Exhibit 1: Alabama

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Useful Links:
State legislature:
http://www.legislature.state.al.us/
Department of Children’s affairs:
http://children.alabama.gov/
Department of Human Resources, Family Services:
http://www.dhr.state.al.us/list.asp?pagetype=Service&cat=Family

Attached Documents:
Alabama House Bill 617
Alabama Code, Section 38-12-1 – Section 38-12-5
HB617

119982-3

By Representative Hall

RFD: Judiciary

First Read: 23-FEB-10
ENROLLED, An Act,

To establish a kinship guardianships; to establish a kinship guardianship subsidy program; to provide legislative intent and purpose; to set procedures for establishing kinship guardianships and legal authority of kinship guardians; and to amend Sections 12-15-301, 12-15-314, 12-15-315, 38-12-2, and 38-12-4, Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act may be cited as the "Alabama Kinship Guardianship Subsidy Act."

Section 2. (a) The Legislature finds and declares the following:

(1) There exists in this state a number of children who cannot reside with their parents, legal guardians, or legal custodians because of such parents', legal guardians', or custodians' incapacity or inability to perform the regular and expected functions of care and support of the children and family care and who thereby come to the attention of juvenile court and into the care and custody of the Department of Human Resources.

(2) An increasing number of relatives, including grandparents, find themselves wanting to provide care to related foster children on a long-term basis to prevent the children from remaining in foster care with unrelated
caregivers yet these relatives are either unable or unwilling to seek termination of the legal relationships between the parent and the child, particularly when it is the caregiver's own child or sibling who is the parent.

(3) It is in the public interest to support legal guardianship assistance that addresses the needs of the children and caregivers in long-term kinship relationships by providing financial assistance to help relatives bear the long-term costs of child care and support for children outside the foster care system.

(4) It is in the public interest to create a new type of legal guardianship that addresses the needs of children in the legal custody of the Department of Human Resources and to establish long-term legal relationships with relatives and place children out of the foster care system.

(5) The purposes of kinship guardianships include the following:

a. Establish procedures to effect a legal relationship between a child in the legal custody of the Department of Human Resources and a kinship guardian when the child is not residing with either parent, a legal guardian, or a legal custodian and to terminate legal custody with the department.

b. Provide a child in the legal custody of the Department of Human Resources with a stable and consistent
long-term relationship with a kinship guardian that will enable the child to develop physically, mentally, and emotionally to the maximum extent possible when the parents, legal guardians, or legal custodians of the child are not willing or able to do so.

c. Establish a permanent placement alternative to a child remaining in the legal custody of the Department of Human Resources under juvenile court supervision in situations where the child cannot be reunited with the parent, legal guardian, or legal custodian, and other persons are not interested in pursuing adoption.

d. Establish a new legal relationship which is permanent during the minority of the child and not subject to modification or revocation merely for a material change in circumstances which has occurred since the order granting the kinship guardianship was entered, but also that the change would materially promote the child's best interest and welfare, and that the positive good brought about by the change would more than offset the inherently disruptive effect caused by uprooting the child.

e. Establish a kinship guardianship subsidy program to help kinship guardians bear the cost of providing care for their relatives' children outside the foster care system with available federal funds and funds made available from other sources.
Section 3. As used in this act, the following terms shall have the following meanings:

(1) CAREGIVER. An individual 21 years of age or older, other than a child's parent, legal guardian, or legal custodian who is an approved foster parent, who is a relative of the child and who has been providing care and support for the child while the child has been residing in the caregiver's home for at least the last six consecutive months while in the legal custody of the Department of Human Resources.

(2) CHILD. An individual under 18 years of age who is in foster care with the caregiver and over whom a court has exercised continuing jurisdiction.

(3) COURT. The juvenile court.

(4) DEPARTMENT. The Department of Human Resources.

(5) KINSHIP GUARDIAN. A caregiver who is willing to assume care of a child because of parental incapacity of a parent, legal guardian, legal custodian, or other dependency reason, with the intent to raise the child to adulthood, and who is appointed the kinship guardian of the child by a juvenile court. A kinship guardian shall be responsible for the care and protection of the child and for providing for the health, education, and maintenance of the child.

(6) PARENTAL INCAPACITY. Abandonment or incapacity of such a serious nature as to demonstrate that the parent, legal guardian, or legal custodian is unable, unavailable, or
unwilling to perform the regular and expected functions or
care and support of the child.

(7) PROGRAM. The Kinship Guardianship Subsidy
Program established by Section 4.

(8) 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.

Section 4. There is established in the department
the Kinship Guardianship Subsidy Program. For the purposes of
this act, the department is authorized to use funds that are
appropriated for child welfare services and funds provided
under the United States Social Security Act, Titles IV-B and
IV-E, or under any waiver that the department receives
pursuant to those titles, or out of any funds made available
to it from other sources for the program.

Section 5. (a) Subject to rules adopted to implement
this act, the department may provide subsidies for an eligible
child placed in kinship guardianship by a court, or by a
federally recognized Native American Indian tribe, if the
child would not be placed in a kinship guardianship without
the assistance of the program.
(b) A child is an eligible child for a kinship guardianship subsidy if the department determines the following:

(1) The child has been removed from the custody of his or her parent or parents, legal guardian, or legal custodian as a result of a judicial determination to the effect that continuation in the custody of the parent or parents, legal guardian, or legal custodian would be contrary to the welfare of the child.

