

By: Senator(s) Turner

To: Judiciary

## SENATE BILL NO. 2301

1 AN ACT TO AMEND SECTION 43-21-157, MISSISSIPPI CODE OF 1972,  
2 TO CORRECT A TECHNICAL ERROR IN THE STATUTORY REFERENCES SO AS TO  
3 CLARIFY JURISDICTION OF THE YOUTH COURT; TO AMEND SECTION  
4 43-21-159, MISSISSIPPI CODE OF 1972, TO REVISE YOUTH COURT  
5 JURISDICTION OVER VIOLATIONS OF THE MISSISSIPPI IMPLIED CONSENT  
6 LAW; AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 43-21-157, Mississippi Code of 1972, is  
9 amended as follows:

10 43-21-157. (1) If a child who has reached his thirteenth  
11 birthday is charged by petition to be a delinquent child, the  
12 youth court, either on motion of the youth court prosecutor or on  
13 the youth court's own motion, after a hearing as hereinafter  
14 provided, may, in its discretion, transfer jurisdiction of the  
15 alleged offense described in the petition or a lesser included  
16 offense to the criminal court which would have trial jurisdiction  
17 of such offense if committed by an adult. The child shall be  
18 represented by counsel in transfer proceedings.

19 (2) A motion to transfer shall be filed on a day prior to  
20 the date set for the adjudicatory hearing but not more than ten  
21 (10) days after the filing of the petition. The youth court may  
22 order a transfer study at any time after the motion to transfer is  
23 filed. The transfer study and any other social record which the  
24 youth court will consider at the transfer hearing shall be made  
25 available to the child's counsel prior to the hearing. Summons  
26 shall be served in the same manner as other summons under this  
27 chapter with a copy of the motion to transfer and the petition  
28 attached thereto.

29 (3) The transfer hearing shall be bifurcated. At the

30 transfer hearing, the youth court shall first determine whether  
31 probable cause exists to believe that the child committed the  
32 alleged offense. For the purpose of the transfer hearing only,  
33 the child may, with the assistance of counsel, waive the  
34 determination of probable cause.

35 (4) Upon such a finding of probable cause, the youth court  
36 may transfer jurisdiction of the alleged offense and the youth if  
37 the youth court finds by clear and convincing evidence that there  
38 are no reasonable prospects of rehabilitation within the juvenile  
39 justice system.

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

43 (a) Whether or not the alleged offense constituted a  
44 substantial danger to the public;

45 (b) The seriousness of the alleged offense;

46 (c) Whether or not the transfer is required to protect  
47 the community;

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

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

53 (f) The sophistication, maturity and educational  
54 background of the child;

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

57 (h) The history of the child, including experience with  
58 the juvenile justice system, other courts, probation, commitments  
59 to juvenile institutions or other placements;

60 (i) Whether or not the child can be retained in the  
61 juvenile justice system long enough for effective treatment or  
62 rehabilitation;

63 (j) The dispositional resources available to the

64 juvenile justice system;

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

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

70 (m) Any other factors deemed relevant by the youth  
71 court; and

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

76 (6) If the youth court transfers jurisdiction of the alleged  
77 offense to a criminal court, the youth court shall enter a  
78 transfer order containing:

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

81 (b) Facts showing that the child was represented by  
82 counsel;

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

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

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

92 (f) A designation of the alleged offense transferred  
93 and of the court to which the transfer is made and a direction to  
94 the clerk to forward for filing in such court a certified copy of  
95 the transfer order of the youth court.

96 (7) The testimony of the child respondent at a transfer  
97 hearing conducted pursuant to this chapter shall not be admissible

98 against the child in any proceeding other than the transfer  
99 hearing.

100 (8) When jurisdiction of an offense is transferred to the  
101 circuit court, or when a youth has committed an act which is in  
102 original circuit court jurisdiction pursuant to Section  
103 43-21-151 \* \* \*, the jurisdiction of the youth court over the  
104 youth is forever terminated, except that such jurisdiction is not  
105 forever terminated if the circuit court transfers or remands the  
106 transferred case to the youth court or if a child who has been  
107 transferred to the circuit court or is in the original  
108 jurisdiction of the circuit court is not convicted. However, when  
109 jurisdiction of an offense is transferred to the circuit court  
110 pursuant to this section or when an offense committed by a youth  
111 is in original circuit court jurisdiction pursuant to Section  
112 43-21-151 \* \* \*, the circuit court shall thereafter assume and  
113 retain jurisdiction of any felony offenses committed by such youth  
114 without any additional transfer proceedings. Any misdemeanor  
115 offenses committed by youth who are in circuit court jurisdiction  
116 pursuant to this section or Section 43-21-151 \* \* \* shall be  
117 prosecuted in the court which would have jurisdiction over that  
118 offense if committed by an adult without any additional transfer  
119 proceedings. The circuit court may review the transfer  
120 proceedings on motion of the transferred child. Such review shall  
121 be on the record of the hearing in the youth court. The circuit  
122 court shall remand the offense to the youth court if there is no  
123 substantial evidence to support the order of the youth court. The  
124 circuit court may also review the conditions of custody or release  
125 pending criminal court proceedings.

