

By: Senator(s) Bean

To: Judiciary

SENATE BILL NO. 2289
(As Sent to Governor)

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; TO AMEND SECTION 43-21-157, MISSISSIPPI CODE OF 1972,
14 TO CORRECT THE INTERNAL REFERENCES WITHIN THE YOUTH COURT ACT TO
15 CLARIFY THE JURISDICTION OF THE YOUTH COURT; AND FOR RELATED
16 PURPOSES.

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

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

20 43-21-121. (1) The youth court shall appoint a guardian ad
21 litem for the child:

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

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

25 (c) When the parent is a minor or a person of unsound
26 mind;

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

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

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

35 (2) The guardian ad litem shall be appointed by the court
36 when custody is ordered or at the first judicial hearing regarding
37 the case, whichever occurs first.

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

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

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

69 cause.

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

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

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

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

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

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

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

102 (2) The Division of Youth Services shall maintain a state

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

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

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

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

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

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

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

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

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

169 43-21-605. (1) In delinquency cases, the disposition order
170 may include any of the following alternatives * * *:

- 171 (a) Release the child without further action;
- 172 (b) Place the child in the custody of the parents, a
173 relative or other persons subject to any conditions and
174 limitations, including restitution, as the youth court may
175 prescribe;
- 176 (c) Place the child on probation subject to any
177 reasonable and appropriate conditions and limitations, including
178 restitution, as the youth court may prescribe;
- 179 (d) Order terms of treatment calculated to assist the
180 child and the child's parents or guardian which are within the
181 ability of the parent or guardian to perform;
- 182 (e) Order terms of supervision which may include
183 participation in a constructive program of service or education or
184 civil fines not in excess of Five Hundred Dollars (\$500.00), or
185 restitution not in excess of actual damages caused by the child to
186 be paid out of his own assets or by performance of services
187 acceptable to the victims and approved by the youth court and
188 reasonably capable of performance within one (1) year;
- 189 (f) Suspend the child's driver's license by taking and
190 keeping it in custody of the court for not more than one (1) year;
- 191 (g) Give legal custody of the child to any of the
192 following:
- 193 (i) The Department of Human Services for
194 appropriate placement; or
- 195 (ii) Any public or private organization,
196 preferably community-based, able to assume the education, care and
197 maintenance of the child, which has been found suitable by the
198 court; or
- 199 (iii) The Department of Human Services for
200 placement in a wilderness training program or a state-supported
201 training school, except that no child under the age of ten (10)
202 years shall be committed to a state training school. The training
203 school may retain custody of the child until the child's twentieth
204 birthday but for no longer. The superintendent of a state

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

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

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

234 (ii) The severity of the crime, whether or not the
235 juvenile is a repeat offender or is a felony offender will be
236 taken into consideration by the judge when adjudicating a juvenile
237 to the work program. The juveniles adjudicated to the work
238 program will be supervised by police officers or reserve officers.

239 The term of service will be from twenty-four (24) to one hundred
240 twenty (120) hours of community service. A juvenile will work the
241 hours to which he was adjudicated on the weekends during school
242 and week days during the summer. Parents are responsible for a
243 juvenile reporting for work. Noncompliance with an order to
244 perform community service will result in a heavier adjudication.
245 A juvenile may be adjudicated to the community service program
246 only two (2) times;

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

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

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

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

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

272 (4) Any institution or agency to which a child has been

273 committed shall give to the youth court any information concerning
274 the child as the youth court may at any time require.

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

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

283 45-31-12. (1) For the purposes of this section, the
284 following terms shall have the meanings ascribed in this
285 subsection:

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

288 (b) "Sex offense" means any offense listed in Section
289 45-31-3(i).

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

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

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

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

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

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

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

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

328 No further information shall be released unless specifically
329 authorized by the FBI.

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

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

337 (a) Has a felony conviction for a crime against
338 persons;

339 (b) Has a felony conviction under the Uniform
340 Controlled Substances Act;

341 (c) Has a conviction for a crime of child abuse or
342 neglect;

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

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

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

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

359 SECTION 7. Section 43-21-157, Mississippi Code of 1972, is
360 amended as follows:

361 43-21-157. (1) If a child who has reached his thirteenth
362 birthday is charged by petition to be a delinquent child, the
363 youth court, either on motion of the youth court prosecutor or on
364 the youth court's own motion, after a hearing as hereinafter
365 provided, may, in its discretion, transfer jurisdiction of the
366 alleged offense described in the petition or a lesser included
367 offense to the criminal court which would have trial jurisdiction
368 of such offense if committed by an adult. The child shall be
369 represented by counsel in transfer proceedings.

370 (2) A motion to transfer shall be filed on a day prior to
371 the date set for the adjudicatory hearing but not more than ten
372 (10) days after the filing of the petition. The youth court may
373 order a transfer study at any time after the motion to transfer is
374 filed. The transfer study and any other social record which the

375 youth court will consider at the transfer hearing shall be made
376 available to the child's counsel prior to the hearing. Summons
377 shall be served in the same manner as other summons under this
378 chapter with a copy of the motion to transfer and the petition
379 attached thereto.

380 (3) The transfer hearing shall be bifurcated. At the
381 transfer hearing, the youth court shall first determine whether
382 probable cause exists to believe that the child committed the
383 alleged offense. For the purpose of the transfer hearing only,
384 the child may, with the assistance of counsel, waive the
385 determination of probable cause.

