

By: Senator(s) Bean

To: Judiciary

SENATE BILL NO. 2289

1 AN ACT TO AMEND SECTION 43-21-121, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE FEE TO BE PAID TO A GUARDIAN AD LITEM; TO AMEND
3 SECTION 43-21-155, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
4 INSTANCES IN WHICH THE YOUTH COURT MAY TRANSFER A CASE TO THE
5 YOUTH COURT OF ANOTHER COUNTY; TO AMEND SECTION 43-21-257,
6 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE RELEASE OF
7 NON-IDENTIFYING INFORMATION CONCERNING ALLEGATIONS OF CHILD ABUSE
8 IN CERTAIN SITUATIONS; TO AMEND SECTION 43-20-17, MISSISSIPPI CODE
9 OF 1972, IN CONFORMITY; TO AMEND SECTION 43-21-605, MISSISSIPPI
10 CODE OF 1972, TO EXPAND THE DISPOSITION ALTERNATIVES AVAILABLE IN
11 DELINQUENCY CASES, AND TO REMOVE THE ORDER OF PREFERENCE; TO AMEND
12 SECTION 45-31-12, MISSISSIPPI CODE OF 1972, TO MAKE A TECHNICAL
13 CORRECTION; AND FOR RELATED PURPOSES.

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

15 SECTION 1. Section 43-21-121, Mississippi Code of 1972, is
16 amended as follows:

17 43-21-121. (1) The youth court shall appoint a guardian ad
18 litem for the child:

19 (a) When a child has no parent, guardian or custodian;

20 (b) When the youth court cannot acquire personal
21 jurisdiction over a parent, a guardian or a custodian;

22 (c) When the parent is a minor or a person of unsound
23 mind;

24 (d) When the parent is indifferent to the interest of
25 the child or if the interests of the child and the parent,
26 considered in the context of the cause, appear to conflict;

27 (e) In every case involving an abused or neglected
28 child which results in a judicial proceeding; or

29 (f) In any other instance where the youth court finds
30 appointment of a guardian ad litem to be in the best interest of
31 the child.

32 (2) The guardian ad litem shall be appointed by the court

33 when custody is ordered or at the first judicial hearing regarding
34 the case, whichever occurs first.

35 (3) In addition to all other duties required by law, a
36 guardian ad litem shall have the duty to protect the interest of a
37 child for whom he has been appointed guardian ad litem. The
38 guardian ad litem shall investigate, make recommendations to the
39 court or enter reports as necessary to hold paramount the child's
40 best interest. The guardian ad litem is not an adversary party
41 and the court shall insure that guardians ad litem perform their
42 duties properly and in the best interest of their wards. The
43 guardian ad litem shall be a competent person who has no adverse
44 interest to the minor. The court shall insure that the guardian
45 ad litem is adequately instructed on the proper performance of his
46 duties.

47 (4) The court may appoint either a suitable attorney or a
48 suitable layman as guardian ad litem. In cases where the court
49 appoints a layman as guardian ad litem, the court shall also
50 appoint an attorney to represent the child. From and after
51 January 1, 1999, in order to be eligible for an appointment as a
52 guardian ad litem, such attorney or lay person must have received
53 child protection and juvenile justice training provided by or
54 approved by the Mississippi Judicial College within the year
55 immediately preceding such appointment. The Mississippi Judicial
56 College shall determine the amount of child protection and
57 juvenile justice training which shall be satisfactory to fulfill
58 the requirements of this section. The Administrative Office of
59 Courts shall maintain a roll of all attorneys and laymen eligible
60 to be appointed as a guardian ad litem under this section and
61 shall enforce the provisions of this subsection.

62 (5) Upon appointment of a guardian ad litem, the youth court
63 shall continue any pending proceedings for a reasonable time to
64 allow the guardian ad litem to familiarize himself with the
65 matter, consult with counsel and prepare his participation in the
66 cause.

67 (6) Upon order of the youth court, the guardian ad litem
68 shall be paid a reasonable fee as determined by the youth court
69 judge or referee out of the county general fund as provided under
70 Section 43-21-123. To be eligible for such fee, the guardian ad
71 litem shall submit an accounting of the time spent in performance
72 of his duties to the court. * * *

73 (7) The court, in its sound discretion, may appoint a
74 volunteer trained layperson to assist children subject to the
75 provisions of this section in addition to the appointment of a
76 guardian ad litem.

