

ALABAMA LEGISLATIVE ACTION PACKET

PURPOSE: ADVOCATING CHANGE TO ALABAMA LAWS TO BETTER PROTECT CHILDREN AND FAMILIES FROM FRAUD AND ABUSE.

Alabama does not permit direct citizen legislative action. HEAL recommends Alabama advocates create a petition directed at Alabama State Legislators (Alabama State House and Senate) requesting that the following recommended changes to State law be enacted. HEAL can support these efforts by creating an action alert to sign any petition created and for Alabama supporters to write their legislators supporting the petition and recommended changes.

Most States require that petitions and letters must be by, for, and/or from constituents of the State. HEAL does not currently have an Alabama chapter and we have provided this recommended action packet to assist Alabama advocates with information and support.

1. Create a petition (hard copy or online) suggesting one, some, or all of the recommended changes to Alabama's laws below. If you need help, just ask. The petition should be to "Alabama Lawmakers: State House of Representatives, State Senate, and Governor of Alabama". If you wish, you can copy/paste the recommendations below into the body of the petition. The petition should begin with, "We, the people of Alabama, demand state lawmakers enact the following laws, regulations, and policies:" (If you choose to create an online petition, make sure that you select that only Alabama residents may sign it to make sure the legislators accept the petition.)
2. Notify HEAL that the petition has been created and let us know if it is hard copy or online. If it is hard copy, we will promote your efforts and do our best to get you the local support you need. If the petition is online, send us the link and we will create an action alert asking Alabama supporters to sign your petition and write a letter to their legislators in Alabama in support of the policy changes you seek to have enacted.

CHILDREN AND YOUTH'S BILL OF RIGHTS

HEAL recommends that the following children and youth's bill of rights be enacted into law in all States:

1. No child shall be involuntarily placed in a secured, lockdown facility without due process of law. (US Constitution, 14th Amendment—law

supported by Supreme Court Rulings in Bellotti v. Baird (1979) U.S. Supreme Court and Ingraham v. Wright (1977) U.S. Supreme Court)

2. No child shall be forced to act as Staff or perform the duties of an employee of any institution involuntarily. (US Constitution, 13th Amendment—law supported by Supreme Court Ruling in Tinker v. Des Moines Independent School District (1969) U.S. Supreme Court)
3. No child shall be forced to act as Staff or perform the duties of an employee of any institution without fair compensation (i.e. minimum wage). (US Constitution, 13th Amendment- law supported by Supreme Court Ruling in Tinker v. Des Moines Independent School District (1969) U.S. Supreme Court)

ALABAMA

Statute of Limitations Suggested Revision(s)

Alabama has no criminal Statute of Limitations in which to prosecute felonies including sexual assault/abuse of minors and physical assault/battery resulting in serious injury or death.

Alabama should include kidnapping among the list of offenses that are listed as having no Statute of Limitations.

HEAL recommends ALA. CODE § 15-3-5 be amended to include sexual abuse, rape, and kidnapping in the list of offenses having no Statute of Limitations.

Alaska provides one example of a State that includes kidnapping in the list of offenses that have no Statute of Limitations for prosecution. (Source: ALASKA STAT. § 12.10.010)

HEAL recommends Alabama revise Alabama Code Section 6-2-38 (See: <http://www.legislature.state.al.us/CodeofAlabama/1975/6-2-38.htm>) to extend the Statute of Limitations for child victims to file suit upon reaching age of majority. HEAL recommends child victims be given 20 years from time of injury or 15 years upon reaching age of majority to file a tort claim against the tortfeasor.

Alternatives to the above extension of time to file a claim for injured minors include judicial system providing accessible and competent attorneys required to represent minors on a contingency basis with no fees due unless case is won and amount to be paid to attorney may not exceed 50% of the damages and 50% total must include all attorney fees and expenses.

Legal Age of Majority Suggested Revision(s)

Alabama should change the legal age of majority from 19 years old to 18 years old. This can be done by amending ALA CODE § 26-1-1. Most other States (exceptions: Mississippi and Nebraska) have found it appropriate to adopt 18 years of age as the standard.

Alabama may be in violation of the Equal Protection Clause (US Constitution, 14th Amendment, Section 1) in posing a greater responsibility on minors than rights afforded to those minors. Children such as Evan Miller (14 years old) have been sentenced as adults for serious crimes in Alabama. (Source: <http://www.law.cornell.edu/supct/cert/10-9646>) And, it seems either children 14 years old and up in Alabama should have the same rights as an adult or that sentencing reform is needed.

