

By: Senator(s) Burton

To: Juvenile Justice

SENATE BILL NO. 2345

1 AN ACT TO AMEND SECTION 43-21-105, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A SECOND OFFENSE OF TRUANCY ON THE PART OF A CHILD
3 SHALL CONSTITUTE A DELINQUENT ACT; TO AMEND SECTION 37-13-91,
4 MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

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

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

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

13 (b) "Judge" means the judge of the Youth Court
14 Division.

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Has committed a delinquent act or acts.

(l) "Neglected child" means a child:

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

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

69 (ii) Who is otherwise without proper care,
70 custody, supervision or support; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

132 facilities and group homes that are licensed by the Department of
133 Human Services.

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

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

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

150 SECTION 2. Section 37-13-91, Mississippi Code of 1972, is
151 amended as follows:

152 37-13-91. (1) This section shall be referred to as the
153 "Mississippi Compulsory School Attendance Law."

154 (2) The following terms as used in this section are defined
155 as follows:

156 (a) "Parent" means the father or mother to whom a child
157 has been born, or the father or mother by whom a child has been
158 legally adopted.

159 (b) "Guardian" means a guardian of the person of a
160 child, other than a parent, who is legally appointed by a court of
161 competent jurisdiction.

162 (c) "Custodian" means any person having the present
163 care or custody of a child, other than a parent or guardian of the
164 child.

165 (d) "School day" means not less than five (5) and not

more than eight (8) hours of actual teaching in which both teachers and pupils are in regular attendance for scheduled schoolwork.

(e) "School" means any public school in this state or any nonpublic school in this state which is in session each school year for at least one hundred eighty (180) school days, except that the "nonpublic" school term shall be the number of days that each school shall require for promotion from grade to grade.

(f) "Compulsory-school-age child" means a child who has attained or will attain the age of six (6) years on or before September 1 of the calendar year and who has not attained the age of seventeen (17) years on or before September 1 of the calendar year.

(g) "School attendance officer" means a person employed by the State Department of Education pursuant to Section 37-13-89.

(h) "Appropriate school official" means the superintendent of the school district or his designee or, in the case of a nonpublic school, the principal or the headmaster.

(i) "Nonpublic school" means an institution for the teaching of children, consisting of a physical plant, whether owned or leased, including a home, instructional staff members and students, and which is in session each school year. This definition shall include, but not be limited to, private, church, parochial and home instruction programs.

(3) A parent, guardian or custodian of a compulsory-school-age child in this state shall cause the child to enroll in and attend a public school or legitimate nonpublic school for the period of time that the child is of compulsory school age, except under the following circumstances:

(a) When a compulsory-school-age child is physically, mentally or emotionally incapable of attending school as determined by the appropriate school official based upon sufficient medical documentation.

(b) When a compulsory-school-age child is enrolled in

200 and pursuing a course of special education, remedial education or
201 education for handicapped or physically or mentally disadvantaged
202 children.

203 (c) When a compulsory-school-age child is being
204 educated in a legitimate home instruction program.

205 The parent, guardian or custodian of a compulsory-school-age
206 child described in this subsection, or the parent, guardian or
207 custodian of a compulsory-school-age child attending any nonpublic
208 school, or the appropriate school official for any or all children
209 attending a nonpublic school shall complete a "certificate of
210 enrollment" in order to facilitate the administration of this
211 section.

212 The form of the certificate of enrollment shall be prepared
213 by the Office of Compulsory School Attendance Enforcement of the
214 State Department of Education and shall be designed to obtain the
215 following information only:

216 (i) The name, address, telephone number and date
217 of birth of the compulsory-school-age child;

218 (ii) The name, address and telephone number of the
219 parent, guardian or custodian of the compulsory-school-age child;

220 (iii) A simple description of the type of
221 education the compulsory-school-age child is receiving and, if the
222 child is enrolled in a nonpublic school, the name and address of
223 the school; and

224 (iv) The signature of the parent, guardian or
225 custodian of the compulsory-school-age child or, for any or all
226 compulsory-school-age child or children attending a nonpublic
227 school, the signature of the appropriate school official and the
228 date signed.

229 The certificate of enrollment shall be returned to the school
230 attendance officer where the child resides on or before September
231 15 of each year. Any parent, guardian or custodian found by the
232 school attendance officer to be in noncompliance with this section
233 shall comply, after written notice of the noncompliance by the

234 school attendance officer, with this subsection within ten (10)
235 days after the notice or be in violation of this section.
236 However, in the event the child has been enrolled in a public
237 school within fifteen (15) calendar days after the first day of
238 the school year as required in subsection (6), the parent or
239 custodian may at a later date enroll the child in a legitimate
240 nonpublic school or legitimate home instruction program and send
241 the certificate of enrollment to the school attendance officer and
242 be in compliance with this subsection.

243 For the purposes of this subsection, a legitimate nonpublic
244 school or legitimate home instruction program shall be those not
245 operated or instituted for the purpose of avoiding or
246 circumventing the compulsory attendance law.

247 (4) An "unlawful absence" is an absence during a school day
248 by a compulsory-school-age child, which absence is not due to a
249 valid excuse for temporary nonattendance. Days missed from school
250 due to disciplinary suspension shall not be considered an
251 "excused" absence under this section. This subsection shall not
252 apply to children enrolled in a nonpublic school.

253 Each of the following shall constitute a valid excuse for
254 temporary nonattendance of a compulsory-school-age child enrolled
255 in a public school, provided satisfactory evidence of the excuse
256 is provided to the superintendent of the school district or his
257 designee:

258 (a) An absence is excused when the absence results from
259 the compulsory-school-age child's attendance at an authorized
260 school activity with the prior approval of the superintendent of
261 the school district or his designee. These activities may include
262 field trips, athletic contests, student conventions, musical
263 festivals and any similar activity.