(2) The department is responsible for the placement and care of the child.

(3) Being returned home or being adopted are not appropriate permanent options for the child.

(4) Permanent placement with a kinship guardian is in the child's best interests.

(5) The child demonstrates a strong attachment to the prospective kinship guardian and the kinship guardian has a strong commitment to caring permanently for the child.

(6) The child has received foster care maintenance payments while residing for at least six consecutive months in the home of the prospective kinship guardian.

(7) With respect to a child who has attained 14 years of age, the child has been consulted regarding the kinship guardianship.
(8) If required for federal funding participation, the kinship guardian is qualified pursuant to a means-based test and any other requirements.

(9) If required for federal funding participation, the necessary degree of relationship exists between the prospective kinship guardian and the child.

Section 6. The amount of a kinship guardianship subsidy shall be determined according to this section and as provided by rules of the department. The subsidy may be paid monthly and the monthly amount may not exceed the monthly foster care maintenance board payment for the child if the child were to remain in the care or custody of the department, without regard to the sources of the funds. No foster care maintenance board payment and kinship subsidy payment shall be paid for the same child for the same period of time. The kinship guardianship subsidy may only be provided for an eligible child. Subject to rules adopted by the department, the subsidy may include up to the federally established amount for nonrecurring expenses, including attorney's fees, incurred by the kinship guardian to complete the kinship guardianship in court. Subsidy payments are subject to the availability of funds and the allocation of funding by the Department of Human Resources.
Section 7. Provided that federal funding is available, the kinship guardianship subsidy shall continue until the following occur:

(1) The child who is being cared for by the kinship guardian reaches age 18 years, or age 21 if the child has attained age 16 before the kinship subsidy agreement became effective, and the child is:

a. Completing secondary education or a program leading to an equivalent credential.

b. Enrolled in an institution which provides postsecondary or vocational education.

c. Participating in a program or activity designed to promote, or remove barriers to, employment.

d. Employed for at least 80 hours per month.

e. Incapable of doing any of these activities described in paragraphs a. through d. due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child, if applicable.

(2) The kinship guardian is no longer legally responsible for support of the child.

(3) The kinship guardian is no longer providing support to the child under the care of the kinship guardian, at which time the kinship guardianship subsidy ceases.
Section 8. (a) Applications for the program may be submitted by a prospective kinship guardian. A written agreement between the prospective kinship guardian entering into the program and the department shall precede the award of a kinship guardianship. The kinship guardianship subsidy agreement and kinship guardianship subsidy shall become effective only upon entry of an order of a court awarding kinship guardianship. The agreement shall specify, at a minimum, the following:

(1) The amount of, and manner in which, each kinship guardianship assistance payment will be provided under the agreement, and the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child.

(2) The additional services and assistance that the child and relative guardian will be eligible for under the agreement.

(3) The procedure by which the relative guardian may apply for additional services as needed.

(4) That the department will pay the cost of nonrecurring expenses associated with obtaining a legal order of kinship guardianship of the child, to the extent the cost does not exceed the federally established amount.
(b) No kinship guardianship subsidy shall be made unless satisfactory documentation is submitted by the kinship guardian showing an eligible child lives in the home of the kinship guardian. Upon approval by the department that all the requirements for payment eligibility have been satisfied, the kinship guardianship subsidy may be retroactive to the date of the court order appointing kinship guardianship.

Section 9. If the subsidy continues for more than one year, the eligibility for and amount of the subsidy shall be reviewed at least annually by the department as provided by rule. The subsidy continues regardless of the state in which the kinship guardian resides, or the state to which the kinship guardian moves, if the kinship guardian continues to be responsible for the child provided funding is available.

Section 10. The department shall adopt rules for the program consistent with this act.

Section 11. Except as required by federal law or regulation, the kinship guardianship subsidy may not be counted as a resource or income in the determination of the kinship guardian's or child's eligibility for any public benefits or assistance. Kinship guardianship subsidy payments shall be exempt from any tax levied by the state or any subdivision thereof and shall be exempt from levy, garnishment, attachment, or any other process whatsoever and shall be inalienable.
Section 12. The department may provide a kinship guardianship subsidy pursuant to this act to any eligible child in department custody by court order on the effective date of this act and to any eligible child placed in department custody by court order after the effective date of the act.

Section 13. Sections 12-15-301, 12-15-314, 12-15-315, 38-12-2, and 38-12-4, Code of Alabama 1975, are amended to read as follows:

"§12-15-301.

"For purposes of this article, the following words and phrases shall 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) CAREGIVER. An individual 21 years of age or older, other than a parent, legal guardian, or legal custodian of a child who is an approved foster parent and who is a relative of the child and has been providing care and support for the child while the child has been residing in the home of the caregiver for at least the last six consecutive months while in the legal custody of the Department of Human Resources.

"(4) CHILD-PLACING AGENCY. The same as the term is defined in subdivision (3) of Section 38-7-2.

