

By: Representative Moody

To: Public Health and
WelfareHOUSE BILL NO. 858
(As Passed the House)

1 AN ACT TO AMEND SECTION 43-15-13, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT CHILDREN IN THE CUSTODY OF THE DEPARTMENT OF HUMAN
3 SERVICES FOR 15 OF THE LAST 22 MONTHS SHALL BE REFERRED FOR
4 TERMINATION OF PARENTAL RIGHTS PROCEEDINGS, WITH CERTAIN
5 EXCEPTIONS, TO PROVIDE AN EXCEPTION TO THE 72 HOUR CHANGE OF
6 PLACEMENT NOTICE REQUIREMENT FOR FOSTER CHILDREN WHEN THE
7 PLACEMENT CHANGE IS TO AN ADOPTIVE OR OTHER PERMANENT PLACEMENT,
8 AND TO CLARIFY THAT THE THREE MONTH FOSTER CARE REVIEW SHALL BE AN
9 ADMINISTRATIVE REVIEW AND THE SIX MONTH REVIEW SHALL BE CONDUCTED
10 BY THE FOSTER CARE REVIEW BOARD; TO AMEND SECTION 43-21-603,
11 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ONCE THE REASONABLE
12 EFFORTS REQUIREMENT FOR MAINTAINING A CHILD IN HIS NATURAL HOME
13 ARE BYPASSED, THE COURT SHALL HAVE A PERMANENCY HEARING WITHIN 30
14 DAYS; TO AMEND SECTION 43-21-609, MISSISSIPPI CODE OF 1972, TO
15 CLARIFY THAT RELATIVE PLACEMENT NEED NOT BE FOUND INAPPROPRIATE
16 PRIOR TO A RECOMMENDATION FOR DURABLE LEGAL CUSTODY; TO AMEND
17 SECTION 43-21-613, MISSISSIPPI CODE OF 1972, TO CHANGE THE TITLE
18 OF DISPOSITIONAL HEARINGS TO PERMANENCY HEARINGS AND IN CONFORMITY
19 THERETO; AND FOR RELATED PURPOSES. BE IT ENACTED BY THE
20 LEGISLATURE OF THE STATE OF MISSISSIPPI:

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22 SECTION 1. Section 43-15-13, Mississippi Code of 1972, is
23 amended as follows:

24 43-15-13. (1) For purposes of this section, "children"
25 means persons found within the state who are under the age of
26 twenty-one (21) years, and who were placed in the custody of the
27 Department of Human Services by the youth court of the appropriate
28 county.

29 (2) The Department of Human Services shall establish a
30 foster care placement program for children whose custody lies with
31 the department, with the following objectives:

32 (a) Protecting and promoting the health, safety and
33 welfare of children;

34 (b) Preventing the unnecessary separation of children
35 from their families by identifying family problems, assisting
36 families in resolving their problems and preventing the breakup of

the family where the prevention of child removal is desirable and possible when the child can be cared for at home without endangering the child's health and safety;

(c) Remedying or assisting in the solution of problems which may result in the neglect, abuse, exploitation or delinquency of children;

(d) Restoring to their families children who have been removed, by the provision of services to the child and the families when the child can be cared for at home without endangering the child's health and safety;

(e) Placing children in suitable adoptive homes approved by a licensed adoption agency or licensed social worker, in cases where restoration to the biological family is not safe, possible or appropriate;

(f) Assuring safe and adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption. At the time of placement, the department shall implement concurrent planning, as described in subsection (7) of this section, so that permanency may occur at the earliest opportunity. Consideration of possible failure or delay of reunification should be given, to the end that the placement made is the best available placement to provide permanency for the child; and

(g) Providing a social worker or social work team for a family and child throughout the implementation of their permanent living arrangement plan. Wherever feasible, the same social worker or social work team shall remain on the case until the child is no longer under the jurisdiction of the youth court.

(3) The State Department of Human Services shall administer a system of individualized plans and reviews once every six (6) months for each child under its custody within the State of Mississippi, each child who has been adjudged a neglected, abandoned or abused child and whose custody was changed by court order as a result of such adjudication, and each public or private facility licensed by the department. The State Department of Human Services administrative review shall be completed on each child within the first three (3) months and a Foster Care Review once every six (6) months after the child's initial forty-eight

(48) hours shelter hearing. Such system shall be for the purpose of enhancing potential family life for the child by the development of individual plans to return the child to its natural parent or parents, or to refer the child to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or foster/adoptive home. The goal of the State Department of Human Services shall be to return the child to its natural parent(s) or refer the child to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or foster/adoptive home when the child has been in foster care for fifteen (15) of the last twenty-two (22) months regardless of whether the foster care was continuous for all of those twenty-two (22) months. The time period starts to run from the date the court makes a finding of abuse and/or neglect or sixty (60) days from when the child was removed from his or her home, whichever is earlier. The department can choose not to file a termination of parental rights petition if the following apply:

