resulted from the intentional conduct or willful neglect of the parent.
  - (7) That reasonable efforts by the Department of Human Resources or licensed public or private child care agencies leading toward the rehabilitation of the parents have failed.
  - (8) That parental rights to a sibling of the child have been involuntarily terminated.
  - (9) Failure by the parents to provide for the material needs of the child or to pay a reasonable portion of support of the child, where the parent is able to do so.
  - (10) Failure by the parents to maintain regular visits with the child in accordance with a plan devised by the Department of Human Resources, or any public or licensed private child care agency, and agreed to by the parent.
  - (11) Failure by the parents to maintain consistent contact or communication with the child.
  - (12) Lack of effort by the parent to adjust his or her circumstances to meet the needs of the child in accordance with agreements reached, including agreements reached with local departments of human resources or licensed child-placing agencies, in an administrative review or a judicial review.
- (b) A rebuttable presumption that the parents are unable or unwilling to act as parents exists in any case where the parents have abandoned a child and this abandonment continues for a period of four months next preceding the filing of the petition. Nothing in this subsection is intended to prevent the filing of a petition in an abandonment case prior to the end of the four-month period.

**§12-15-320.**

- (a) Termination of parental rights cases shall be given priority over other cases.
- (b) If the juvenile court determines that the parents of a child are unwilling or unable to act as parents and terminates their parental rights, it may do the following:

- (1) Transfer or continue the permanent legal custody of the child to the Department of Human Resources or to any public or private licensed child-placing agency able and willing to assume the care and maintenance of the child. An order of the juvenile court which terminates parental rights and awards permanent legal custody to the Department of Human Resources or to a licensed child-placing agency shall mean that the Department of Human Resources or the licensed child-placing agency shall have authority to make permanent plans for the child, including the authority to place for adoption and consent to adoption.
- (2) Transfer or continue the permanent legal custody of the child to the petitioner who, after study by the Department of Human Resources, is found to be able to properly receive and care for the child.

**§12-15-321.**

Where the juvenile court has terminated the parental rights and has placed legal custody of the child with the Department of Human Resources or with a public or private licensed child-placing agency, the juvenile court, at least annually, shall review the circumstances of the child to determine what efforts have been made to achieve permanency for the child.

**§12-15-322.**

Upon the termination of parental rights by the juvenile court and placement of permanent custody of a child with any agency or department, the agency or department may place the child for adoption or consent to the adoption of the child.

**§12-15-323.**

Appeals relating to dependency and termination of parental rights cases shall take priority over other cases filed on appeal *except for emergency matters, including appeals from denial of waiver of parental consent for abortion.*<sup>110</sup>

**ARTICLE 4.**

**INVOLUNTARY COMMITMENT OF MINORS OR CHILDREN.**

**§12-15-401.**

For purposes of this article, the following words and phrases shall have the following meanings:

- (1) COMMIT. Transfer legal and physical custody.
- (2) DEPARTMENT. The Department of Mental Health and Mental Retardation.

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<sup>110</sup> This language emphasizes that dependency and termination of parental rights cases shall take priority over other cases filed on appeal, except for certain emergency matters. This provision is consistent with Ala. Code § 12-15-120(a) (2008) (juvenile cases) and Ala. Code § 26-18-2 (2008) (termination of parental rights cases). Waiver of parental consent for abortion cases are excepted because these appeals must be handled in an expeditious, confidential and anonymous manner according to Ala. Code § 26-21-4(h) (2008).

**§12-15-402.**

- (a) The state, any county, any municipality, or any governmental department or agency, including, but not limited to, the Department of Human Resources or the Department of Youth Services, or any person, including a parent, legal guardian, or legal custodian, may file a petition in the juvenile court to have any minor or child, as defined in this chapter, committed to the custody of the department on the basis that the minor or child is mentally ill or mentally retarded and, as a consequence of that mental illness or mental retardation, poses a real and present threat of substantial harm to self or to others.
- (b) The petition shall be verified and filed in the county in which the minor or child is located *or resides*,<sup>111</sup> petitioning the juvenile court to commit the minor or child to the custody of the department.

**§12-15-403.**

- (a) When at the time a petition is filed, a juvenile court shall immediately review the petition and may require the petitioner to be sworn and answer under oath questions in regard to the petition and the minor or child sought to be committed.
- (b) If it appears from the face of the petition or from the testimony of the petitioner that the petition is totally without merit, the juvenile court *shall*<sup>112</sup> order the petition dismissed without further proceedings.

**§12-15-404.**

Service of the petition upon the minor or child sought to be committed and upon his or her parent, legal guardian, or legal custodian shall be as provided in this chapter for service on minors and children generally or as otherwise provided by rules of court promulgated by the Supreme Court of Alabama.