"(5) ELIGIBLE CHILD. In addition to the definition of "child" in Section 12-15-102(3), an individual under 18 years of age who has been residing with the caregiver for at least the last six consecutive months while in the legal custody of the Department of Human Resources.

"(6) KINSHIP GUARDIAN. A caregiver who is willing to assume care of a child because of parental incapacity of a parent, legal guardian, or legal custodian, or other dependency reasons, with the intent to raise the child to adulthood, and who is appointed the kinship guardian of the child by a juvenile court. A kinship guardian shall be responsible for the care and protection of the child and for providing for the health, education, and maintenance of the child.
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.

PARENTAL INCAPACITY. Abandonment or incapacity of such a serious nature as to demonstrate that the parent, legal guardian, or legal custodian is unable, unavailable, or unwilling to perform the regular and expected functions of care and support of the child.

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.

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.

"(11) 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, grandniece, grandnephew, or a stepparent.

"(12) 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.

"(13) 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.

"(14) TERMINATION OF PARENTAL RIGHTS. A severance of all rights of a parent to a child.

"(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.

"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.

"(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.

"(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.

"(f)(1) After a child has been placed in the legal custody of the Department of Human Resources, the department may file with the juvenile court a written request for appointment of a kinship guardian in cases where the juvenile court has entered an order under Section 12-15-315 affirming kinship guardianship as the permanent plan for the child."
"(2) A written request for appointment of a kinship guardian shall be verified and allege the following with respect to the child:

"a. Facts that if proved will meet the requirements for a kinship guardianship.

"b. The date and place of birth of the child, if known, and if not known, the reason for the lack of knowledge.

"c. The legal residence of the child and the place where he or she resides, if different from the legal residence.

"d. The marital status of the child if applicable.

"e. The name and home and business addresses of an individual caregiver sought to be appointed as a kinship guardian and all residents of that individual's household.

"f. The relationship between the individual caregiver sought to be appointed as a kinship guardian and the child.

"g. The names and home and business addresses of the parents of the child if known.

"h. The names and home and business addresses of legal guardians or legal custodians.

"i. The existence of any pending matters involving the custody of the child.

"j. A signed statement from the individual caregiver sought to be appointed as a kinship guardian that the
individual agrees to accept the duties and responsibilities of being a kinship guardian.

"k. The existence of any other matters pending in the juvenile court involving the child and, if they exist, a statement that departments, agencies, individuals, or entities authorized or involved in the proceedings by law or court order consent to the relief requested.

"l. The results of a criminal history record background check and a child abuse record check of the individual caregiver seeking to be appointed as a kinship guardian and all adult residents of the household of the individual caregiver.

"m. Whether the child is subject to provisions of the federal Indian Child Welfare Act of 1978 (25 U.S.C. §1901 et seq.) and, if so:

"1. The tribal affiliations of the parents, legal guardians, or legal custodians of the child; and

"2. The specific actions taken to notify the tribes of the parents, legal guardians, or legal custodians and the results of the contacts.

"n. Other relevant facts in support of the written request to be appointed as a kinship guardian.

"(3) After the juvenile court finds that an individual caregiver qualifies to be appointed as a kinship guardian, the requirements of subdivision (5) have been
proved, and the best interests of the child will be served by the requested appointment, it may make the appointment. After a kinship guardianship appointment, the juvenile court may make any other disposition of the matter that will serve the best interests of the child.

"(4) A kinship guardian may be appointed by the juvenile court only if:

"a.1. A parent, legal guardian, or legal custodian of the child is living and has consented in writing to the appointment of a kinship guardian and the consent has not been withdrawn; or

"2. A parent of the child is living but all parental rights in regard to the child have been terminated or restricted by a prior court order, provided that for this purpose only, the blood relationship with the child will continue to be recognized in defining relative caregiver; and

"b.1. The child has resided with the individual caregiver seeking to be appointed as a kinship guardian without the parent, legal guardian, or legal custodian for a period of six months or more immediately preceding the date the written request is filed, and a parent, legal guardian, or legal custodian having legal custody of the child is currently unwilling or unable to provide adequate care, maintenance, and supervision for the child or there are extraordinary circumstances; and
"2. No legal guardian of the child is currently
appointed pursuant to the Alabama Uniform Guardianship and
Protective Proceedings Act, Section 26-2A-1, et seq.

"(5) The burden of proof shall be by clear and
convincing evidence, except that in those cases involving an
Indian child as defined in the federal Indian Child Welfare
Act of 1978, 25 U.S.C. §1901, the burden of proof shall be
proof beyond a reasonable doubt.

"(6) As part of a kinship guardianship order, the
juvenile court may order a parent, legal guardian, or legal
custodian to pay the reasonable costs of support and
maintenance of the child that the parent, legal guardian, or
legal custodian is financially able to pay. The juvenile court
shall use the Child Support Guidelines established by Rules of
the Alabama Supreme Court to calculate a reasonable payment.

"(7) The juvenile court may order visitation between
a parent, legal guardian, or legal custodian and the child to
maintain or rebuild a parent-child relationship if the
visitation is in the best interests of the child.