(a) The child is being cared for by a relative; and/or

(b) The department has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child. In furthering this goal, the department shall establish policy and procedures designed to appropriately place children in permanent homes, such policy to include a system of reviews for all children in foster care, as follows: Foster care counselors in the department shall make all possible contact with the child's natural parent(s) and any interested relative for the first two (2) months following the child's entry into the foster care system. Except in cases of aggravated circumstances prescribed in Section 43-21-603(7)(c) or (d), the child's natural parent(s) will have a reasonable time to be determined by the court. This time shall not exceed a six-month period of time in which to meet the service agreement with the department for the benefit of the child unless the

department has documented extraordinary and compelling reasons for extending the time period in the best interest of the child. If this agreement has not been satisfactorily met, simultaneously the child will be referred to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or a foster/adoptive home * * *. For children under the age of three (3) years, termination of parental rights shall be initiated within six (6) months, unless the department has documented compelling and extraordinary circumstances, and placement in a permanent relative's home, adoptive home or foster/adoptive home within two (2) months. For children who have been abandoned pursuant to the provisions of Section 97-5-1, termination of parental rights shall be initiated within thirty (30) days and placement in an adoptive home shall be initiated without necessity for placement in a foster home. The department need not initiate termination of parental rights proceedings where the child has been placed in durable legal custody or long-term or formalized foster care by a court of competent jurisdiction.

(4) The Foster Care Review once every six (6) months shall be conducted by personnel within the State Department of Human Services or by a designee or designees of the department and may include others appointed by the department, and the review shall include at a minimum an evaluation of the child based on the following:

(a) The extent of the care and support provided by the parents or parent, while the child is in temporary custody;

(b) The extent of communication with the child by parents, parent or guardian;

(c) The degree of compliance by the agency and the parents with the social service plan established;

(d) The methods of achieving the goal and the plan establishing a permanent home for the child;

(e) Social services offered and/or utilized to facilitate plans for establishing a permanent home for the child;

143 and

144 (f) Relevant testimony and recommendations from the
145 foster parent of the child, the grandparents of the child, the
146 guardian ad litem of the child, representatives of any private
147 care agency which has cared for the child, the social worker
148 assigned to the case, and any other relevant testimony pertaining
149 to the case.

150 Each child's review plan once every six (6) months shall be
151 filed with the court which awarded custody and shall be made
152 available to natural parents or foster parents upon approval of
153 the court. The court shall make a finding as to the degree of
154 compliance by the agency and the parent(s) with the child's social
155 service plan. The court also shall find that the child's health
156 and safety are the paramount concern. In the interest of the
157 child, the court shall, where appropriate, initiate proceedings on
158 its own motion. The State Department of Human Services shall
159 report to the Legislature as to the number of such children, the
160 findings of the foster care review board and relevant statistical
161 information in foster care in a semi-annual report to the
162 Legislature to be submitted to the Joint Oversight Committee of
163 the Department of Human Services. Said report shall not refer to
164 the specific name of any child in foster care.

165 (5) The State Department of Human Services, with the
166 cooperation and assistance of the State Department of Health,
167 shall develop and implement a training program for foster care
168 parents to indoctrinate them as to their proper responsibilities
169 upon a child's entry into their foster care. The program shall
170 provide a minimum of twelve (12) clock hours of training. The
171 foster care training program shall be satisfactorily completed by
172 such foster care parents prior to, or within ninety (90) days
173 after child placement with such parent. Record of such foster
174 care parent's training program participation shall be filed with
175 the court as part of a foster care child's review plan once every
176 six (6) months.

177 (6) When the Department of Human Services is considering
178 placement of a child in a foster home and when the department
179 deems it to be in the best interest of the child, the department
180 shall give first priority to placing the child in the home of one
181 (1) of the child's relatives within the third degree, as computed
182 by the civil law rule. In placing the child in a relative's home,
183 the department may waive any rule, regulation or policy applicable
184 to placement in foster care that would otherwise require the child
185 to have a separate bed or bedroom or have a bedroom of a certain
186 size, if placing the child in a relative's home would be in the
187 best interest of the child and such requirements cannot be met in
188 the relative's home.

