

By: Warren

To: Juvenile Justice

HOUSE BILL NO. 314

1 AN ACT TO PROVIDE FOR A VICTIMS' BILL OF RIGHTS FOR YOUTH
2 COURTS; TO DEFINE CERTAIN TERMS; TO AUTHORIZE THE APPOINTMENT OR
3 DESIGNATION OF A LAWFUL REPRESENTATIVE FOR A VICTIM; TO REQUIRE
4 THAT CERTAIN INFORMATION BE PROVIDED TO VICTIMS; TO PROVIDE FOR
5 THE NOTIFICATION OF CHARGES AGAINST THE JUVENILE; TO PROVIDE FOR
6 CONFERENCES WITH THE PROSECUTING ATTORNEY; TO SPECIFY THE RIGHTS
7 OF THE VICTIM; TO PROVIDE FOR SEQUESTRATION, IF POSSIBLE, FROM THE
8 ACCUSED WHILE WAITING FOR COURT PROCEEDINGS; TO AUTHORIZE
9 CONFIDENTIALITY OF CERTAIN IDENTIFYING INFORMATION; TO PROVIDE FOR
10 CONFERENCES WITH YOUTH COURT COUNSELORS; TO PROVIDE THAT THE
11 VICTIM SHALL BE INFORMED OF DISPOSITIONAL ORDERS AND APPEALS; TO
12 REQUIRE NOTIFICATION OF ESCAPES; TO PROVIDE FOR THE RETURN OF
13 PROPERTY OR AN EXPLANATION WHY PROPERTY WILL NOT BE RETURNED; TO
14 PROTECT THE VICTIM FROM LOSS OF EMPLOYMENT; TO AMEND SECTION
15 99-43-3, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS
16 OF THIS ACT; AND FOR RELATED PURPOSES.

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

18 SECTION 1. The purpose of this act is to ensure the fair and
19 compassionate treatment of victims of delinquent acts in the youth
20 courts of Mississippi, to increase the effectiveness of the youth
21 court system by affording rights and considerations to the victims
22 of delinquent acts, and to preserve and protect victims' rights to
23 justice and fairness in the youth court system.

24 SECTION 2. As used in this act, the following words shall
25 have the meanings ascribed to them, unless the context clearly
26 requires otherwise:

27 (a) "Accused" means a juvenile who has been charged
28 with committing a violent offense.

29 (b) "Court proceeding" means any hearing, argument or
30 other matter scheduled by and held before the youth court, but
31 does not include any matter not held in the presence of the judge.

32 (c) "Custodial agency" includes the Division of Youth
33 Services, a detention facility in which a juvenile has been placed
34 by a youth court judge, or any secure mental health facility
35 having custody of a juvenile who has been charged or adjudicated
36 for a violent offense.

37 (d) "Final disposition" means the ultimate termination
38 of the jurisdiction of the youth court over the accused for the
39 violent offense.

40 (e) "Immediate family" means the spouse, parent, child,
41 sibling, grandparent or guardian of the victim, unless that person
42 is in custody for an offense or is the accused.

43 (f) "Lawful representative" means a person who is a
44 member of the immediate family or who is designated by the court
45 to represent the victim. No person in custody for an offense or
46 who is the accused may serve as lawful representative.

47 (g) "Post-arrest release" means any release of the
48 accused from confinement prior to the adjudicatory hearing.

49 (h) "Post-adjudication release" means any release of
50 the accused from detention which results from the violent offense.

51 (i) "Prosecuting attorney" means the county attorney or
52 an attorney designated by the youth court judge as youth court
53 prosecutor.

54 (j) "Right" means any right granted to the victim by
55 the laws of this state.

56 (k) "Victim" means a person against whom the violent
57 offense has been committed, or if the person is deceased or
58 incapacitated, the lawful representative.

59 (l) "Violent offense" means conduct that gives a law

60 enforcement officer, prosecutor or youth court intake worker
61 probable cause to believe that an act has been committed which
62 would be a felony if committed by an adult and involves physical
63 injury or the threat of physical injury, or any sexual offense, or
64 any offense involving domestic violence or burglary of a dwelling.

65 The burglary of a dwelling will be considered a violent offense
66 under this act only if a resident or guest is present at the time
67 of the offense.