**§12-15-405.**

- (a) When any minor or child against whom a petition has been filed seeking to commit the minor or child to the custody of the department is initially brought before the juvenile court, the juvenile court shall *provide a copy of the petition and if requested*,<sup>113</sup> read the

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<sup>111</sup> This language allows a petition for involuntary commitment to be filed in the county in which the minor or child resides, which may not be the same as the county in which the child is located. This change reduces confusion by adopting the venue rules that apply in dependency proceedings. See Ala. Code § 12-15-302(a) (2009) (“Dependency proceedings shall be commenced in the county where the child resides, in the county where the child is present when the proceedings are commenced, or in the county where the acts that are the basis of the dependency petition occurred.”).

<sup>112</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, a juvenile court had the *discretion* to dismiss a petition upon a finding that the petition was totally without merit. See Ala. Code § 12-15-90(b) (2008) (“If it appears from the face of the petition or from the testimony of the petitioner that the petition is totally without merit, the court *may* order the petition dismissed without further proceedings.”) (emphasis added). The 2008 Act made dismissal in such cases mandatory.

<sup>113</sup> This amended provision requires the juvenile court to provide a copy of the petition to the minor or child and his or her parent, legal guardian, or legal custodian, and, if requested, read a copy of the petition to them. These

petition to the minor or child and to his or her parent, legal guardian, or legal custodian and counsel, and inform those persons verbally and in writing of the date, time, and place of the next hearing to be held in regard to the minor or child, the purpose of the hearing, the rights of the minor or child at the hearing, and the possible consequences of the hearing.

- (b) The juvenile court shall appoint *a child's attorney* for the minor or child. ***The juvenile court may appoint a guardian ad litem in addition to the child's attorney.***<sup>114</sup> No statement made or act done by the minor or child in the presence of the juvenile court prior to the minor or child obtaining the services of a child's attorney, or a guardian ad litem, shall be considered by the juvenile court in determining if the minor or child should be committed to the custody of the department.
- (c) Notice of the filing of a petition pursuant to this section and of the date of final hearing shall be given ***to the department by the juvenile court within 14 days prior to the hearing.***<sup>115</sup> The notice shall constitute an application for admission to a facility maintained, operated, or under the supervision and control of the department.
- (d) Not less than 24 hours prior to the final hearing, the department shall notify the juvenile court whether adequate facilities are available for the minor or child and to which facility the minor or child should be sent if the juvenile court should determine that the minor or child is to be committed. The minor or child shall not be accepted if the facility does not have adequate facilities available or if acceptance of the minor or child would result in an overcrowded condition.

#### **§12-15-406.**

- (a) At the time that a minor or child sought to be committed is first brought before the juvenile court, the juvenile court shall determine the placement of the minor or child pending further hearings. No limitations shall be placed upon the minor or child unless limitations shall be necessary to prevent the minor or child from doing substantial harm to self or to others or to prevent the minor or child from leaving the jurisdiction of the juvenile court.

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changes ensure that the minor or child and his or her parent, legal guardian, or legal custodian are apprised of the contents of the petition, as required by due process.

<sup>114</sup> This language provides that a child's attorney shall be automatically appointed to represent every minor or child who is subject to a petition under this article. Because a child or minor who is the subject of a petition for involuntary commitment is facing the prospect of a substantial deprivation of liberty, he or she should have the assistance of an attorney who can ensure that the court's decision is informed by all relevant evidence, including evidence that suggests involuntary commitment would be unnecessarily restrictive. The provision also recognizes that the juvenile court has discretion to appoint a guardian ad litem in addition to a child's attorney. Such appointment may be necessary in cases where the court does not believe the parties have presented sufficient evidence to enable the court to determine whether commitment is appropriate.

<sup>115</sup> This language requires that the Department of Mental Health/Mental Retardation receive notice of a petition and hearing date at least 14 days prior to the hearing. Such notice is essential to allow the Department adequate time to prepare for the hearing.

- (b) No child shall be placed in a juvenile detention facility unless the child *is charged with a delinquent act.*<sup>116</sup>
- (c) *The juvenile court may order the minor or child to be held in a public or private facility pending receipt by the department.*<sup>117</sup>
- (d) The juvenile court shall order the minor or child to appear at the times and places set for hearing the petition and may order and require the minor or child to appear at designated times and places to be examined by medical doctors or mental health professionals.

**§12-15-407.**

- (a) If the juvenile court finds it necessary to temporarily confine or restrain the minor or child, pending final hearing upon a petition for mental commitment of the minor or child in the custody of any person, department, or agency other than his or her parent, legal guardian, or legal custodian, the juvenile court at the time the confinement is ordered shall set the matter for a hearing within seven days to determine if probable cause exists that the minor or child should be committed. At the probable cause hearing, the juvenile court shall determine if it is necessary to continue the restraint or confinement pending the final hearing.
- (b) Upon a finding of probable cause that the minor or child should be committed, the juvenile court shall enter an order so stating and setting the date, time, and place of the hearing on the merits of the petition.
- (c) The final hearing shall be held on the merits of the petition within 30 days of the date that the minor or child was served with a copy of the petition seeking to commit the minor or child.