189 (7) The Legislature recognizes that the best interests of
190 the child require that the child be placed in the most permanent
191 living arrangement as soon as is practicably possible. To achieve
192 this goal, the Department of Human Services is directed to conduct
193 concurrent planning so that a permanent living arrangement may
194 occur at the earliest opportunity. Permanent living arrangements
195 may include prevention of placement of a child outside the home of
196 the family when the child can be cared for at home without
197 endangering the child's health or safety; reunification with the
198 family, when safe and appropriate, if temporary placement is
199 necessary; or movement of the child toward the most permanent
200 living arrangement and permanent legal status. When a child is
201 placed in foster care or relative care, the department shall first
202 ensure and document that reasonable efforts were made to prevent
203 or eliminate the need to remove the child from the child's home.
204 The department's first priority shall be to make reasonable
205 efforts to reunify the family when temporary placement of the
206 child occurs or shall request a finding from the court that
207 reasonable efforts are not appropriate or have been unsuccessful.

208 A decision to place a child in foster care or relative care shall
209 be made with consideration of the child's health, safety and best
210 interests. At the time of placement, consideration should also be

given so that if reunification fails or is delayed, the placement made is the best available placement to provide a permanent living arrangement for the child. The department shall adopt rules addressing concurrent planning for reunification and a permanent living arrangement. The department shall consider the following factors when determining appropriateness of concurrent planning:

- (a) The likelihood of prompt reunification;
- (b) The past history of the family;
- (c) The barriers to reunification being addressed by the family;
- (d) The level of cooperation of the family;
- (e) The foster parents' willingness to work with the family to reunite;
- (f) The willingness and ability of the foster family or relative placement to provide an adoptive home or long-term placement;
- (g) The age of the child; and
- (h) Placement of siblings.

(8) If the department has placed a child in foster care or relative care pursuant to a court order, the department may not change the child's placement unless the department specifically documents to the court that the current placement is unsafe or unsuitable or that another placement is in the child's best interests * * * unless the new placement is in an adoptive home or other permanent placement. * * * Except in emergency circumstances as determined by the department or where the court orders placement of the child pursuant to Section 43-21-303, the foster parents, grandparents or other relatives of the child shall be given an opportunity to contest the specific reasons documented by the department at least seventy-two (72) hours prior to any such departure, and the court may conduct a review of such placement unless the new placement is in an adoptive home or other permanent placement. When a child is returned to foster care or relative care, the former foster parents or relative placement

shall be given the prior right of return placement in order to eliminate additional trauma to the child.

(9) The Department of Human Services shall provide the foster parents, grandparents or other relatives with at least a seventy-two-hour notice of departure for any child placed in their foster care or relative care, except in emergency circumstances as determined by the department or where the court orders placement of the child pursuant to Section 43-21-303. The parent/legal guardian, grandparents of the child, guardian ad litem and the court exercising jurisdiction shall be notified in writing when the child leaves foster care or relative care placement, regardless of whether the child's departure was planned or unplanned. The only exceptions to giving a written notice to the parent(s) are when a parent has voluntarily released the child for adoption or the parent's legal rights to the child have been terminated through the appropriate court with jurisdiction.

(10) The Department of Human Services shall extend the following rights to foster care parents:

(a) A clear understanding of their role as foster parents and the roles of the birth parent(s) and the placement agency in respect to the child in care;

(b) Respect, consideration, trust and value as a family who is making an important contribution to the agency's objectives;

(c) Involvement in all the agency's crucial decisions regarding the foster child as team members who have pertinent information based on their day-to-day knowledge of the child in care;

(d) Support from the social worker in efforts to do a better day-to-day job in caring for the child and in working to achieve the agency's objectives for the child and the birth family through provision of:

(i) Pertinent information about the child and the birth family.

(ii) Help in using appropriate resources to meet the child's needs.

(iii) Direct interviews between the social worker and the child, previously discussed and understood by the foster parents.

(e) The opportunity to develop confidence in making day-to-day decisions in regard to the child;

(f) The opportunity to learn and grow in their vocation through planned foster parent education;

(g) The opportunity to be heard regarding agency practices that they may question; and

(h) Reimbursement for costs of the foster child's care in the form of a board payment based on the age of the foster child as prescribed in Section 43-15-17.