In Alabama the age of consent to sexual intercourse is 16 years old. The age to obtain a driver's license is also 16 in Alabama. So, it would seem Alabama concedes that teenagers 16 and up should be afforded greater responsibility and afforded more freedoms. This, coupled with factors that include ability to enlist in military service and vote, supports an amendment to make 18 the legal age of majority in Alabama.

Alabama, Mississippi, and Nebraska must understand the international implications of declaring 18-year olds to be children as a matter of law. This means that 18-year old American youth serving in the military are considered child-soldiers as a matter of law in Alabama, Mississippi, and Nebraska, which means the U.S. is in violation of international laws related to child-soldiers. Families with young adults who require extended care and supervision due to individual circumstances can file for extended legal guardianship/custody of 18-year olds and have a remedy at law for resolving issues in which 18-year olds may require additional guidance and supervision. There is no reasonable basis for not lowering the age of majority to 18 years in these states.

Child Abuse Laws Suggested Revision(s)

The definitions and laws pertaining to child abuse and/or endangering the welfare of a child in Alabama are found at <http://www.legislature.state.al.us/CodeofAlabama/1975/13A-13-6.htm>. HEAL recommends that the following language be added to Alabama's Child Endangerment Laws:

Emotional	Abuse
Citation: Ann. Stat. § 9:6-8.21 (New Jersey Statutory Definition)	

"Abused child or abused or neglected child means a child under age 18 years who is in an institution, and:

- Has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being
-
- Who has been willfully isolated from ordinary social contact under circumstances that indicate emotional or social deprivation"

In addition, HEAL recommends that Abandonment be added to Alabama's Child Endangerment Laws and defined as in the following Kansas Statute:

Kansas § 38-2202. Definitions. "As used in the revised Kansas code for care of children, unless the context otherwise indicates: "Abandon" or "abandonment" means to forsake, desert or, (a) without making appropriate provision for substitute care, cease providing care for the child."

HEAL recommends that "appropriate provision for substitute care" be limited to the least restrictive environment within the child's community of residence and/or within the State of Alabama if institutionalization is required.

****Special Note: Unlicensed Facilities**

HEAL recommends Alabama create an online accessible database of licensed facilities that includes inspection reports/complaints similar to the licensed facilities database provided by the State of Arizona. See <http://www.azdhs.gov/als/behavior/community.htm> (click on "Facilities Search: Including Inspection Reports")

Alabama will shut down unlicensed facilities:

"If the Department representative determines, through investigation, that any person, group of persons or corporation is, or has been operating an unlicensed child care facility, the results of the investigation shall be reported to the Attorney General and to the appropriate District Attorney for prosecution. (Section 38-7-10, Code of Alabama 1975.)"

Source:

http://dhr.alabama.gov/documents/MinimumStandards_ResidentialChildCareFacilities.pdf

HEAL has contacted the Alabama Department of Public Health, Department of Mental Health, and the Alabama Department of Human Resources regarding the apparent failure on their part to enforce the law in shutting down unlicensed facilities. HEAL e-mailed both departments on February 5th, 2013 advising that

they shut down Restoration Youth Academy in Escambia, AL. If Restoration Youth Academy is exempt due to being a “faith-based” institution, then HEAL will need to propose changes to exemption status laws/statutes as related to facilities such as Restoration Youth Academy.

The Autism National Committee’s report on laws regulating restraint and seclusion suggest that Alabama has strict laws against the misuse of seclusion and restraint. HEAL was unable to find the Statutes and none were cited in the ANC report. Further research is needed.

Faith-Based Exemptions Suggested Revision(s)

I was unable to find a specific law showing the extent of exemptions and from what form of oversight/regulation in regards to programs operating in Alabama. I am waiting to hear back regarding unlicensed facilities and hope one of the departments can cite me the specific law and interpretation of law that allows programs like RYA to operate without a license.

HEAL recommends Alabama adopt the language found in California Health and Safety Code § 1596.792, which requires licensure of faith-based/religious childcare providers unless they meet standard exemption requirements such as caring solely for their own family members. (Source: <http://www.childcarelaw.org/docs/ganda-licenseexempt.pdf> and <http://law.onecle.com/california/health/1596.792.html>.) Alabama may be able to include this language in ALA Code Section 38-7-10.

