

By: Representative Perry

To: Juvenile Justice

HOUSE BILL NO. 765

1 AM ACT TO AMEND SECTIONS 43-21-105 AND 43-21-151, MISSISSIPPI
2 CODE OF 1972, TO REVISE THE JURISDICTION OF THE YOUTH COURT
3 REGARDING AGE; AND FOR RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 SECTION 1. Section 43-21-105, Mississippi Code of 1972, is
6 amended as follows:

7 43-21-105. The following words and phrases, for purposes of
8 this chapter, shall have the meanings ascribed herein unless the
9 context clearly otherwise requires:

10 (a) "Youth court" means the Youth Court Division.

11 (b) "Judge" means the judge of the Youth Court
12 Division.

13 (c) "Designee" means any person that the judge appoints
14 to perform a duty which this chapter requires to be done by the
15 judge or his designee. The judge may not appoint a person who is
16 involved in law enforcement to be his designee.

17 (d) "Child" and "youth" are synonymous, and each means
18 a person who has not reached his seventeenth birthday. A child
19 who has not reached his seventeenth birthday and is on active duty
20 for a branch of the armed services or is married is not considered
21 a "child" or "youth" for the purposes of this chapter.

22 (e) "Parent" means the father or mother to whom the
23 child has been born, or the father or mother by whom the child has
24 been legally adopted.

25 (f) "Guardian" means a court-appointed guardian of the
26 person of a child.

27 (g) "Custodian" means any person having the present

28 care or custody of a child whether such person be a parent or
29 otherwise.

30 (h) "Legal custodian" means a court-appointed custodian
31 of the child.

32 (i) "Delinquent child" means a child who has reached
33 his tenth birthday and who has committed a delinquent act or,
34 while being required to attend an alternative school program
35 provided under Section 37-13-92, willfully and habitually absents
36 himself therefrom.

37 (j) "Delinquent act" is any act, which if committed by
38 an adult, is designated as a crime under state or federal law, or
39 municipal or county ordinance other than offenses punishable by
40 life imprisonment or death. A delinquent act includes escape from
41 lawful detention and violations of the Mississippi School
42 Compulsory Attendance Law, violations of the Uniform Controlled
43 Substances Law and violent behavior.

44 (k) "Child in need of supervision" means a child who
45 has reached his seventh birthday and is in need of treatment or
46 rehabilitation because the child:

47 (i) Is habitually disobedient of reasonable and
48 lawful commands of his parent, guardian or custodian and is
49 ungovernable; or

50 (ii) While being required to attend school,
51 willfully and habitually violates the rules thereof or willfully
52 and habitually absents himself therefrom; or

53 (iii) Runs away from home without good cause; or

54 (iv) Has committed a delinquent act or acts.

55 (l) "Neglected child" means a child:

56 (i) Whose parent, guardian or custodian or any
57 person responsible for his care or support, neglects or refuses,
58 when able so to do, to provide for him proper and necessary care
59 or support, or education as required by law, or medical, surgical,
60 or other care necessary for his well-being; provided, however, a
61 parent who withholds medical treatment from any child who in good

62 faith is under treatment by spiritual means alone through prayer
63 in accordance with the tenets and practices of a recognized church
64 or religious denomination by a duly accredited practitioner
65 thereof shall not, for that reason alone, be considered to be
66 neglectful under any provision of this chapter; or

67 (ii) Who is otherwise without proper care,
68 custody, supervision or support; or

69 (iii) Who, for any reason, lacks the special care
70 made necessary for him by reason of his mental condition, whether
71 said mental condition be mentally retarded or mentally ill; or

72 (iv) Who, for any reason, lacks the care necessary
73 for his health, morals or well-being.

74 (m) "Abused child" means a child whose parent,
75 guardian or custodian or any person responsible for his care or
76 support, whether legally obligated to do so or not, has caused or
77 allowed to be caused upon said child sexual abuse, sexual
78 exploitation, emotional abuse, mental injury, nonaccidental
79 physical injury or other maltreatment. Provided, however, that
80 physical discipline, including spanking, performed on a child by a
81 parent, guardian or custodian in a reasonable manner shall not be
82 deemed abuse under this section.

83 (n) "Sexual Abuse" means obscene or pornographic
84 photographing, filming or depiction of children for commercial
85 purposes, or the rape, molestation, incest, prostitution or other
86 such forms of sexual exploitation of children under circumstances
87 which indicate that the child's health or welfare is harmed or
88 threatened.

89 (o) "A child in need of special care" means a child
90 with any mental or physical illness that cannot be treated with
91 the dispositional alternatives ordinarily available to the youth
92 court.

93 (p) A "dependent child" means any child who is not a
94 child in need of supervision, a delinquent child, an abused child
95 or a neglected child, and which child has been voluntarily placed

96 in the custody of the Department of Human Services by his parent,
97 guardian or custodian.