"(8)a. A kinship guardianship is intended to be
permanent during the child's minority similar to other
permanency plan options. After the kinship guardian has been
appointed by the juvenile court, a parent, other person,
entity, department, or agency, including the Department of
Human Resources, may file a petition to revoke or modify the
kinship guardianship by proving not only that a material
disruptive effect
caused by uprooting the child.
"b. If the juvenile court finds that a petition for
revocation of the kinship guardianship filed by the Department
of Human Resources meets the standard in paragraph a. above,
it shall grant the petition, and the child shall be placed in
the legal custody of the Department of Human Resources. If the
juvenile court finds that a petition for modification of the
kinship guardianship filed by the Department of Human
Resources meets the standard in paragraph a. above, it shall
grant the petition, and the child shall remain with the
kinship guardian but shall be under the protective supervision
of the department.
"c. This subsection does not intend to preclude a
parent, other person, entity, department, or agency, including
the Department of Human Resources, from filing a petition to
modify other terms of the order of the juvenile court granting
the kinship guardianship, including, but not limited to,
visitation, which shall be decided, after notice to the
department, on the basis of what is in the best interests of the child.

"(9)a. Except as provided herein, a kinship guardian shall have the same rights, responsibilities, and authority relating to the child as a parent, including, but not limited to, making decisions concerning the care and well-being of the child; consenting to routine, preventative, necessary, elective, cosmetic, and emergency medical, dental, and mental health needs; arranging and consenting to educational plans for the child; arranging and consenting to athletic, sport, or other activity participation; applying for financial assistance and social services for which the child is eligible; applying for a permit or license; applying for admission to a college or university; responsibility for activities necessary to ensure the safety, permanency, and well-being of the child; and ensuring the maintenance and protection of the child, and further provided, that the appointment of the kinship guardian terminates the education rights of the parent in favor of the kinship guardian and the kinship guardian shall be deemed the parent for federal IDEA and other educational purposes.

"b. A kinship guardian may not consent to the adoption of the child or a name change for the child. The parent of the child shall retain the authority to consent to the adoption of the child or a name change for the child.
"c. The parent, legal guardian, or legal custodian from whose custody the child was removed shall retain the obligation to pay child support.

d. Unless otherwise ordered by the juvenile court, a kinship guardian has the authority to make all decisions regarding appropriate visitation between the parent, legal guardian, or legal custodian and the child.

e. The appointment of a kinship guardian does not limit or terminate any rights or benefits derived from or between the child and parent, legal guardian, or legal custodian relating to inheritance or insurance.

f. A kinship guardianship terminates when the child reaches 18 years of age, or when the child reaches age 21 if the child is eligible for guardianship subsidy up to age 21 regardless of whether the juvenile court has continued jurisdiction, or when the kinship guardianship is otherwise terminated or revoked by the juvenile court.

g. A certified copy of the court order appointing a kinship guardian shall be satisfactory proof of the authority of the kinship guardian, and letters of guardianship need not be issued.

h. A kinship guardianship order is the legal authority to enroll the named child in school and consent to school-related activities and medical care for the child; to give permission or consent for other non-school related
activities, placements, and events; and to enroll the child in health, homeowner, employment, motor vehicle, and other insurance.

"i. A kinship guardianship order is the legal authority for the kinship guardian to authorize or consent to medical care, dental care, and mental health care for the child.

"j. No Absent negligence, wantonness, recklessness, or deliberate misconduct, no person who acts in good faith reliance on a kinship guardianship order without actual knowledge of facts contrary to that order is subject to criminal or civil liability or professional disciplinary action. This good faith immunity applies even though a parent, legal guardian, or legal custodian having parental rights or a person having legal custody of the child has contrary wishes. A person who relies upon a kinship guardianship order is under no duty to make further inquiry or investigation.

"§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. 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 retaining legal custody.

"(4) Permanently placed with a kinship guardian pursuant to a written request filed by the Department of Human Resources for appointment of an individual as a kinship guardian. In addition to the allegations set forth in this
section, the written request shall further contain the following:

"a. That granting kinship guardianship of the child to the relative caregiver is in the best interests of the child and that neither a permanency goal of return of the child to the parents of the child nor adoption would be in the best interests of the child and are therefore not appropriate permanent plans for the child.

"b. That granting a kinship guardianship of the child to the relative caregiver will provide the child with a safe and permanent home.

"c. That the child demonstrates a strong attachment to the relative caregiver and the relative caregiver demonstrates a strong commitment to caring permanently for the child.

"d. That the relative caregiver has been approved as a foster parent pursuant to regulations of the Department of Human Resources, has completed a criminal history clearance and child abuse and neglect central registry clearance, and that results of these clearances have been provided to the juvenile court.

"e. That the child has been in foster care in the care of the prospective kinship guardian for a period of not less than six consecutive months preceding the filing of the written request for appointment of a kinship guardian."
"f. That if the child is 14 years of age or older, he or she has indicated his or her position regarding the prospective kinship guardianship and if the child is 18 years of age or older, he or she has consented to the kinship guardianship if capable of giving effective consent.

"(5) Placed in adult custodial care.

"(6) 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.

"(b) If the juvenile court determines the permanent plan under subsection (a) 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, be placed with a kinship guardian, 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. 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.

"(c) 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.

"(d) 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.
"(e) If the permanency plan for a child is placement
with a kinship guardian, the individualized service plan must
contain the following:

"(1) The steps that the Department of Human
Resources has taken to determine that it is not appropriate
for the child to be returned home or adopted.