126 (9) When any youth has been the subject of a transfer to  
127 circuit court for an offense committed in any county of the state  
128 or has committed any act which is in the original jurisdiction of  
129 the circuit court pursuant to Section 43-21-151 \* \* \*, that  
130 transfer or original jurisdiction shall be recognized by all other  
131 courts of the state and no subsequent offense committed by such

132 youth in any county of the state shall be in the jurisdiction of  
133 the youth court unless transferred to the youth court pursuant to  
134 Section 43-21-159(3). Transfers from youth courts of other states  
135 shall be recognized by the courts of this state and no youth who  
136 has a pending charge or a conviction in the adult court system of  
137 any other state shall be in the jurisdiction of the youth courts  
138 of this state, but such youths shall be in the jurisdiction of the  
139 circuit court for any felony committed in this state or in the  
140 jurisdiction of the court of competent jurisdiction for any  
141 misdemeanor committed in this state.

142 SECTION 2. Section 43-21-159, Mississippi Code of 1972, is  
143 amended as follows:

144 43-21-159. (1) When a person appears before a court other  
145 than the youth court, and it is determined that the person is a  
146 child under jurisdiction of the youth court, such court shall,  
147 unless the jurisdiction of the offense has been transferred to  
148 such court as provided in this chapter, or unless the child has  
149 previously been the subject of a transfer from the youth court to  
150 the circuit court for trial as an adult and was convicted,  
151 immediately dismiss the proceeding without prejudice and forward  
152 all documents pertaining to the cause to the youth court; and all  
153 entries in permanent records shall be expunged. The youth court  
154 shall have the power to order and supervise the expunction or the  
155 destruction of such records in accordance with Section 43-21-265.

156 The youth court is authorized to expunge the record of any case  
157 within its jurisdiction in which an arrest was made, the person  
158 arrested was released and the case was dismissed or the charges  
159 were dropped or there was no disposition of such case. In cases  
160 where the child is charged with a hunting or fishing violation or  
161 a traffic violation, except for driving offenses under the  
162 Mississippi Implied Consent Law, whether it be any state or  
163 federal law \* \* \* or municipal ordinance or county resolution or  
164 where the child is charged with a violation of Section 67-3-70,  
165 the appropriate criminal court shall proceed to dispose of the

166 same in the same manner as for other adult offenders and it shall  
167 not be necessary to transfer the case to the youth court of the  
168 county. Unless the cause has been transferred, or unless the  
169 child has previously been the subject of a transfer from the youth  
170 court to the circuit court for trial as an adult \* \* \* and was  
171 convicted, the youth court shall have power on its own motion to  
172 remove jurisdiction from any criminal court of any offense  
173 including a hunting or fishing violation, a traffic violation, or  
174 a violation of Section 67-3-70, committed by a child in a matter  
175 under the jurisdiction of the youth court and proceed therewith in  
176 accordance with the provisions of this chapter.

177 (2) After conviction and sentence of any child by any other  
178 court having original jurisdiction on a misdemeanor charge, and  
179 within the time allowed for an appeal of such conviction and  
180 sentence, the youth court of the county shall have the full power  
181 to stay the execution of the sentence and to release the child on  
182 good behavior or on other order as the youth court may see fit to  
183 make unless the child has previously been the subject of a  
184 transfer from the youth court to the circuit court for trial as an  
185 adult and was convicted. When a child is convicted of a  
186 misdemeanor and is committed to, incarcerated in or imprisoned in  
187 a jail or other place of detention by a criminal court having  
188 proper jurisdiction of such charge, such court shall notify the  
189 youth court judge or the judge's designee of the conviction and  
190 sentence prior to the commencement of such incarceration. The  
191 youth court shall have the power to order and supervise the  
192 destruction of any records involving children maintained by the  
193 criminal court in accordance with Section 43-21-265. However, the  
194 youth court shall have the power to set aside a judgment of any  
195 other court rendered in any matter over which the youth court has  
196 exclusive original jurisdiction, to expunge or destroy the records  
197 thereof in accordance with Section 43-21-265, and to order a  
198 refund of fines and costs.

199 (3) Nothing in subsection (1) or (2) shall apply to a youth

200 who has a pending charge or a conviction for any crime over which  
201 circuit court has original jurisdiction.

202 (4) In any case wherein the defendant is a child as defined  
203 in this chapter and of which the circuit court has original  
204 jurisdiction, the circuit judge, upon a finding that it would be  
205 in the best interest of such child and in the interest of justice,  
206 may at any stage of the proceedings prior to the attachment of  
207 jeopardy transfer such proceedings to the youth court for further  
208 proceedings unless the child has previously been the subject of a  
209 transfer from the youth court to the circuit court for trial as an  
210 adult and was convicted or has previously been convicted of a  
211 crime which was in original circuit court jurisdiction, and the  
212 youth court shall, upon acquiring jurisdiction, proceed as  
213 provided in this chapter for the adjudication and disposition of  
214 delinquent child proceeding proceedings. If the case is not  
215 transferred to the youth court and the youth is convicted of a  
216 crime by any circuit court, the trial judge shall sentence the  
217 youth as though such youth was an adult. The circuit court shall  
218 not have the authority to commit such child to the custody of the  
219 Department of Youth Services for placement in a state-supported  
220 training school.

221 (5) In no event shall a court sentence an offender over the  
222 age of eighteen (18) to the custody of the Division of Youth  
223 Services for placement in a state-supported training school.

224 (6) When a child's driver's license is suspended by the  
225 youth court for any reason, the clerk of the youth court shall  
226 report the suspension, without a court order under Section  
227 43-21-261, to the Commissioner of Public Safety in the same manner  
228 as such suspensions are reported in cases involving adults.

229 (7) No offense involving the use or possession of a firearm  
230 by a child who has reached his fifteenth birthday and which, if  
231 committed by an adult would be a felony, shall be transferred to  
232 the youth court.

233 SECTION 3. This act shall take effect and be in force from

234 and after its passage.