The Department of Human Services shall require the following responsibilities from participating foster parents:

(a) Understanding the department's function in regard to the foster care program and related social service programs;

(b) Sharing with the department any information which may contribute to the care of foster children;

(c) Functioning within the established goals and objectives to improve the general welfare of the foster child;

(d) Recognizing the problems in foster home placement that will require professional advice and assistance and that such help should be utilized to its full potential;

(e) Recognizing that the foster family will be one of the primary resources for preparing a child for any future plans that are made, including return to birth parent(s), termination of parental rights or reinstitutionalization;

(f) Expressing their view of agency practices which relate to the foster child with the appropriate staff member;

(g) Understanding that all information shared with the foster parents about the child and his/her birth parent(s) must be held in the strictest of confidence;

(h) Cooperating with any plan to reunite the foster child with his birth family and work with the birth family to achieve this goal; and

(i) Attending dispositional review hearings and termination of parental rights hearings conducted by a court of competent jurisdiction, or providing their recommendations to the court in writing.

SECTION 2. Section 43-21-603, Mississippi Code of 1972, is amended as follows:

43-21-603. (1) At the beginning of each disposition hearing, the judge shall inform the parties of the purpose of the hearing.

(2) All testimony shall be under oath unless waived by all parties and may be in narrative form. The court may consider any evidence which is material and relevant to the disposition of the cause, including hearsay and opinion evidence. At the conclusion of the evidence, the youth court shall give the parties an opportunity to present oral argument.

(3) If the child has been adjudicated a delinquent child, prior to entering a disposition order, the youth court should consider, among others, the following relevant factors:

- (a) The nature of the offense;
- (b) The manner in which the offense was committed;
- (c) The nature and number of a child's prior adjudicated offenses; and
- (d) The child's need for care and assistance.

(4) If the child has been adjudicated a child in need of supervision, prior to entering a disposition order, the youth court should consider, among others, the following relevant factors:

- (a) The nature and history of the child's conduct;
- (b) The family and home situation; and
- (c) The child's need of care and assistance.

(5) If the child has been adjudicated a neglected child or

an abused child, prior to entering a disposition order, the youth court shall consider, among others, the following relevant factors:

(a) The child's physical and mental conditions;

(b) The child's need of assistance;

(c) The manner in which the parent, guardian or custodian participated in, tolerated or condoned the abuse, neglect or abandonment of the child;

(d) The ability of a child's parent, guardian or custodian to provide proper supervision and care of a child; and

(e) Relevant testimony and recommendations, where available, from the foster parent of the child, the grandparents of the child, the guardian ad litem of the child, representatives of any private care agency which has cared for the child, the social worker assigned to the case, and any other relevant testimony pertaining to the case.

(6) After consideration of all the evidence and the relevant factors, the youth court shall enter a disposition order which shall not recite any of the facts or circumstances upon which such disposition is based, nor shall it recite that a child has been found guilty; but it shall recite that a child is found to be a delinquent child, a child in need of supervision, a neglected child or an abused child.

(7) In the event that the youth court orders that the custody or supervision of a child who has been adjudicated abused or neglected be placed with the Department of Human Services or any other person or public or private agency, other than the child's parent, guardian or custodian, the youth court shall find and the disposition order shall recite that:

(a) (i) Reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or

(ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the

child within his own home, and that there is no reasonable alternative to custody; and

(b) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that the placement of the child in foster care is in the best interests of the child; or

(c) Reasonable efforts to maintain the child within his home shall not be required if the court determines that:

(i) The parent has subjected the child to aggravated circumstances including, but not limited to, abandonment, torture, chronic abuse and sexual abuse; or

(ii) The parent has been convicted of murder of another child of such parent, voluntary manslaughter of another child of such parent, aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of such parent; or

(iii) The parental rights of the parent to a sibling have been terminated involuntarily; and

(iv) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that placement of the child in foster care is in the best interests of the child. * * *

Once the reasonable efforts requirement is bypassed, the court shall have a permanency hearing pursuant to Section 43-21-613 within thirty (30) days of such finding.

(8) Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the disposition order.

SECTION 3. Section 43-21-609, Mississippi Code of 1972, is amended as follows:

43-21-609. In neglect and abuse cases, the disposition order may include any of the following alternatives, giving precedence in the following sequence:

(a) Release the child without further action;

(b) Place the child in the custody of his parents, a relative or other person subject to any conditions and limitations as the court may prescribe. If the court finds that temporary relative placement, adoption or foster care placement is inappropriate, unavailable or otherwise not in the best interest of the child, durable legal custody may be granted by the court to any person subject to any limitations and conditions the court may prescribe; such durable legal custody will not take effect unless the child or children have been in the physical custody of the proposed durable custodians for at least one (1) year under the supervision of the Department of Human Services. The requirements of Section 43-21-613 as to disposition review hearings does not apply to those matters in which the court has granted durable legal custody. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities;

(c) Order terms of treatment calculated to assist the child and the child's parent, guardian or custodian which are within the ability of the parent, guardian or custodian to perform;

(d) Order youth court personnel, the Department of Human Services or child care agencies to assist the child and the child's parent, guardian or custodian to secure social or medical services to provide proper supervision and care of the child;

(e) Give legal custody of the child to any of the following but in no event to any state training school:

(i) The Department of Human Services for appropriate placement; or

(ii) Any private or public organization, preferably community-based, able to assume the education, care and maintenance of the child, which has been found suitable by the court. Prior to assigning the custody of any child to any private institution or agency, the youth court through its designee shall

first inspect the physical facilities to determine that they provide a reasonable standard of health and safety for the child.