"(2) The reasons for any separation of siblings
during placement.

"(3) The reasons why a permanent placement with a
fit and willing relative caregiver through a kinship
guardianship arrangement is in the best interests of the
child.

"(4) The ways in which the child meets the
eligibility requirements for the kinship guardianship program.

"(5) The efforts the Department of Human Resources
has made to discuss adoption by the relative foster parent of
the child as a more permanent alternative to a kinship
guardianship and, in the case of a relative foster parent who
has chosen not to pursue adoption, documentation of the
reasons therefor.

"(6) The efforts made by the Department of Human
Resources to discuss with the parent, legal guardian, or legal
custodian of the child the kinship guardianship arrangement,
or the reasons why the efforts were not made.

"§38-12-2.
"(a) There is established a Kinship Foster Care Program in the State Department of Human Resources.

"(b) When a child has been removed from his or her home and is in the care, custody, or guardianship of the department, the department shall attempt to place the child with a relative for kinship foster care. If the relative is approved by the department to provide foster care services, in accordance with rules and regulations adopted by the department regarding foster care services, and a placement with the relative is made, the relative may receive payment for the full foster care rate only as provided by federal law for the care of the child and any other benefits that might be available to foster parents, whether in money or in services. Foster care payments shall cease upon the effective date of the kinship subsidiary payments or as provided by the department.

"(c) The department shall establish eligibility standards for becoming a kinship foster parent as follows:

"(1) Relatives within the first, second, or third degree to the parent or stepparent of a child who may be related through blood, marriage, or adoption may be eligible for approval as a kinship foster parent. A relative shall be 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, grandniece, grandnephew, or
a stepparent. For the purposes of kinship foster care, the
blood relationship will continue to be recognized in defining
relative after termination of parental rights.

"(2) The kinship foster parent shall be 21 years of
age or older, except that if the spouse or partner of the
relative is 21 years of age or older and living in the home,
and the relative is between 18 and 21 years of age, the
department may waive the age requirement unless the department
provides otherwise by rule to carry out the provisions of this
chapter.

"(3) The department may waive standards for kinship
foster care as provided by department rule and as permitted by
other state and federal law.

"§38-12-4.

"(a) The department shall determine whether the
person is able to care effectively for the foster child by the
following methods:

"(1) Reviewing personal and professional references.

"(2) Observing during a home visit of the kinship
foster parent with household members.

"(3) Interviewing the kinship foster parent.

"(b) The department and the kinship foster parent
shall develop an individualized service plan for the
foster care of the child. The plan shall be periodically
reviewed and updated. If the plan includes the use of an
approved daycare center or family daycare home, the department
shall pay for child care arrangements, according to
established rates.

"(c) The kinship foster parent shall cooperate with
any activities specified in the individualized service
plan for the foster child, such as counseling, therapy, court
sessions, or visits with the foster child's parents or other
family members.

"(d) Whether appointed kinship guardian by the
juvenile court or awarded a kinship guardianship subsidy, the
kinship foster parent shall meet and continue to meet all
subsidy program and funding requirements."

Section 14. The provisions of this act are
severable. If any part of this act is declared invalid or
unconstitutional, that declaration shall not affect the part
which remains.

Section 15. This act shall become effective October
1, 2010.
I hereby certify that the within Act originated in and was passed by the House 08-APR-10, as amended.

Greg Pappas
Clerk

Senate 21-APR-10 Passed
As used in this chapter the following words shall have the following meanings:

(1) DEPARTMENT. State Department of Human Resources.

(2) FOSTER PARENT. Any person with whom a child in the care, custody, or guardianship of the department, is placed for temporary or long-term care, but shall not include any person with whom a child is placed for the purpose of adoption.

(Act 99-437, p. 864, §1.)

(a) There is established a Kinship Foster Care Program in the State Department of Human Resources.

(b) When a child has been removed from his or her home and is in the care, custody, or guardianship of the department, the department shall attempt to place the child with a relative for kinship foster care. If the relative is approved by the department to provide foster care services, in accordance with rules and regulations adopted by the department regarding foster care services, and a placement with the relative is made, the relative may receive payment for the full foster care rate for the care of the child and any other benefits that might be available to foster parents, whether in money or in services.

(c) The department shall establish eligibility standards for becoming a kinship foster parent as follows:
(1) Relatives within the first, second, or third degree to the parent or stepparent of a child who may be related through blood, marriage, or adoption may be eligible for approval as a kinship foster parent.

(2) The kinship foster parent shall be 21 years of age or older, except that if the spouse or partner of the relative is 21 years of age or older and living in the home, and the relative is between 18 and 21 years of age, the department may waive the age requirement.

(Act 99-437, p. 864, §2.)

ALA CODE § 38-12-3: Alabama Code - Section 38-12-3: INVESTIGATION OF PROSPECTIVE KINSHIP FOSTER PARENT

(a) A person may become a kinship foster parent only upon the completion of an investigation to ascertain if there is a state or federal record of criminal history for the prospective kinship foster parent or any other adult residing in the prospective foster parent's home.