264 (b) An absence is excused when the absence results from
265 illness or injury which prevents the compulsory-school-age child
266 from being physically able to attend school.

267 (c) An absence is excused when isolation of a

compulsory-school-age child is ordered by the county health officer, by the State Board of Health or appropriate school official.

(d) An absence is excused when it results from the death or serious illness of a member of the immediate family of a compulsory-school-age child. The immediate family members of a compulsory-school-age child shall include children, spouse, grandparents, parents, brothers and sisters, including stepbrothers and stepsisters.

(e) An absence is excused when it results from a medical or dental appointment of a compulsory-school-age child where an approval of the superintendent of the school district or his designee is gained before the absence, except in the case of emergency.

(f) An absence is excused when it results from the attendance of a compulsory-school-age child at the proceedings of a court or an administrative tribunal if the child is a party to the action or under subpoena as a witness.

(g) An absence may be excused if the religion to which the compulsory-school-age child or the child's parents adheres, requires or suggests the observance of a religious event. The approval of the absence is within the discretion of the superintendent of the school district or his designee, but approval should be granted unless the religion's observance is of such duration as to interfere with the education of the child.

(h) An absence may be excused when it is demonstrated to the satisfaction of the superintendent of the school district or his designee that the purpose of the absence is to take advantage of a valid educational opportunity such as travel including vacations or other family travel. Approval of the absence must be gained from the superintendent of the school district or his designee before the absence, but the approval shall not be unreasonably withheld.

(i) An absence may be excused when it is demonstrated

to the satisfaction of the superintendent of the school district or his designee that conditions are sufficient to warrant the compulsory-school-age child's nonattendance. However, no absences shall be excused by the school district superintendent or his designee when any student suspensions or expulsions circumvent the intent and spirit of the compulsory attendance law.

(5) Any compulsory-school-age child subject to the provisions of this section who is adjudicated to be a truant for a second or subsequent offense of truancy may be committed to the appropriate state training school. Any parent, guardian or custodian of a compulsory-school-age child subject to this section who refuses or willfully fails to perform any of the duties imposed upon him or her under this section or who intentionally falsifies any information required to be contained in a certificate of enrollment, shall be guilty of contributing to the neglect of a child and, upon conviction, shall be punished in accordance with Section 97-5-39.

Upon prosecution of a parent, guardian or custodian of a compulsory-school-age child for violation of this section, the presentation of evidence by the prosecutor that shows that the child has not been enrolled in school within eighteen (18) calendar days after the first day of the school year of the public school which the child is eligible to attend, or that the child has accumulated twelve (12) unlawful absences during the school year at the public school in which the child has been enrolled, shall establish a prima facie case that the child's parent, guardian or custodian is responsible for the absences and has refused or willfully failed to perform the duties imposed upon him or her under this section. However, no proceedings under this section shall be brought against a parent, guardian or custodian of a compulsory-school-age child unless the school attendance officer has contacted promptly the home of the child and has provided written notice to the parent, guardian or custodian of the requirement for the child's enrollment or attendance.

336 (6) If a compulsory-school-age child has not been enrolled
337 in a school within fifteen (15) calendar days after the first day
338 of the school year of the school which the child is eligible to
339 attend or the child has accumulated five (5) unlawful absences
340 during the school year of the public school in which the child is
341 enrolled, the school district superintendent shall report, within
342 two (2) school days or within five (5) calendar days, whichever is
343 less, the absences to the school attendance officer. The State
344 Department of Education shall prescribe a uniform method for
345 schools to utilize in reporting the unlawful absences to the
346 school attendance officer. The superintendent, or his designee,
347 also shall report any student suspensions or student expulsions to
348 the school attendance officer when they occur.

349 (7) When a school attendance officer has made all attempts
350 to secure enrollment and/or attendance of a compulsory-school-age
351 child and is unable to effect the enrollment and/or attendance,
352 the attendance officer shall file a petition with the youth court
353 under Section 43-21-451 or shall file a petition in a court of
354 competent jurisdiction as it pertains to parent or child. The
355 youth court shall expedite a hearing to make an appropriate
356 adjudication and a disposition to ensure compliance with the
357 Compulsory School Attendance Law, and may order the child to
358 enroll or reenroll in school. The superintendent of the school
359 district to which the child is ordered may assign, in his
360 discretion, the child to the alternative school program of the
361 school established pursuant to Section 37-13-92.

362 (8) The State Board of Education shall adopt rules and
363 regulations for the purpose of reprimanding any school
364 superintendents who fail to timely report unexcused absences under
365 the provisions of this section.

366 (9) Notwithstanding any provision or implication herein to
367 the contrary, it is not the intention of this section to impair
368 the primary right and the obligation of the parent or parents, or
369 person or persons in loco parentis to a child, to choose the

370 proper education and training for such child, and nothing in this
371 section shall ever be construed to grant, by implication or
372 otherwise, to the State of Mississippi, any of its officers,
373 agencies or subdivisions any right or authority to control,
374 manage, supervise or make any suggestion as to the control,
375 management or supervision of any private or parochial school or
376 institution for the education or training of children, of any kind
377 whatsoever that is not a public school according to the laws of
378 this state; and this section shall never be construed so as to
379 grant, by implication or otherwise, any right or authority to any
380 state agency or other entity to control, manage, supervise,
381 provide for or affect the operation, management, program,
382 curriculum, admissions policy or discipline of any such school or
383 home instruction program.

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