68 SECTION 3. (1) If a victim is physically or emotionally
69 unable to exercise any right established by this act, but is able
70 to designate in writing a lawful representative, the designated
71 representative or person may exercise the same rights that the
72 victim is entitled to exercise. The victim may revoke his or her
73 designated representation at any time and thereafter personally
74 exercise his or her rights.

75 (2) If a victim is incompetent, deceased or otherwise
76 incapable of designating another person to act in his or her
77 behalf, the court may appoint a lawful representative who is not a
78 witness in the case. If at any time the victim is no longer
79 incompetent, incapacitated, or otherwise incapable of acting, the
80 victim may personally exercise his or her rights.

81 (3) If the victim is a minor, the parent, guardian or other
82 immediate family of the victim, or a designated representative as
83 determined by the court, may exercise all of the right of the
84 victim on behalf of the victim.

85 SECTION 4. Unless the victim is unavailable or incapacitated
86 as a result of the violent offense, within seventy-two (72) hours
87 after the law enforcement agency becomes responsible for

88 investigating the offense, the law enforcement agency shall
89 provide to the victim in a manner and form prescribed by the
90 Attorney General the following information.

91 (a) The availability of emergency and crisis services.

92 (b) The availability of victims' compensation benefits
93 and the name, address and telephone number of the victim
94 compensation hearing officer.

95 (c) The name of the law enforcement officer and
96 telephone number of the law enforcement agency with the following
97 statement attached: "If within sixty (60) days you are not
98 notified of an arrest in your case, you may call the telephone
99 number of the law enforcement agency for the status of the case."

100 (d) The procedural steps involved in a youth court
101 action.

102 (e) The rights authorized by the Mississippi
103 Constitution on rights of victims, including a form to invoke
104 these rights.

105 (f) The existence of and eligibility requirements for
106 restitution and compensation pursuant to Section 99-37-1 et seq.
107 and Section 99-41-1 et seq.

108 (g) A recommended procedure if the victim is subjected
109 to threats or intimidation.

110 (h) The name and telephone number of the office of the
111 prosecuting attorney to contact for further information.

112 SECTION 5. (1) Upon written request of the victim, the
113 prosecuting attorney shall notify the victim of all charges filed
114 against the juvenile and any youth court proceedings, other than
115 detention hearings, as soon as practicable, including any changes

116 that may occur.

117 (2) In order to be entitled to receive notice under this
118 section, the victim shall provide to and maintain with the office
119 of the prosecuting attorney a request for notice which shall
120 include the telephone number and address of the victim. The
121 request for notice shall be considered withdrawn and void in the
122 event the victim fails to update this information as necessary.

123 (3) Notice provided under this section is not a violation of
124 the confidentiality provisions of the Youth Court Act.

125 SECTION 6. (1) The prosecuting attorney shall confer with
126 the victim prior to the adjudicatory hearing on a violent offense,
127 including any recommendations from the victim concerning any
128 dispositional alternatives.

129 (2) Any information received by the victim relating to the
130 substance of the case shall be kept confidential, except as
131 authorized by the court.

132 SECTION 7. The rights of the victim do not include the
133 authority to direct the prosecution of the case.

134 SECTION 8. The victim shall have the right to a final
135 disposition of the case in the youth court without unreasonable
136 delay. To effectuate this right, the court in determining whether
137 or not to grant a continuance or change the date of any proceeding
138 shall make every reasonable effort to consider the prejudice to
139 the victim of the delay.

140 SECTION 9. The victim has the right to be present throughout
141 all proceedings of the youth court which are presided over by the
142 judge, with the exception of the initial detention hearing. The
143 judge shall not enter a dispositional order unless the victim is

144 present or the judge has been advised by the prosecuting attorney
145 that the victim was informed of the date, time and place of the
146 hearing and of his right to be present, or that reasonable efforts
147 were made to so inform the victim and he or she could not be
148 located. The absence of a victim who has been informed of the
149 date, place and time of any youth court proceeding, or who cannot
150 be located by reasonable efforts, shall not preclude the court
151 from going forward with the proceeding.

152 SECTION 10. Where possible, the court shall provide a
153 waiting area for the victim separate from the area where the
154 accused, his or her family and witnesses are waiting for the court
155 proceeding. If a separate waiting area is not available, the
156 court shall minimize the contact of the victim with the accused,
157 his or her family and witnesses by providing a law enforcement
158 officer or member of the court staff to stay with the victim in
159 the waiting area.