77 SECTION 2. Section 43-21-155, Mississippi Code of 1972, is
78 amended as follows:

79 43-21-155. (1) If a child is alleged to be a delinquent
80 child or a child in need of supervision, the proceedings shall be
81 commenced in any county where any of the alleged acts are said to
82 have occurred. After adjudication, the youth court may, in the
83 best interest of the child, transfer the case at any stage of the
84 proceeding for disposition to the county where the child resides
85 or to a county where a youth court has previously acquired
86 jurisdiction.

87 (2) If a child is alleged to be an abused or neglected
88 child, the proceedings shall be commenced in the county where the
89 child's custodian resides or in the county where the child is
90 present when the report is made to the intake unit.

91 SECTION 3. Section 43-21-257, Mississippi Code of 1972, is
92 amended as follows:

93 43-21-257. (1) Unless otherwise provided in this section,
94 any record involving children, including valid and invalid
95 complaints, and the contents thereof maintained by the Department
96 of Human Services, or any other state agency, shall be kept
97 confidential and shall not be disclosed except as provided in
98 Section 43-21-261.

99 (2) The Division of Youth Services shall maintain a state
100 central registry containing the number and disposition of all

101 cases together with such other useful information regarding such
102 cases as may be requested and is obtainable from the records of
103 the youth court. The Division of Youth Services shall annually
104 publish a statistical record of the number and disposition of all
105 cases, but the names or identity of any children shall not be
106 disclosed in the reports or records. The Division of Youth
107 Services shall adopt such rules as may be necessary to carry out
108 this subsection. The central registry files and the contents
109 thereof shall be confidential and shall not be open to public
110 inspection. Any person who shall disclose or encourage the
111 disclosure of any record involving children from the central
112 registry shall be subject to the penalty in Section 43-21-267.
113 The youth court shall furnish, upon forms provided by the Division
114 of Youth Services, the necessary information, and these completed
115 forms shall be forwarded to the Division of Youth Services.

116 (3) The Department of Human Services shall maintain a state
117 central registry on neglect and abuse cases containing (a) the
118 name, address and age of each child, (b) the nature of the harm
119 reported, (c) the name and address of the person responsible for
120 the care of the child, and (d) the name and address of the
121 substantiated perpetrator of the harm reported. The Department of
122 Human Services shall adopt such rules and administrative
123 procedures, especially those procedures to afford due process to
124 individuals who have been named as substantiated perpetrators
125 prior to the release of their name from the registry, as may be
126 necessary to carry out this subsection. The central registry
127 shall be confidential and shall not be open to public inspection.

128 Any person who shall disclose or encourage the disclosure of any
129 record involving children from the central registry without
130 following the rules and administrative procedures of the
131 department shall be subject to the penalty in Section 43-21-267.
132 The Department of Human Services and its employees are hereby
133 exempt from any civil liability as a result of any action taken
134 pursuant to the compilation and/or release of information on the

135 registry pursuant to this section and any other applicable section
136 of the code. The Department of Human Services shall obtain an
137 order of disclosure pursuant to Section 43-21-261 from the youth
138 court of appropriate jurisdiction authorizing the release of
139 information from the registry.

140 (4) The Mississippi State Department of Health may release
141 the findings of investigations into allegations of abuse within
142 licensed day care centers made under the provisions of Section
143 43-21-353(8) to any parent of a child who is enrolled in the day
144 care center at the time of the alleged abuse or at the time the
145 request for information is made. The findings of any such
146 investigation may also be released to parents who are considering
147 placing children in the day care center. No information
148 concerning such investigations may contain the names or
149 identifying information of individual children.

150 The Department of Health shall not be held civilly liable for
151 the release of information on any findings, recommendations or
152 actions taken pursuant to investigations of abuse that have been
153 conducted pursuant to Section 43-21-353(8).

154 SECTION 4. Section 43-20-17, Mississippi Code of 1972, is
155 amended as follows:

156 43-20-17. Information received by the licensing agency shall
157 not be disclosed publicly in such manner as to identify
158 individuals or facilities, except in a proceeding involving the
159 question of licensure or pursuant to Sections 43-21-353(8) and
160 43-21-257 concerning the release of findings from investigations
161 into allegations of abuse within the licensed facility. No
162 information concerning such investigations may contain the names
163 or identifying information of individual children.