HEAL recommends that Alabama clearly defines Ministry so that charlatans cannot pose as ministries while hurting children, exploiting families, and defrauding parents. Merriam-Webster defines ministers as follows:

min·is·ter

noun \ˈmi-nə-stər\

Definition of *MINISTER*

1

: [agent](#)

2

a : one officiating or assisting the officiant in church worship

b : a clergyman especially of a Protestant communion

(Source: <http://www.merriam-webster.com/dictionary/ministers?show=0&t=1361078281>)

And, Ministry is defined as:

Definition of *MINISTRY*

1

: [ministration](#)

2

: the office, duties, or functions of a [minister](#)

3

: the body of [ministers](#) of religion : [clergy](#)

(Source: <http://www.merriam-webster.com/dictionary/ministry>)

A ministry by standard definition does not include nor extend to operating for-profit residential treatment centers, group homes, nor unlicensed academic nor behavioral health programs. It includes officiating in church worship. To extend the word ministry to cover all operations and facilities that claim faith-based/religious status sacrifices public welfare and safety and does so without a sound basis in reasoning. As shown, the State of California does not permit child-caring agencies exemption from licensure and regulation based on faith. Nor should any other State, including Alabama.

Educational Consultants/Referral Services Suggested Revision(s)

HEAL recommends that Alabama establish professional guidelines and professional licensure standards and certification requirements for any individual engaging in a business of making referrals to any mental health or educational institution.

In addition, HEAL recommends that Alabama ban the use of hired transport services to involuntarily transport children from their home to any location outside the State of Alabama. (HEAL is waiting on information regarding such a ban being effectively enforced or at least written into law and will provide an example/proposed model as soon as it is available.)

Teen/Youth Transport Services Suggested Revision(s)

HEAL recommends that Alabama establish professional guidelines and professional licensure standards and certification requirements for any individual or business engaging in involuntary transport of youth for mental health, behavioral health, medical care, and/or educational purposes. HEAL recommends that anyone engaged in such a business at minimum be required to be licensed Emergency Medical Technicians (EMTs) with ambulance driver certification with special licensing/certification requirements for transport services taking children across state lines. HEAL recommends that only law enforcement personnel engaged in transporting adjudicated youth who have been court-ordered to a secured treatment facility be permitted to transport youth across

state lines for such purposes and that private placements of youth be outlawed as we recommend all youth be recognized as having the right to due process when enrollment/placement violates a minor's civil liberty interests.

Seclusion and Restraint Suggested Revision(s)

HEAL suggests Alabama amend State laws regarding seclusion and restraint of children to match Sen. Harkin's (D-IA) and Rep. Miller's (D-CA) Keeping All Students Safe Act of 2011 (S. 2020, H.R. 1381).

Special Note: http://alabamachildcarefacts.com/?page_id=33 is a website created by a partnership of 2 organizations, namely Alabama Partnership for Children and Voices for Alabama's Children. I have e-mailed them at alabamachildcarefacts@gmail.com seeking assistance regarding amending Alabama's laws.

Reparative/Conversion Therapy Revision(s)

HEAL suggests that Alabama enact a law similar to California's law banning reparative/conversion therapy on children and youth. HEAL believes the methods involved in reparative/conversion therapy are inhumane and harmful whether or not they are used to change sexual behavior or any legal behavior or beliefs that may not align with those of families or service providers seeking to use coercive thought reform/conversion therapy techniques to change behavior. See

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1172 for more information.

Facilities and Occupational and Professional Licensure Database Revision(s)

HEAL recommends that Alabama create an online searchable database including any and all programs offering 24-hour supervised care to children living outside the home whether the programs call themselves therapeutic boarding schools, boot camps, wilderness programs, residential treatment centers, specialty boarding schools, or the like. Arizona provides the most user-friendly searchable database on licensed facilities and the database includes inspection and complaint records. See <http://hsapps.azdhs.gov/ls/sod/SearchProv.aspx?type=BH>. HEAL recommends Alabama create a searchable database similar to that provided by the State of Arizona.

HEAL recommends that Alabama create an all-encompassing online searchable database of all individuals that hold occupational or professional licenses in Alabama that allows for one-stop online verification to determine if an individual claiming occupational or professional licensure is properly licensed and in good-standing with the state. Utah provides the most user-friendly searchable database on licensed individuals and the database includes disciplinary records/actions. See <https://secure.utah.gov/llv/search/index.html>. HEAL recommends Alabama create a searchable database similar to that provided by the State of Utah.

Alabama may wish to include educator/teacher license verification with the overall professional licensure verification recommended above or continue to maintain a separate searchable database to verify educator qualifications as found at <https://tcert.alsde.edu/portal/public/pages/SearchCerts.aspx>.

The above measures would help Alabama protect consumers from fraud and abuse by making such information easily accessible.

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