**§12-15-408.**

At all hearings conducted pursuant to this section to commit a minor or child to the custody of the department, the following shall apply:

- (1) The minor or child sought to be committed shall be present unless, prior to the hearing, the child's attorney for the minor or child has filed in writing a waiver of the presence of the minor or child on the ground that the presence of the minor or child would be dangerous to his or her physical or mental health or that the conduct of the minor or child could reasonably be expected to prevent the hearing from being held in an orderly manner and the juvenile court has determined from the evidence that the waiver should be granted and has entered an order approving the waiver.

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<sup>116</sup> This subsection clarifies that a child must not be placed in a juvenile detention facility unless he or she is charged with a delinquent act. Reference to a minor or child being placed in a jail or other facility for persons accused of or convicted of committing crimes was deleted to bring this section in compliance with the federal Juvenile Justice and Delinquency Prevention Act, which prohibits the institutionalization of nonoffenders and restricts the placement of children in adult jails or lockups. See 42 U.S.C. § 5633(a)(11) & (13) (2008).

<sup>117</sup> This new subsection codifies current practice by confirming that the juvenile court may order the minor or child to be held in a public or private facility pending receipt by the Department of Mental Health/Mental Retardation.

- (2) The minor or child sought to be committed shall have the right to compel the attendance of and offer the testimony of witnesses, to be confronted with the witnesses in support of the petition and to cross-examine those witnesses, and to testify in his or her own behalf. No minor or child shall be compelled to testify against himself or herself.
- (3) The juvenile court shall cause the hearing to be recorded stenographically, mechanically, or electronically and shall retain the recording for a period of not less than three years from the date the petition is denied or granted, and not less than the duration of any commitment pursuant to the hearing.
- (4) All hearings shall be heard by the juvenile court without a jury, and the persons who may be present shall be as provided in Section 12-15-129.

**§12-15-409.**

- (a) An attorney representing the state, any county, or municipality or the Department of Youth Services or the Department of Human Resources or an attorney representing the person or persons filing a petition to have a minor or child committed may serve as the advocate in support of the petition to commit in all matters regarding the petition.
- (b) At the final hearing upon a petition seeking to commit a minor or child to the custody of the department on the basis that the minor or child is mentally ill, the juvenile court may grant the petition if ***clear and convincing evidence***<sup>118</sup> proves all of the following:
  - (1) That the minor or child sought to be committed is mentally ill.
  - (2) That, as a consequence of the mental illness, the minor or child poses a real and present threat of substantial harm to himself, herself, or to others.
  - (3) That the threat of substantial harm has been evidenced by a recent overt act.
  - (4) That treatment is available for the mental illness of the minor or child or that confinement is necessary to prevent the minor or child from causing substantial harm to himself, herself, or to others.
  - (5) That commitment is the least restricting alternative necessary and available for treatment of the illness of the minor or child.
- (c) Upon these findings, the juvenile court shall enter an order setting forth the findings and may order the minor or child committed to the custody of the department.

**§12-15-410.**

- (a) At the final hearing upon a petition seeking to commit a minor or child to the department on the basis that the minor or child is mentally retarded, the juvenile court may grant the petition if ***clear and convincing evidence***<sup>119</sup> proves all of the following:

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<sup>118</sup> This change replaces the “substantial evidence” standard with a “clear and convincing evidence” standard, thereby bringing juvenile proceedings into line with proceedings for the involuntary commitment of adults. *See Ala. Code § 22-52-37(a)(8) (2008)* (“The necessity for commitment must be proved by evidence which is clear, unequivocal and convincing.”).

<sup>119</sup> This change replaces the “substantial evidence” standard with the “clear and convincing evidence” standard, thereby bringing juvenile proceedings into line with proceedings for the involuntary commitment of adults. *See Ala.*

- (1) The minor or child sought to be committed is mentally retarded.
  - (2) The mentally retarded minor or child is not *mildly retarded, as defined by the department*.<sup>120</sup>
  - (3) The minor or child, if allowed to remain in the community, is likely to cause serious injury to himself, herself, or others, or that adequate care, rehabilitation, and training opportunities are available only at a facility provided by the department.
- (b) Upon these findings, the juvenile court shall enter an order setting forth the findings, and may order the minor or child committed to the custody of the department.

**§12-15-411.**

- (a) Any minor or child committed to the custody of the department who has gained maximum benefit from institutional treatment, who is no longer in need of the services of the department, or who has gained maximum benefit from the programs of the department shall be discharged from the custody of the department. The minor or child shall not be received again by the department pursuant to the original commitment order unless deemed appropriate by a court of proper jurisdiction holding a subsequent hearing.
- (b) The department shall notify the committing juvenile court *or the court to which the case is transferred and the parties to the commitment action* in writing, *which must be received by the juvenile court*<sup>121</sup> at least 10 days in advance of the proposed discharge. The committing juvenile court, at the time of discharge, shall transfer custody to a person or another state department or agency deemed suitable by the juvenile court.

**§12-15-412.**

The juvenile court committing any minor or child to the custody of the department shall retain jurisdiction over the minor or child so long as the minor or child is in the custody of the department *regarding the original commitment*.<sup>122</sup>

**§12-15-413.**

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Code § 22-52-37(a)(8) (2008) (“The necessity for commitment must be proved by evidence which is clear, unequivocal and convincing.”).