164 SECTION 5. Section 43-21-605, Mississippi Code of 1972, is
165 amended as follows:

166 43-21-605. (1) In delinquency cases, the disposition order
167 may include any of the following alternatives * * *:

168 (a) Release the child without further action;

169 (b) Place the child in the custody of the parents, a
170 relative or other persons subject to any conditions and
171 limitations, including restitution, as the youth court may
172 prescribe;

173 (c) Place the child on probation subject to any
174 reasonable and appropriate conditions and limitations, including
175 restitution, as the youth court may prescribe;

176 (d) Order terms of treatment calculated to assist the
177 child and the child's parents or guardian which are within the
178 ability of the parent or guardian to perform;

179 (e) Order terms of supervision which may include
180 participation in a constructive program of service or education or
181 civil fines not in excess of Five Hundred Dollars (\$500.00), or
182 restitution not in excess of actual damages caused by the child to
183 be paid out of his own assets or by performance of services
184 acceptable to the victims and approved by the youth court and
185 reasonably capable of performance within one (1) year;

186 (f) Suspend the child's driver's license by taking and
187 keeping it in custody of the court for not more than one (1) year;

188 (g) Give legal custody of the child to any of the
189 following:

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

192 (ii) Any public or private organization,
193 preferably community-based, able to assume the education, care and
194 maintenance of the child, which has been found suitable by the
195 court; or

196 (iii) The Department of Human Services for
197 placement in a wilderness training program or a state-supported
198 training school, except that no child under the age of ten (10)
199 years shall be committed to a state training school. The training
200 school may retain custody of the child until the child's twentieth
201 birthday but for no longer. The superintendent of a state
202 training school may parole a child at any time he may deem it in

203 the best interest and welfare of such child. Twenty (20) days
204 prior to such parole, the training school shall notify the
205 committing court of the pending release. The youth court may then
206 arrange subsequent placement after a reconvened disposition
207 hearing except that the youth court may not recommit the child to
208 the training school or any other secure facility without an
209 adjudication of a new offense or probation or parole violation.
210 Prior to assigning the custody of any child to any private
211 institution or agency, the youth court through its designee shall
212 first inspect the physical facilities to determine that they
213 provide a reasonable standard of health and safety for the child.
214 The youth court shall not place a child in the custody of a state
215 training school for truancy, unless such child has been
216 adjudicated to have committed an act of delinquency in addition to
217 truancy;

218 (h) Recommend to the child and the child's parents or
219 guardian that the child attend and participate in the Youth
220 Challenge Program under the Mississippi National Guard, as created
221 in Section 43-27-203, subject to the selection of the child for
222 the program by the National Guard; however, the child must
223 volunteer to participate in the program. The youth court may not
224 order any child to apply or attend the program;

225 (i) (i) Adjudicate the juvenile to the Statewide
226 Juvenile Work Program if the program is established in the court's
227 jurisdiction. The juvenile and his parents or guardians must sign
228 a waiver of liability in order to participate in the work program.
229 The judge will coordinate with the youth services counselors as to
230 placing participants in the work program;

231 (ii) The severity of the crime, whether or not the
232 juvenile is a repeat offender or is a felony offender will be
233 taken into consideration by the judge when adjudicating a juvenile
234 to the work program. The juveniles adjudicated to the work
235 program will be supervised by police officers or reserve officers.
236 The term of service will be from twenty-four (24) to one hundred

237 twenty (120) hours of community service. A juvenile will work the
238 hours to which he was adjudicated on the weekends during school
239 and week days during the summer. Parents are responsible for a
240 juvenile reporting for work. Noncompliance with an order to
241 perform community service will result in a heavier adjudication.
242 A juvenile may be adjudicated to the community service program
243 only two (2) times;

244 (iii) The judge shall assess an additional fine on
245 the juvenile which will be used to pay the costs of implementation
246 of the program and to pay for supervision by police officers and
247 reserve officers. The amount of the fine will be based on the
248 number of hours to which the juvenile has been adjudicated; * * *

249 (j) Order the child to participate in a youth court
250 work program as provided in Section 43-21-627 ; or

251 (k) Order the child into a juvenile detention center
252 operated by the county or into a juvenile detention center
253 operated by any county with which the county in which the court is
254 located has entered into a contract for the purpose of housing
255 delinquents. The time period for such detention cannot exceed
256 ninety (90) days. The youth court judge may order that the number
257 of days specified in the detention order be served either
258 throughout the week or on weekends only.

259 (2) In addition to any of the disposition alternatives
260 authorized under subsection (1) of this section, the disposition
261 order in any case in which the child is adjudicated delinquent for
262 an offense under Section 63-11-30 shall include an order denying
263 the driver's license and driving privileges of the child as
264 required under subsection (8) of Section 63-11-30.