98 (q) "Custody" means the physical possession of the
99 child by any person.

100 (r) "Legal custody" means the legal status created by a
101 court order which gives the legal custodian the responsibilities
102 of physical possession of the child and the duty to provide him
103 with food, shelter, education and reasonable medical care, all
104 subject to residual rights and responsibilities of the parent or
105 guardian of the person.

106 (s) "Detention" means the care of children in
107 physically restrictive facilities.

108 (t) "Shelter" means care of children in physically
109 nonrestrictive facilities.

110 (u) "Records involving children" means any of the
111 following from which the child can be identified:

112 (i) All youth court records as defined in Section
113 43-21-251;

114 (ii) All social records as defined in Section
115 43-21-253;

116 (iii) All law enforcement records as defined in
117 Section 43-21-255;

118 (iv) All agency records as defined in Section
119 43-21-257; and

120 (v) All other documents maintained by any
121 representative of the state, county, municipality or other public
122 agency insofar as they relate to the apprehension, custody,
123 adjudication or disposition of a child who is the subject of a
124 youth court cause.

125 (v) "Any person responsible for care or support" means
126 the person who is providing for the child at a given time. This
127 term shall include, but is not limited to, stepparents, foster
128 parents, relatives, nonlicensed babysitters or other similar
129 persons responsible for a child and staff of residential care

130 facilities and group homes that are licensed by the Department of
131 Human Services.

132 (w) The singular includes the plural, the plural the
133 singular and the masculine the feminine when consistent with the
134 intent of this chapter.

135 (x) "Out-of-home" setting means the temporary
136 supervision or care of children by the staff of licensed day care
137 centers, the staff of public, private and state schools, the staff
138 of juvenile detention facilities, the staff of unlicensed
139 residential care facilities and group homes and the staff of, or
140 individuals representing, churches, civic or social organizations.

141 (y) "Durable legal custody" means the legal status
142 created by a court order which gives the durable legal custodian
143 the responsibilities of physical possession of the child and the
144 duty to provide him with care, nurture, welfare, food, shelter,
145 education and reasonable medical care. All these duties as
146 enumerated are subject to the residual rights and responsibilities
147 of the natural parent(s) or guardian(s) of the child or children.

148 SECTION 2. Section 43-21-151, Mississippi Code of 1972, is
149 amended as follows:

150 43-21-151. (1) The youth court shall have exclusive
151 original jurisdiction in all proceedings concerning a delinquent
152 child, a child in need of supervision, a neglected child, an
153 abused child or a dependent child except in the following
154 circumstances:

155 (a) Any act attempted or committed by a child, which if
156 committed by an adult would be punishable under state or federal
157 law by life imprisonment or death, will be in the original
158 jurisdiction of the circuit court;

159 (b) Any act attempted or committed by a child with the
160 use of a deadly weapon, the carrying of which concealed is
161 prohibited by Section 97-37-1, or a shotgun or a rifle, which
162 would be a felony if committed by an adult, will be in the
163 original jurisdiction of the circuit court; and

164 (c) When a charge of abuse of a child first arises in
165 the course of a custody action between the parents of the child
166 already pending in the chancery court and no notice of such abuse
167 was provided prior to such chancery proceedings, the chancery
168 court may proceed with the investigation, hearing and
169 determination of such abuse charge as a part of its hearing and
170 determination of the custody issue as between the parents,
171 notwithstanding the other provisions of the Youth Court Law. The
172 proceedings in chancery court on the abuse charge shall be
173 confidential in the same manner as provided in youth court
174 proceedings.

175 When a child is expelled from the public schools, the youth
176 court shall be notified of the act of expulsion and the act or
177 acts constituting the basis for expulsion.

178 (2) Jurisdiction of the child in the cause shall attach at
179 the time of the offense and shall continue thereafter for that
180 offense until the child's twentieth birthday, unless sooner
181 terminated by order of the youth court. The youth court shall not
182 have jurisdiction over offenses committed by a child on or after
183 his seventeenth birthday * * *.

184 (3) No child who has not reached his thirteenth birthday
185 shall be held criminally responsible or criminally prosecuted for
186 a misdemeanor or felony; however, the parent, guardian or
187 custodian of such child may be civilly liable for any criminal
188 acts of such child. No child under the jurisdiction of the youth
189 court shall be held criminally responsible or criminally
190 prosecuted by any court for any act designated as a delinquent
191 act, unless jurisdiction is transferred to another court under
192 Section 43-21-157.

193 (4) The youth court shall also have jurisdiction of offenses
194 committed by a child which have been transferred to the youth
195 court by an order of a circuit court of this state having original
196 jurisdiction of the offense, as provided by Section 43-21-159.

197 (5) The youth court shall regulate and approve the use of

198 teen court as provided in Section 43-21-753.

199 SECTION 3. This act shall take effect and be in force from
200 and after July 1, 1999.