<sup>120</sup> The 2008 Act deleted all references to “borderline” mental retardation because that phrase has no meaning to mental health practitioners and had created unnecessary confusion in involuntary commitment proceedings. The Act also deleted the statutory definition of “mildly retarded” and deferred instead to the definition used by the Department of Mental Health/Mental Retardation.

<sup>121</sup> This language revises the notice obligations of the Department of Mental Health/Mental Retardation by requiring that the Department not only notify the committing court of a proposed discharge, but also the parties and the court to which a case has been transferred. Such notice is particularly important when the family of a committed child or minor has moved to another county during the period of commitment.

<sup>122</sup> This new language clarifies that the jurisdiction of the committing court is not indefinite, but that it does continue as long as the child remains in the custody of the Department of Mental Health/Mental Retardation.

*The probable cause hearing provided in Section 12-15-407 and the final hearing provided in Section 12-15-408 may be consolidated with the consent of all the parties.*<sup>123</sup>

## ARTICLE 5.

### MULTIPLE NEEDS CHILD PROVISIONS.

#### §12-15-501.

For purposes of this article, the following words and phrases shall have the following meanings:

- (1) COUNTY TEAM. A county children's services facilitation team.
- (2) MULTIPLE NEEDS CHILD. A child coming to the attention of the juvenile court or one of the entities listed herein who is at imminent risk of out-of-home placement or a placement in a more restrictive environment, and whose needs require the services of two or more of the following entities: Department of Youth Services, public school system (services for exceptional needs), Department of Human Resources, Department of Public Health, juvenile probation officers, or Department of Mental Health and Mental Retardation.
- (3) STATE TEAM. The Alabama Children's Services Facilitation Team.

#### §12-15-502.

After the filing of a petition alleging that a child is delinquent, dependent, or in need of supervision, or after the filing of a petition seeking mental commitment of a minor or child pursuant to Section 12-15-401, the juvenile court, on its own motion or motion of a party, may refer the above-referenced child to the county team for recommendation if the petition alleged or evidence reveals to the juvenile court that the child may be a multiple needs child. ***If the case involves a child in need of supervision, or a status offender as defined in subdivision (4) of Section 12-15-201, who is at imminent risk of being placed in the legal or physical custody of the Department of Human Resources, the juvenile court shall refer the case to the county team.***<sup>124</sup> This referral may occur prior to any hearing, or the juvenile court may suspend proceedings during the hearing or prior to disposition to review the findings and recommendations of the county team. ***Upon referral to the county children's services facilitation team, the juvenile probation officer shall continue to provide case management to the status offender unless the county children's services facilitation team appoints another person to act as case manager. The juvenile probation officer shall participate in county***

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<sup>123</sup> This new section allows the court to consolidate the probable cause hearing with the final hearing, upon consent of all parties, in order to avoid unnecessary expense and delay.

<sup>124</sup> This language creates a mandatory referral requirement for children in need of supervision ("CHINS") or other status offenders who are at imminent risk of being placed in the legal or physical custody of the Department of Human Resources. The court may elect to suspend other proceedings pending a review by the county children's services facilitation team, but unless otherwise provided in this Title, suspension is not required and will sometimes be inappropriate.

*children's services facilitation team meetings and share records information and reports on the status offender with the county children's services facilitation team.*<sup>125</sup>

**§12-15-503.**

- (a) Within 21 days of receipt of a juvenile court referral *or within another time specified by the juvenile court*,<sup>126</sup> the county team shall present to the juvenile court a plan of services addressing the needs of the child referred to the county team and the respective responsibilities of departments, agencies, and organizations composing this county team. Upon receipt of this plan, the juvenile court may find the child a multiple needs child. When the juvenile court finds it is in the best interests of the multiple needs child, the juvenile court may order the use of any dispositional alternative or service available for dependent children, delinquent children, or children in need of supervision, children who are emotionally disturbed, mentally retarded, or mentally ill, or children who need specialized educational services, or children who need health services, or any combination thereof. The departments, agencies, or organizations shall be responsible for the implementation of the service plan adopted by the juvenile court.
- (b) No multiple needs child, unless alleged or adjudicated delinquent, shall be placed in *secure custody, except as provided in Section 12-15-208.*<sup>127</sup>
- (c) The juvenile court may appoint a guardian ad litem for a multiple needs child.
- (d) The provisions of subsections (a), (b), and (c) which require new or additional services beyond those already provided by the departments or agencies which are members of the State Team are mandated only to the extent that additional funds are appropriated to the State Multiple Needs Children Fund to implement its provisions. Nothing in the provisions relating to multiple needs children shall prohibit or restrict departments or agencies charged with the duty of providing services for children and families from working cooperatively and providing financial assistance to address needs which have been identified prior to a case being referred to a county team.