(b) The Alabama Bureau of Investigation shall conduct the investigation and shall make the results of the investigation available to the department in accordance with this section. The department shall maintain the confidentiality of the investigation results and shall use the results only for purposes of determining a person's eligibility to become a kinship foster parent.

(c) It is unlawful, except for the purpose of determining a person's eligibility for kinship foster care, for any person to disclose information obtained under this section. Any person violating this section commits a Class A misdemeanor.

(Act 99-437, p. 864, §3.)
ALA CODE § 38-12-4: Alabama Code - Section 38-12-4: CASE PLAN

(a) The department shall determine whether the person is able to care effectively for the foster child by the following methods:

(1) Reviewing personal and professional references.

(2) Observing during a home visit of the kinship foster parent with household members.

(3) Interviewing the kinship foster parent.

(b) The department and the kinship foster parent shall develop a case plan for the foster care of the child. The plan shall be periodically reviewed and updated. If the plan includes the use of an approved daycare center or family daycare home, the department shall pay for child care arrangements, according to established rates.

(c) The kinship foster parent shall cooperate with any activities specified in the case plan for the foster child, such as counseling, therapy, court sessions, or visits with the foster child's parents or other family members.

(Act 99-437, p. 864, §4.)

ALA CODE § 38-12-5: Alabama Code - Section 38-12-5: RULES AND REGULATIONS

The department may adopt rules and regulations to carry out the provisions of this chapter.

(Act 99-437, p. 864, §5.)
How States are implementing the Fostering Connections Act

Alabama’s At-risk Children

Alabama Department of Human Resources (DHR) Family Services Division (FSD) is the agency responsible for child welfare services statewide and oversees the 67 county departments. According to data available in January 2009, in SFY 2008 Alabama DHR-FSD investigated 18,150 reports of child maltreatment; of these 9,290 were substantiated. As of January 2010, there were approximately 6400 children in foster care or custody of the DHR. Of these children, approximately 100 live in approved related foster homes and 500 live with relatives with the Department holding custody. There are approximately 600 children in care that are legally available for adoption. Approximately 350 of the 600 available for adoption children have an identified goal of adoption by the current foster parent and 250 are in need of an identified adoptive resource.

Working with its federal partners, in January 2009 DHR set up a comprehensive automated case management system that provides a unified automated tool to support most, if not all, family, child and adult services. This Family, Adult, and Child Tracking System (FACTS) is Alabama’s Statewide Automated Child Welfare Information System (SACWIS). The FACTS system is currently operational statewide. As expected in newly developed complex systems, which incorporates massive data from multiple stand-alone systems, the reliability of the data is compromised; however, the data reports are becoming increasingly more reliable. It is anticipated that within the next 6 months the reliability issues will be resolved.

Any discussion of Alabama’s at-risk children must recognize Alabama’s extraordinary history as a pioneer of child welfare reform that was propelled by a long standing consent degree, R.C. vs. Walley. Alabama DHR operated under this consent degree from December, 1991 until it was dissolved on January 16, 2007 by U.S. District Judge Ira Dement with the accolade that “Alabama’s child welfare system not only met the high expectation of the court, but also demonstrated an unsurpassed ability to provide for the safety and well-being of children and families in distress.” DHR-FSD sets the vision for establishing the infrastructure to support service delivery and sustain the systemic capacity for service delivery and improvements across all county departments. A range of administrative supports are provided to the county departments in areas of policy development, program training, foster and adoptive home recruitment and approval, consultation and technical assistance, budgeting, data analysis, quality assurance, and also some direct client services to children and families.

Though the impetus for the reform was a lawsuit, the reform was not adversarial. Alabama DHR worked collaboratively with national experts and the plaintiffs to rebuild its system at the point where it matters – the point of interaction between the system and the families it was established to serve. The Alabama child welfare system now reflects the apex of a child and family strength based model. Services are designed specific to each child and family and not simply for compliance with existing standards. Even though fewer than half the counties had started the reform, from 1991 to 1995, when the number of children in foster care nationally rose by 12 percent, Alabama’s foster care census fell by 22 percent and children’s length of stay in care dropped from an average of 438 days to less than 100. In January 2008 the National Coalition for Child Protection Reform reported that an independent monitor appointed by the court found that the rate at which children are taken from their homes was among the lowest in the country and repeat maltreatment of children left in their own homes was cut sharply.

Alabama’s Budget Landscape

Like most other states, Alabama is struggling with the economy. Alabama operates on an annual budget. Its fiscal year aligns with the federal fiscal year beginning October 1 and ending September 30 the following year. Alabama faced a $1.1 billion budget deficit for fiscal year 2009 and faces a $1.2 billion budget gap for fiscal year 2010. On August 21, 2009, Governor Bob Riley announced the need for a mid-year budget adjustment due to declining state revenue. Many of the
agencies funded by General Fund were ordered to modify their standard allocations of 25 percent each quarter to 22 percent for the first to third quarters and 34 percent for the fourth quarter.  