386 (4) Upon such a finding of probable cause, the youth court
387 may transfer jurisdiction of the alleged offense and the youth if
388 the youth court finds by clear and convincing evidence that there
389 are no reasonable prospects of rehabilitation within the juvenile
390 justice system.

391 (5) The factors which shall be considered by the youth court
392 in determining the reasonable prospects of rehabilitation within
393 the juvenile justice system are:

394 (a) Whether or not the alleged offense constituted a
395 substantial danger to the public;

396 (b) The seriousness of the alleged offense;

397 (c) Whether or not the transfer is required to protect
398 the community;

399 (d) Whether or not the alleged offense was committed in
400 an aggressive, violent, premeditated or willful manner;

401 (e) Whether the alleged offense was against persons or
402 against property, greater weight being given to the offense
403 against persons, especially if personal injury resulted;

404 (f) The sophistication, maturity and educational
405 background of the child;

406 (g) The child's home situation, emotional condition and
407 life-style;

408 (h) The history of the child, including experience with

409 the juvenile justice system, other courts, probation, commitments
410 to juvenile institutions or other placements;

411 (i) Whether or not the child can be retained in the
412 juvenile justice system long enough for effective treatment or
413 rehabilitation;

414 (j) The dispositional resources available to the
415 juvenile justice system;

416 (k) Dispositional resources available to the adult
417 correctional system for the child if treated as an adult;

418 (l) Whether the alleged offense was committed on school
419 property, public or private, or at any school-sponsored event, and
420 constituted a substantial danger to other students;

421 (m) Any other factors deemed relevant by the youth
422 court; and

423 (n) Nothing in this subsection shall prohibit the
424 transfer of jurisdiction of an alleged offense and a child if that
425 child, at the time of the transfer hearing, previously has not
426 been placed in a juvenile institution.

427 (6) If the youth court transfers jurisdiction of the alleged
428 offense to a criminal court, the youth court shall enter a
429 transfer order containing:

430 (a) Facts showing that the youth court had jurisdiction
431 of the cause and of the parties;

432 (b) Facts showing that the child was represented by
433 counsel;

434 (c) Facts showing that the hearing was held in the
435 presence of the child and his counsel;

436 (d) A recital of the findings of probable cause and the
437 facts and reasons underlying the youth court's decision to
438 transfer jurisdiction of the alleged offense;

439 (e) The conditions of custody or release of the child
440 pending criminal court proceedings, including bail or recognizance
441 as the case may justify, as well as a designation of the custodian
442 for the time being; and

443 (f) A designation of the alleged offense transferred
444 and of the court to which the transfer is made and a direction to
445 the clerk to forward for filing in such court a certified copy of
446 the transfer order of the youth court.

447 (7) The testimony of the child respondent at a transfer
448 hearing conducted pursuant to this chapter shall not be admissible
449 against the child in any proceeding other than the transfer
450 hearing.

451 (8) When jurisdiction of an offense is transferred to the
452 circuit court, or when a youth has committed an act which is in
453 original circuit court jurisdiction pursuant to Section
454 43-21-151 * * *, the jurisdiction of the youth court over the
455 youth is forever terminated, except that such jurisdiction is not
456 forever terminated if the circuit court transfers or remands the
457 transferred case to the youth court or if a child who has been
458 transferred to the circuit court or is in the original
459 jurisdiction of the circuit court is not convicted. However, when
460 jurisdiction of an offense is transferred to the circuit court
461 pursuant to this section or when an offense committed by a youth
462 is in original circuit court jurisdiction pursuant to Section
463 43-21-151 * * *, the circuit court shall thereafter assume and
464 retain jurisdiction of any felony offenses committed by such youth
465 without any additional transfer proceedings. Any misdemeanor
466 offenses committed by youth who are in circuit court jurisdiction
467 pursuant to this section or Section 43-21-151 * * * shall be
468 prosecuted in the court which would have jurisdiction over that
469 offense if committed by an adult without any additional transfer
470 proceedings. The circuit court may review the transfer
471 proceedings on motion of the transferred child. Such review shall
472 be on the record of the hearing in the youth court. The circuit
473 court shall remand the offense to the youth court if there is no
474 substantial evidence to support the order of the youth court. The
475 circuit court may also review the conditions of custody or release
476 pending criminal court proceedings.

477 (9) When any youth has been the subject of a transfer to
478 circuit court for an offense committed in any county of the state
479 or has committed any act which is in the original jurisdiction of
480 the circuit court pursuant to Section 43-21-151 * * *, that
481 transfer or original jurisdiction shall be recognized by all other
482 courts of the state and no subsequent offense committed by such
483 youth in any county of the state shall be in the jurisdiction of
484 the youth court unless transferred to the youth court pursuant to
485 Section 43-21-159(3). Transfers from youth courts of other states
486 shall be recognized by the courts of this state and no youth who
487 has a pending charge or a conviction in the adult court system of
488 any other state shall be in the jurisdiction of the youth courts
489 of this state, but such youths shall be in the jurisdiction of the
490 circuit court for any felony committed in this state or in the
491 jurisdiction of the court of competent jurisdiction for any
492 misdemeanor committed in this state.

493 SECTION 8. This act shall take effect and be in force from
494 and after July 1, 1999.