**§12-15-504.**

There is created an Executive Council of the State Team consisting of the heads of the following departments or agencies: Department of Education, Department of Human Resources, Department of Mental Health and Mental Retardation, Department of Public Health, and the

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<sup>125</sup> When a status offender is referred to the county children's services facilitation team, this provision requires that the juvenile probation officer continue to provide case management services for the child, unless and until the team determines that another person should serve as case manager.

<sup>126</sup> This language authorizes the juvenile court to extend or accelerate the statutory 21-day time period allowed for the county team to present a plan of services.

<sup>127</sup> Prior to the enactment of the Alabama Juvenile Justice Act of 2008, this section provided that "[n]o child, unless alleged or adjudicated delinquent, may be placed in *detention facilities* established primarily for delinquents." Ala. Code § 12-15-71(h)(2) (2008) (emphasis added). The 2008 Act clarified and strengthened the Code's protections for multiple needs children to prohibit all secure placements, not just detention, for multiple needs children who have not been accused or adjudicated of committing a delinquent act. This provision is subject to the exceptions set forth in Ala. Code § 12-15-208 (2009).

Department of Youth Services. The Executive Council shall exercise general supervision and oversight over the State Team, approve its state plan and its budget, oversee all financial arrangements, approve all policies and procedures, as well as amendments thereto, and establish minimum standards for the operation of county teams.

**§12-15-505.**

- (a) The State Team is created and shall consist of a representative appointed by the head of the following departments, agencies, or organizations: The Department of Education, the Department of Human Resources, the Department of Mental Health and Mental Retardation, the Department of Public Health, the Department of Youth Services, and the Alabama Chief Probation Officers Association.
- (b) The appointments to the state team shall be for a term of three years beginning October 1, 1983, and each three years thereafter and until their successors are appointed, except that the initial appointments of the representatives of the Department of Human Resources and the Department of Mental Health and Mental Retardation shall be for three years; the initial appointments of the representatives of the Department of Education and the Department of Youth Services shall be for two years; and the initial appointments of representatives of the Department of Public Health and the Alabama Chief Probation Officers Association shall be for one year. Any vacancies in the appointed positions shall be filled in like manner as their predecessors and shall serve for the remainder of the term of their predecessors and until a successor is appointed. Representatives may be reappointed for additional terms.
- (c) The State Team shall annually select one of its members to serve as chair and may select other officers as needed.
- (d) The State Team shall meet at least monthly at a time and place that is mutually agreeable.
- (e) The State Team shall:
  - (1) Develop and implement interagency plans for statewide services for multiple needs children.
  - (2) Develop guidelines, policies, and procedures for the allocation of available resources for services to multiple needs children. These guidelines, policies, and procedures shall be approved by the Executive Council of the State Team.
  - (3) Be authorized to exchange records, documents, and information among members of the state and county teams as well as the departments or agencies the members represent for the purposes of assessment, planning, and delivery of services to children.
  - (4) Consult with the county teams to ensure that all efforts to provide services locally and in the least restrictive environment are exhausted before a case is referred to the State Team. Upon receiving a referral, the State Team shall develop a plan which shall be binding on the county team. The State Team may allocate resources to implement the plan for services and treatment in accordance with the budget approved by the Executive Council of the State Team.
  - (5) The State Team may accept and use funds available to it from all sources, including, but not limited to, grants, appropriations, gifts, and donations for the purpose of implementing this section. All these funds shall be deposited into the

State Multiple Needs Children Fund, which shall be under the management of the State Team. Moneys of the fund may be withdrawn by vouchers authorized by the *Director of the Multiple Needs Child Office*<sup>128</sup> in accordance with the operations plan approved by the Executive Council of the State Team.

- (6) The State Team shall report periodically to the Alabama Children's Policy Council on the services available within the state, the number of cases upon which the State Team has been consulted or requested to formulate a service plan, and budgetary needs or constraints affecting delivery of services.
- (f) The State Team may employ staff, conditioned upon appropriation of funds, to carry out the duties of the State Team. Employment may be through contract or appointment pursuant to the State Merit System, utilizing one of the member departments or agencies as the appointing or contracting authority. Supervision of the *Director of the Multiple Needs Child Office*<sup>129</sup> shall be by the chair of the State Team.

**§12-15-506.**

- (a) A county team is created in each county of the state. The county team shall consist of a representative appointed by the head of the following departments, agencies, or organizations: The local education agency or agencies, the county department of human resources, the Department of Mental Health and Mental Retardation, the Department of Youth Services, and a juvenile probation officer appointed by the presiding juvenile court judge.
- (b) Appointments to the county team shall be for a term of three years beginning October 1, 1993, and each three years thereafter and until their successors are appointed, except that the initial appointments of the representatives of the county department of human resources and the Department of Mental Health and Mental Retardation shall be for three years; the initial appointments of the representatives of the local education agency or agencies and the Department of Youth Services shall be for two years; and the initial appointment of the juvenile probation officer shall be for one year. Any vacancies in the appointed positions shall be filled in like manner as their predecessors and shall serve for the remainder of the term of their predecessors and until a successor is appointed. Representatives may be reappointed for additional terms.
- (c) The county team shall annually select one of its members to serve as chair and may select other officers as needed.
- (d) Meetings of the county team may be held as needed. The county team shall meet during its normally scheduled time when a case is referred by a juvenile court or from notice of a member that there is a need for the county team to develop a service plan.
- (e) The county team shall:
  - (1) Comply with the guidelines, policies, and procedures promulgated by the State Team and approved by the Executive Council of the State Team.