A freeze has been imposed on state government hiring. To date, however, child welfare staffing has not been substantially impacted by the freeze. Child welfare caseload standards and additional staff requirements are identified in the Alabama Administrative Code Chapter 660-5-53. Based on a preceding 12 month average these standards require 1 worker for every 8 to 12 protective service investigations. This range takes into account the different amounts of time and skill needed for more complex cases such as court placements (limited to 10 cases) and sexual abuse (limited to 8 cases). Other 12 month average caseload limitations are: 18 families for ongoing protective services, 18 children for foster care services, 22 children for adoption placement, and 40 resource cases. These standards give administrators a solid foundation to ask to hire workers in order to maintain the caseload standards. DHR has a staffing allocation committee. When caseloads rise above the caseload standards the county department requests permission from the state committee and the DHR commissioner to hire staff. Due to the hiring freeze, the commissioner must confirm approval with the Governor’s Office.

P.L. 110-351 State Options

Guardianship Assistance Program (GAP) implementation requires legislation. DHR program and legal staff in collaboration with the courts and Casey Family Programs have prepared legislation entitled, “Alabama Kinship Guardianship Subsidy Act” for the 2010 legislative session. Currently Alabama has a Kinship foster care program. Relatives can be approved as foster care providers. The draft legislation that aligns with the federal program would allow for children currently placed in related foster homes to be discharged from the foster care system to the permanent care of a guardian. There are approximately 100 children in the state’s custody in approved related foster care homes and approximately 500 in the state’s custody in relatives homes not approved as foster care homes.

Support to eligible young adults aged 19, 20, or 21. Since 1989, Alabama has allowed foster care maintenance payments and adoption subsidy up to the age of 21 for children under certain circumstances. Both foster care maintenance and adoption assistance payments may be made through state funds when ineligible for federal funding and the child is eligible to remain in care beyond the age of 18. Children age 14 and older are eligible to receive Independent Living Service (ILS) to assist in the development of skills that support their transition to adulthood. Alabama may provide Medicaid for foster care youth to age 21 provided they meet the points of eligibility. Currently, Medicaid is matched by state child welfare funds. The change in legislation, which provides for federal funding to pay for what has been previously paid through State dollars, results in the Medicaid agency now providing the required match funds. This will allow state child welfare funds to be available to create and provide more innovative services to this group.

Aftercare financial assistance and support services continue to be available to youth that leave the system prior to their 21 st birthday. For youth that are in care on their 18th birthday, policy allows for the youth to re-enter foster care if the need arises. Whether the youth needs to re-enter foster care or remains in their own home, financial, housing, counseling, employment, education and other appropriate support and services are provided as needed until their 21 st birthday. During SFY 2005, two thousand five hundred and forty one youth ages 14 and older were in foster care and received independent living services.

Chafee funding is used for education training vouchers (ETVs) and other services to provide support and funds to youth currently in foster care and youth formerly in foster care who have not attained age twenty three to attend accredited colleges, universities, vocational and/or technical training institutions. Youth may receive up to $5,000 per year for four years as they pursue higher education.

Support to eligible youth who exit care to guardianship or adoption after age 16 is under review. Currently, these youth are provided educational training vouchers and other services through Chafee funds as described above.

Alabama Indian Tribes

The Poarch Band of Creek Indians is the only federally recognized Indian Tribe in Alabama. It operates as a sovereign nation with its own system of government and bylaws. The Tribe is in the process of evaluating whether to apply directly to the Secretary for IV-E funding and/or Chafee funding. The Tribe and DHR have never had a formal agreement for the Tribe to access federal funding but the state has open communication with the Tribe. When Tribal children come to the attention of the Department, DHR policies require that child welfare staff provide services to these children in compliance with the Indian Child Welfare Act (ICWA). When an Indian child is removed from his/her home, whenever possible the child is placed with extended family members, other tribal members, or another Indian family. When this is
not possible, the Indian child’s tribe must approve the placement. Tribal Courts have exclusive jurisdiction over child custody proceedings and it is the state courts’ responsibility to transfer jurisdiction to tribal courts unless there is good cause to the contrary as defined by ICWA.

**P.L. 110-351 Mandatory Provision**

No statutory changes were required to implement the mandatory provisions. Minimal changes were needed to Alabama’s polices and practices to be in compliance with these provisions and no fiscal impact is anticipated.

**Relative Notification** must occur within the thirty days as stipulated by the federal statute. The 30 day requirement is not needed in state law but has been incorporated into policy. There are concerns in the manner that relatives are to be notified and the expectations that relatives are to be given when fully implementing the federal requirements. Permanency and concurrent planning practice requires the case worker to obtain detailed information and complete forms that identify relative resources upon bringing a child into care. This information is provided to the court at the adjudicatory hearing that occurs 72 hours following the child’s entry into care. If relatives are located who are willing to provide care, they are to be given preference when the home evaluation shows the relative can provide safe and appropriate care.

**Education stability policy** requires that children in out of home care be placed in close proximity to their own home and maintained in their same school whenever possible. DHR has worked with the State Department of Education to develop policy and the State Department of Education has sent out a letter to the local superintendents suggesting protocols. However, local school districts are autonomous and establish their own protocols. Each county DHR department has worked with the local education agency and established protocols to expedite enrollment and transfer of records to avoid any delay in a child’s entry into school. When a change in school is necessary, it is the caseworker’s responsibility to transfer or provide the foster parents the information needed to enroll the child in school and ensure that school records are transferred.