SECTION 4. Section 43-21-613, Mississippi Code of 1972, is amended as follows:

43-21-613. (1) If the youth court finds, after a hearing which complies with the sections governing adjudicatory hearings, that the terms of a delinquency or child in need of supervision disposition order, probation or parole have been violated, the youth court may, in its discretion, revoke the original disposition and make any disposition which it could have originally ordered. The hearing shall be initiated by the filing of a petition which complies with the sections governing petitions in this chapter and which includes a statement of the youth court's original disposition order, probation or parole, the alleged violation of that order, probation or parole, and the facts which show the violation of that order, probation or parole.

Summons shall be served in the same manner as summons for an adjudicatory hearing.

(2) On motion of a child or a child's parent, guardian or custodian, the youth court may, in its discretion, conduct an informal hearing to review the disposition order. If the youth court finds a material change of circumstances relating to the disposition of the child, the youth court may modify the disposition order to any appropriate disposition of equal or greater precedence which the youth court could have originally ordered.

(3) (a) Unless the youth court's jurisdiction has been terminated, all disposition orders for supervision, probation or placement of a child with an individual or an agency shall be reviewed by the youth court judge or referee at least annually to determine if continued placement, probation or supervision is in the best interest of the child or the public. For children who have been adjudicated abused or neglected, the youth court shall conduct a permanency hearing within six (6) months after the

earlier of:

(i) An adjudication that the child has been abused or neglected; or

(ii) Sixty (60) days from the child's removal from the allegedly abusive or neglectful custodian/parent. Notice of such hearing shall be given in accordance with the provisions of Section 43-21-505(5). In conducting the hearing, the judge or referee may require a written report, information or statements from the child's youth court counselor, parent, guardian or custodian which includes, but is not limited to, an evaluation of the child's progress and recommendations for further supervision or treatment. The judge or referee shall, at the permanency hearing determine the future status of the child, including, but not limited to, whether the child should be returned to the parent(s) or placed with suitable relatives, * * * placed for adoption, placed for the purpose of establishing durable legal custody or should, because of the child's special needs or circumstances, be continued in foster care on a permanent or long-term basis. If the child is in an out-of-state placement, the hearing shall determine whether the out-of-state placement continues to be appropriate and in the best interest of the child. The judge or referee may find that reasonable efforts to maintain the child within his home shall not be required in accordance with Section 43-21-603(7)(c).

(b) The court may find that the filing of a termination of parental rights petition is not in the child's best interest if:

(i) The child is being cared for by a relative; and/or

(ii) The State Department of Human Services has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child.

(c) (i) In the event that the youth court either orders or continues the custody or supervision of a child to be

placed with the Department of Human Services or any other person or public or private agency, other than the child's parent, guardian or custodian, * * * unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), the youth court shall find and the * * * order shall recite that the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that placement or continued placement of the child in foster care is in the best interest of the child, and that:

1. Reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or

2. The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody.

(ii) The youth court also shall find and the order shall recite that:

1. Reasonable efforts were made to reunify the child safely with his family if the removal could not be prevented; or

2. If reasonable efforts were not made to prevent the child's removal from home or to reunify the child with his family, that reasonable efforts are or were not required; or

3. If the permanent plan for the child is adoption, guardianship, or some other permanent living arrangement other than reunification, that reasonable efforts were made to make and finalize that alternate permanent placement.

(e) The provisions of this subsection shall also apply to review of cases involving a dependent child; provided, however, such reviews shall take place not less frequently than once each one hundred eighty (180) days. A dependent child shall be ordered by the youth court judge or referee to be returned to the custody

551 and home of the child's parent, guardian or custodian unless the
552 judge or referee, upon such review, makes a written finding that
553 the return of the child to the home would be contrary to the
554 child's best interests.

555 (f) Reviews are not to be conducted unless explicitly
556 ordered by the youth court concerning those cases in which the
557 court has granted durable legal custody. In such cases, the
558 Department of Human Services shall be released from any oversight
559 or monitoring responsibilities.

560 SECTION 5. This act shall take effect upon passage and be in
561 force from and after its passage.