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<sup>128</sup> This change codifies current practice.

<sup>129</sup> This change codifies current practice.

- (2) Be authorized to develop guidelines, policies, and procedures, not in conflict with the minimum standards established by the State Team, for the county team.
- (3) Be authorized to exchange records, documents, and information among members of the county and State Teams, as well as the departments or agencies the members represent, for the purposes of assessment, planning, and delivery of services to children.
- (4) By consensus, develop an individualized service plan to meet the needs of each child who is accepted by the county team.
- (5) Consult with the State Team whenever the county team is unable to reach an agreement as to a service plan. In the event a county team requests assistance of the State Team because of an inability to agree on a plan or needs assistance developing or implementing a plan, the service plan developed by the State Team shall be binding on the county team, as well as the departments, agencies, or organizations represented.
- (6) Work with the county children's policy council to ensure that appropriate local services are developed, modified, or expanded as the needs of children within the community are identified.
- (7) Be authorized to accept and use funds available to it from all sources, including, but not limited to, grants, appropriations, gifts, and donations for the purpose of implementing this section. All these funds shall be deposited into the county multiple needs children fund, which shall be under the management of the county team. Moneys of the fund may be withdrawn by vouchers or checks authorized by the chair of the county team in accordance with the operations plan approved by the county team.

**§12-15-507.**

The members of the state and county teams shall be entitled to be reimbursed for their expenses, including travel, lodging, food, and other expenses at the same rate as state employees. The expenses shall be paid by their respective departments, agencies, or organizations. Travel expenses of members of the team not otherwise reimbursed by the respective departments, agencies, or organizations may be paid from funds available to the teams.

**§12-15-508.**

- (a) There is established in the State Treasury a fund to be known as the State Multiple Needs Children Fund which shall be administered by the agency designated by the Executive Council of the State Team. This fund shall consist of all moneys appropriated for these purposes from the State General Fund, the Alabama Education Trust Fund, or the Children First Trust Fund, donations, grants, bequests, loans, or any other sources, either public or private, relating to providing services for children identified as multiple needs children.
- (b) The State Multiple Needs Children Fund shall be used to provide services not otherwise provided by state departments or agencies for multiple needs children. Administrative costs connected with the expenditures of state multiple needs children funds shall not exceed a percentage amount established by the Executive Council of the State Team.

- (c) All funds now or hereafter deposited to the credit of the State Multiple Needs Children Fund shall be expended for the purposes of carrying out this article; provided, however, that no funds shall be withdrawn nor expended for any purpose whatsoever unless the same shall have been allotted and budgeted in accordance with the provisions of Article 4 of Chapter 4 of Title 41, and only in the amounts and for the purposes provided by the Legislature in the general appropriations bill for any specific fiscal year.
- (d) The Chief Examiner of the Department of Public Accounts shall develop a uniform accounting system for the State Multiple Needs Children Fund conforming to generally accepted accounting principles. County teams and programs shall establish and maintain the uniform accounting system.
- (e) The annual reports and all records of accounts and financial records of all funds received by the State Multiple Needs Children Fund by grant, contract, or otherwise from state, local, or federal sources, shall be subject to audit annually by the Chief Examiner of the Department of Public Accounts. All audits shall be completed as soon as practicable after the end of the fiscal year of the team.

**§12-15-509.**

- (a) The Executive Council of the State Team shall adopt policies and procedures relating to the allocation of available resources for providing services for multiple needs children; for granting funds for programs and services on individuals; and for monitoring, evaluating, and reviewing services provided by programs where funds are provided. Funds available to provide services for multiple needs children may be allocated by the State Team:
  - (1) To counties, or groups of counties, based on detailed proposals, for establishing new, needs-based local services or expanding existing programs.
  - (2) To provide treatment for individual children.
  - (3) For other activities consistent with the purposes of this article.
- (b) The State Team, with approval of the Executive Council, shall determine the amount and duration of grants made for new programs provided for one or more counties. The State Team shall also determine the amount of funding to be awarded and the duration in individual cases where local resources have been exhausted. The State Team may select projects which meet the criteria and are compatible with the purposes of the multiple needs children program for financial awards.
- (c) In order to remain eligible for continued grant funding, a recipient shall substantially comply with the standards and administrative regulations defining program effectiveness which shall be promulgated by the Executive Council of the State Team. Each recipient shall participate in an evaluation to determine local and state program effectiveness. The form of this evaluation shall be a part of the promulgated policies and procedures.
- (d) Continued grant funding shall be based on demonstrated effectiveness in providing services to meet the identified needs.
- (e) If it is determined that there are reasonable grounds to believe that a participating county team is not complying with its plan or the minimum standards, the State Team shall give 30 days' written notice to the participating entity. If the State Team finds that a participating entity is not complying with its plan or the established minimum standards,

the State Team shall require the entity to provide a letter of intent as to how and when specific deficiencies identified will be corrected. If no letter is submitted to the State Team within the time limit specified, or if the deficiencies are not corrected within 45 days after the letter has been submitted to the entity, the funding may be suspended in part or in whole until compliance is achieved.