**Sibling Connections** have high priority when making placements. Policies that align with the federal requirements have been in place since 1994. DHR conducts exhaustive searches to identify a placement option that can accommodate siblings being placed together. Whenever siblings are separated, the effort to maintain connections and/or reunify them continues throughout the life of the case. Systemically, DHR has targeted recruitment efforts to find foster families capable of caring for large sibling groups. There are additional supports including special, higher board rates for foster parents who take siblings groups of four or more.

**Transition plan for children aging out of foster care**

Effective July 1, 2002, the Smooth Transition into Adulthood policy was implemented. DHR developed requirements for transitional and independent living programs to provide consistency in the development and delivery of transitional and independent living services throughout the state. DHR provides training and technical support for the county departments’ foster parents and social workers in transitional planning and independent living services for teens. DHR allows each county to provide their own Independent Living Program (ILP) so that the program can be individualized to the needs of the youth in the county. Each county department is expected to include 4 components for all youth in their program. These are: 1) Promoting a sense of control over their future, 2) Promoting a sense of competency, 3) Promoting a sense of permanency, and 4) Promoting a sense of usefulness. Foster care youth are to be included in the planning process on an individual level and on a group level. Youth participate in developing their goals through the individual service plan (ISP) and youth advisory councils.

The individualized service plan (ISP) serves as the youth’s transitional plan and identifies the specific steps and services designed to facilitate transition into adulthood. All of the youth’s current level of functioning, as it relates to life skills development, must be assessed as soon as the need is indicated, but no later than the fourteenth (14th) birthday and must be reviewed every six months thereafter. The assessment may be formal or informal but shall determine current level of functioning; how that current level of functioning can be improved; what the associated needs are; and the skills that may be developed or enhanced to facilitate maximum functioning as an adult.

Alabama youth advisory council program, Dedicated, Responsible, Empowered, and Motivated (D.R.E.A.M.), is composed of youth from local advisory groups and adult facilitators. D.R.E.A.M. provides education and employment assistance, opportunities for social interaction, and personal and emotional supports.

In 2006, DHR began efforts to target foster parents and mentors for teens. County departments are encouraged to develop partnerships with community based organizations and local businesses that can provide assistance and opportunities (job
shadowing, internships, career development, full or part time employment) to youth transitioning out of care. Ninety days after discharge, social workers are asked to provide information about the level of youth’s achievement and assess the need for after care services to sustain self sufficiency.

**Health oversight and coordination** planning includes the importance of a regular physician (preferably the child’s established physician), initial examination upon placement and ESPDT screening. Health needs are incorporated into the child and family service plan. DHR works with and utilizes the services of the Alabama Department of Public Health, Alabama Medicaid Agency, hospitals, clinics and private physicians to provide for children’s and families’ health care needs. DHR plans to strengthen the statewide functioning of the health care committee. FACTS maintains health information for each child to ensure the availability of health information and enable the coordination of ongoing physical, mental and dental health needs including inoculations and oversight of medications, particularly psychotropic drugs. Policy regulates the administering of all medications, including over the counter ones. These health care issues are incorporated into quality assurance reviews. There are behavior analysts on staff to review the treatment of children in care who have identified behavior issues.

**Family Connections Grants:** Alabama did not apply for any of these grants. Family Group Conferencing, also known as Individualized Service Plan (ISP), is used throughout the county departments. Although Alabama does not have a formal Kinship Navigator program, state does utilize the federal parent locator in conducting diligent searches. Exploration of other avenues to locate families is being considered.

There are substance abuse treatment programs across the state, though timely access is sometimes limited. In addition, 14 counties have newly established court drug dependency programs for children, youth and families involved with the juvenile court system.

**Opportunities & Challenges**

Alabama works to turn challenges into opportunity. Current issues of priority focus are:

- Moving legislation through the 2010 state legislative session to enable implementation of the kinship guardianship program.
- Implementation of the National Youth in Transition Data (NYTD) and youth status upon exiting care.
- Finding and training a diverse pool of foster and adoptive resources to meet the needs of children entering care or already in care. Alabama is planning an extensive foster/adoptive resource media campaign in early 2010 for this purpose.
- Planning more specifically for children with the permanency goal of Another Permanent Planned Living Arrangement (APPLA). Generally, these are children who have been in care for long periods of time, are older youth and/or have some difficulty of care needs. Casey Family Programs has provided support and technical assistance for staffing these cases individually at permanency round tables where innovative and creative planning to improve permanency for these children is explored.
- Looking at workforce issues to maintain experienced, skilled, staff, with a focus on supervisors.

**Conclusion**

As discussed in the beginning of this document, Alabama has worked progressively for the last 18 years through political changes and with advocates to build a model child welfare system. Alabama remains resolute to sustain its gains in child welfare and continue to move forward to provide safe and permanent homes for children who cannot safely return to their own home. To this end, flexibility in federal financing that would enable services to be provided to children in their own homes at the same level as can be provided in out of home care would be beneficial. Such flexible funding could be used to strengthen families and prevent removal and expedite reunification in situations where removal was necessary for child safety. In addition, de-linking the IV-E eligibility from 1996 AFDC eligibility standards could make more children eligible for federal foster care funding and free state funds to be used for front end preventative services.

**Resources**