265 (3) Fines levied under this chapter shall be paid into the
266 general fund of the county but, in those counties wherein the
267 youth court is a branch of the municipal government, it shall be
268 paid into the municipal treasury.

269 (4) Any institution or agency to which a child has been
270 committed shall give to the youth court any information concerning

271 the child as the youth court may at any time require.

272 (5) The youth court shall not place a child in another
273 school district who has been expelled from a school district for
274 the commission of a violent act. For the purpose of this
275 subsection, "violent act" means any action which results in death
276 or physical harm to another or an attempt to cause death or
277 physical harm to another.

278 SECTION 6. Section 45-31-12, Mississippi Code of 1972, is
279 amended as follows:

280 45-31-12. (1) For the purposes of this section, the
281 following terms shall have the meanings ascribed in this
282 subsection:

283 (a) "Child" or "children" means any person under
284 eighteen (18) years of age.

285 (b) "Sex offense" means any offense listed in Section
286 45-31-3(i).

287 (c) "Sex offense criminal history record information"
288 has the meaning ascribed to this phrase in Section 45-31-3(j).

289 (2) Any institution, facility, clinic, organization or other
290 entity that provides services to children in a residential setting
291 where care, lodging, maintenance, and counseling or therapy for
292 alcohol or controlled substance abuse or for any other emotional
293 disorder or mental illness is provided for children, whether for
294 compensation or not, that holds itself out to the public as
295 providing such services, and that is entrusted with the care of
296 the children to whom it provides services, because of the nature
297 of the services and the setting in which the services are provided
298 shall be subject to the provisions of this section.

299 (3) Each entity to which subsection (2) applies shall
300 complete, through the appropriate governmental authority, sex
301 offense criminal history record information, as authorized under
302 Section 45-31-1 et seq., and felony conviction record information
303 checks for each employee, prospective employee, volunteer or
304 prospective volunteer of the entity who provides or would provide

305 services to children for the entity. In order to determine the
306 applicant's suitability for employment, the entity shall ensure
307 that the applicant be fingerprinted by local law enforcement, and
308 the results forwarded to the Department of Public Safety. If no
309 disqualifying record is identified at the state level, the
310 fingerprints shall be forwarded by the Department of Public Safety
311 to the FBI for a national criminal history record check.

312 (4) Upon receipt of the information from the FBI as to the
313 national criminal history record check, the Department of Public
314 Safety shall submit to the applicable entity the following:

315 (a) The applicant meets the criteria for
316 employment/licensing under the above state statute; or

317 (b) The applicant's fingerprints submitted to the FBI
318 were unclassifiable. As a result, only a name-check was
319 conducted, and no criminal record was located. If you desire a
320 further check by fingerprints, please attach a new set of
321 fingerprints to the unclassifiable set and resubmit them to this
322 office for transmittal to the FBI Identification Division; or

323 (c) The applicant does not meet the criteria for
324 employment/licensing under the above state statute.

325 No further information shall be released unless specifically
326 authorized by the FBI.

327 The Department of Public Safety and its employees are hereby
328 exempt from any civil liability as a result of any action taken as
329 to the compilation and/or release of information pursuant to this
330 section and any applicable section of the code.

331 (5) No entity to which subsection (2) applies shall employ
332 any person, or allow any person to serve as a volunteer, who would
333 provide services to children for the entity if the person:

334 (a) Has a felony conviction for a crime against
335 persons;

336 (b) Has a felony conviction under the Uniform
337 Controlled Substances Act;

338 (c) Has a conviction for a crime of child abuse or

339 neglect;

340 (d) Has a conviction for any sex offense as defined in
341 Section 45-31-3; or

342 (e) Has a conviction for any other offense committed in
343 another jurisdiction or any federal offense which would constitute
344 one (1) of the offenses listed in this subsection without regard
345 to its designation in that jurisdiction or under federal law.

346 (6) All fees incurred in compliance with this section shall
347 be borne by the entity to which subsection (2) applies.

348 (7) Any entity that violates the provisions of this section
349 by failure to complete sex offense criminal history record
350 information and felony conviction record information checks, as
351 required under subsection (3) of this section, shall be subject to
352 a penalty of up to Ten Thousand Dollars (\$10,000.00) for each such
353 violation and may be enjoined from further operation until it
354 complies with this section in actions maintained by the Attorney
355 General.

356 SECTION 7. This act shall take effect and be in force from
357 and after July 1, 1999.