- (f) A quarterly report shall be submitted to the Alabama Children's Policy Council showing the awards initiated by the State Team during the quarter and the cumulative totals for each new services awards and awards for each special project. An annual report shall also be compiled.

## **ARTICLE 6.**

### **APPEALS.**

#### **§12-15-601.**

A party, including the state or any subdivision of the state, has the right to appeal a judgment or order from any juvenile court proceeding pursuant to this chapter. The procedure for appealing these cases shall be pursuant to rules of procedure adopted by the Supreme Court of Alabama. All appeals from juvenile court proceedings pursuant to this chapter shall take precedence over all other business of the court to which the appeal is taken.

## **TITLE 26. INFANTS AND INCOMPETENTS.**

### **CHAPTER 24. DEPARTMENT OF CHILDREN'S AFFAIRS.**

#### **§26-24-30.**

- (a) The Alabama Children's Policy Council is hereby created and shall consist of the following members: Three appointees from business and industry made by the Governor; the Lieutenant Governor; the Speaker of the House of Representatives; two members of the Alabama Senate, one appointed by the Lieutenant Governor and one appointed by the President Pro Tempore of the Senate; two members of the House of Representatives appointed by the Speaker of the House of Representatives; the Chief Justice of the Supreme Court of Alabama; the legal advisor to the Governor; the Attorney General; the President of the Juvenile and Family Court Judges' Association; the Commissioner of the Department of Corrections; the President of the District Attorneys' Association; the President of the Chief Juvenile Probation Officers' Association; the Commissioner of the Department of Human Resources; the Administrative Director of Courts; the Commissioner of the Department of Children's Affairs; the Commissioner of the Department of Mental Health and Mental Retardation; the Executive Director of the Department of Youth Services; the State Superintendent of Education; the State Health Officer; the Executive Director of the Alabama Children's Trust Fund; the President of the Alabama Parent-Teachers Association; the Director of the Alabama Department of Economic and Community Affairs; the Commissioner of the Department of Rehabilitation Services; the Commissioner of the Alabama Medicaid Agency; the Director of the Department of Public Safety; the Administrator of the Alcoholic Beverage Control Board; the Director of the Office of School Readiness; the Director of Voices for

Alabama's Children; the Director of A Journey to Manhood; the President of A Coalition of 100 Black Women; the President of 21st Century Youth Leadership Program; *the Director of the Children First Foundation; the Director of the Multiple Needs Child Office;*<sup>130</sup> and five persons to be appointed by the Alabama Children's Policy Council. The appointed members of the Alabama Children's Policy Council shall reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. All appointments are subject to Senate confirmation and shall be effective until acted upon by the Senate.

- (b) The Commissioner of the Department of Children's Affairs shall serve as chair and the Chief Justice of the Supreme Court of Alabama as vice chair. The five Alabama Children's Policy Council appointees and the three appointees of the Governor shall serve on the Alabama Children's Policy Council for two years from October 1 following their appointment and until their successors are selected, and may be reappointed for additional terms. Any vacancies in the appointed positions shall be filled in like manner as their predecessor and shall serve for a full term and until their successors are selected. If the Alabama Children's Policy Council deems it necessary or advisable, it may elect other officers and adopt by-laws. The vice chair and any other officers of the Alabama Children's Policy Council, other than the chair, shall hold these offices for a period as designated by the Alabama Children's Policy Council, or for so long as they remain members of the Alabama Children's Policy Council. The Alabama Children's Policy Council shall meet at the call of the chair at least once annually prior to September 1 of each fiscal year, and at other times as, in the opinion of the chair, additional meetings are needed.
- (c) It shall be the duty of the Alabama Children's Policy Council and the Chief Justice of the Supreme Court of Alabama to review the report prepared by the Department of Children's Affairs pursuant to Section 26-24-34 and to make recommendations as it deems necessary and appropriate to the Governor and Legislature by October 1 of each fiscal year. It shall also be the duty of the Alabama Children's Policy Council to develop a state resource guide, which may be automated, including procedural information concerning how to access these services. This guide shall be distributed to departments, agencies, and organizations serving children, as well as the county children's policy councils in each county of the state and the general public.

**§26-24-31.**

- (a) There is hereby established the Alabama Children's Policy Council Fund into which there is automatically appropriated twenty thousand dollars (\$20,000) annually at the beginning of each fiscal year. Any funds remaining in the Alabama Children's Policy Council Fund at the end of any fiscal year shall not revert to the State General Fund. The Comptroller shall transfer the moneys from the State General Fund to the Alabama Children's Policy Council Fund annually at the beginning of each fiscal year and the moneys in the fund shall be expended for the travel expenses of members of the Alabama Children's Policy Council who are not otherwise reimbursed by the state and such other necessary operating costs and expenses as approved by the chair of the Alabama

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<sup>130</sup> This language expands the Alabama Children's Policy Council to include the Director of the Children First Foundation and the Director of the Multiple Needs Child Office.

Children's Policy Council. Travel and per diem for all members of the Alabama Children's Policy Council shall be calculated and paid at the same rate applicable to state employees. Any expenses of the Alabama Children's Policy Council, including printing, postage, and mailing costs, which cannot be paid because of insufficient funds, shall be charged to the departments and agencies represented by membership on the Alabama Children's Policy Council on a pro-rata basis, as calculated by the chair.

- (b) The Alabama Children's Policy Council may accept and use funds available to it from all sources, including, but not limited to, grants, appropriations, gifts, and donations for the purpose of implementing this chapter. All funds shall be deposited into the Alabama Children's Policy Council Fund, which shall be under the management of the Alabama Children's Policy Council. Moneys of the fund may be withdrawn by vouchers or checks signed by the chair of the Alabama Children's Policy Council.

**§26-24-32.**

The members of the Alabama Children's Policy Council who are officers or employees of the State of Alabama shall be entitled to be reimbursed for their expenses, including travel, lodging, food, and other expenses at the same rate as other state employees. These expenses shall be paid by the Comptroller from funds appropriated from the State Treasury to the department or agency which the member represents.

**§26-24-33.**

- (a) A county children's policy council is hereby created in each county of the state. The county children's policy council shall consist of the following members: A juvenile court judge in each county; the county director of the Department of Human Resources; a county representative of the Department of Mental Health and Mental Retardation; a county representative of the Department of Youth Services; a county representative of the Department of Rehabilitation Services, the Medicaid Agency, the Department of Public Safety, and the Alcoholic Beverage Control Board, provided they have a physical presence in the county; the county superintendent of education and any city superintendent of education in the county; the county chief juvenile probation officer; a representative of the county health department; the district attorney; local legislators; the chair of the county commission; the sheriff, and *at least*<sup>131</sup> seven persons to be appointed by the county children's policy council from the community including, but not limited to, state and local government officials, practicing attorneys, community organizations, business and industry, and representatives of any other agencies or organizations providing services to families and children in the county.
- (b) All members of the county children's policy council shall serve on the county children's policy council for two years and until their successors are appointed, except those who serve by virtue of holding a designated office. The county children's policy council shall be convened at least once each quarter at the call of the chair. *The juvenile court judge presiding over the county children's policy council may nominate a member to serve as*

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<sup>131</sup> In order to maximize community participation and local leadership, this language authorizes the county children's policy councils to appoint more than seven members of the community.

*chair.*<sup>132</sup> At the first meeting of the county children's policy council, the county children's policy council shall select its additional council members. If the county children's policy council deems it necessary or advisable, it may elect other officers and adopt bylaws. The additional officers shall hold office for the period as designated by the county children's policy council.

**§26-24-34.**

The duties of the county children's policy council shall include, but not be limited to, the following: Reviewing the needs of children in the county and the responsibilities assigned each department or agency by law; determining areas of responsibility and identifying areas of duplication or conflict between departments and agencies in the county; identifying local resources and developing, in conjunction with the Department of Children's Affairs, and updating annually, a local resource guide to services available to children which shall include procedural information concerning how to access those local services; articulating and communicating to the local community the needs of children; and submitting an annual report to the Department of Children's Affairs by July 1 of each year on the local services provided to children, local needs of children, and recommendations of the county children's policy council based on data from the previous fiscal year ending September 30. The Department of Children's Affairs shall then, by September 1 of each year, submit its summary recommendations based on the reports, along with a copy of each local report to the Alabama Children's Policy Council. The local resource guides shall be used by the Alabama Children's Policy Council in compiling a state resource guide, which may be automated and shall be distributed to the general public and to agencies and organizations serving children.

**§26-24-35.**

All references to the "Alabama Juvenile Justice Coordinating Council" and to "county juvenile justice coordinating councils" in this code, are changed to the "Alabama Children's Policy Council" and "county children's policy councils" respectively. All other laws, rules, regulations, and legal references of any kind to the "Alabama Juvenile Justice Coordinating Council" or to "county juvenile justice coordinating councils" shall be changed to the "Alabama Children's Policy Council" or to "county children's policy councils" respectively when this code is next reprinted and in other laws, rules, regulations, and legal references as is appropriate, timely, and economically feasible.

...

**Section 7.**

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<sup>132</sup> Under this new language, the juvenile court judge who presides over the county children's policy council is authorized to nominate a member of the council to serve as chair in lieu of the judge, whose judicial responsibilities may not leave sufficient time to invest in the council.

This act shall become effective on January 1 following its passage and approval by the Governor, or its otherwise becoming law except that the provisions of subdivision (1) of subsection (a) of Section 12-15-208 *and Section 12-15-215 (a) (3)b*, Code of Alabama 1975, regarding status offenders, shall not become effective until October 1, 2009.