160 SECTION 11. Based upon the reasonable apprehension of the
161 victims of acts or threats of physical violence or intimidation by
162 the accused, the family of the accused, or anyone at the direction
163 of the accused, the prosecutor may petition the court to direct
164 that no fact which could divulge the residence or place of
165 employment of the victim, or other related information, be
166 testified to in open court or made a part of the record. If the
167 court grants the petition, the attorney for the accused shall be
168 directed to hold any such information confidential and not to
169 divulge it to the accused or to any person without a further order
170 from the court.

171 SECTION 12. If the victim has provided the prosecuting

172 attorney with a current address and/or telephone number, the
173 prosecuting attorney shall provide to the victim information about
174 his or her right to be present and to be heard at any
175 dispositional hearing, along with the date, time and place that
176 the hearing is to be held. If the judge orders restitution, the
177 victim shall be informed of the procedure to be followed to
178 collect the restitution.

179 SECTION 13. Prior to the dispositional hearing, the youth
180 court counselor assigned to the case shall confer with the victim
181 and inform the victim of his or her right to make a written or
182 oral statement to the judge concerning the disposition of the
183 case. In making his report to the judge, the counselor shall
184 provide information on the economic, physical and psychological
185 impact that the violent offense has had on the victim and the
186 immediate family of the victim. Any oral statement to the judge
187 by the victim shall be made at the dispositional hearing with all
188 parties present.

189 SECTION 14. If the victim is not present at the
190 dispositional hearing, he or shall be informed of the
191 dispositional order as soon as practicable.

192 SECTION 15. If the youth court judge's decision is appealed
193 to the Mississippi Supreme Court, the prosecuting attorney shall
194 inform the victim of the appeal and, if the youth court will be
195 represented in the appeal by someone other than the county or
196 youth court prosecuting attorney, give the victim the address and
197 telephone number of the attorney who will be representing the
198 youth court in the appeal.

199 SECTION 16. (1) If the victim has requested notice, he or

200 she shall be notified of any escape by the accused from detention
201 and of any subsequent return to custody. This notification shall
202 be given by the agency having physical custody of the accused at
203 the time of the escape.

204 (2) If the victim has requested notice, the agency having
205 physical custody of the accused shall notify the victim within
206 fifteen (15) days prior to the release of the accused from
207 custody.

208 SECTION 17. After consultation with the prosecuting
209 attorney, the law enforcement agency responsible for investigating
210 the offense shall return to the victim any property belonging to
211 the victim that was taken during the course of the investigation,
212 or shall inform the victim why the property will not be returned.

213 If the property taken during the investigation is needed as
214 evidence, the court may, upon request of the prosecuting attorney
215 and where practicable, order that a photograph of the property be
216 substituted. If evidence is released pursuant to this subsection,
217 the attorney for the accused or his investigator may inspect and
218 independently photograph any evidence before it is released.

219 SECTION 18. Upon request of the victim, the prosecuting
220 attorney shall notify the victim's employer that the victim has
221 the duty to respond to a subpoena to testify in the youth court
222 hearings or to participate in the preparation of the case without
223 loss of employment, intimidation or threat or fear of loss of
224 employment.

225 SECTION 19. The failure to provide a right, privilege or
226 notice to a victim under this act shall not be grounds for the
227 accused to seek to have the adjudication or disposition set aside,

228 and any reasonable attempt to provide notice shall satisfy the
229 requirements of this act.

230 SECTION 20. The prosecuting attorney may assert the rights
231 of the victim at any time during the proceedings.

232 SECTION 21. Section 99-43-3, Mississippi Code of 1972, is
233 amended as follows:

234 99-43-3. As used in this chapter, the following words shall
235 have the meanings ascribed to them, unless the context clearly
236 requires otherwise:

237 (a) "Accused" means a person who has been arrested for
238 committing a criminal offense and who is held for an initial
239 appearance or other proceeding before trial or who is a target of
240 an investigation for committing a criminal offense.

241 (b) "Appellate proceeding" means an oral argument held
242 in open court before the Mississippi Court of Appeals, the
243 Mississippi Supreme Court, a federal court of appeals or the
244 United States Supreme Court.

245 (c) "Arrest" means the actual custodial restraint of a
246 person or his submission to custody.

247 (d) "Community status" means extension of the limits of
248 the places of confinement of a prisoner through work release,
249 intensive supervision, house arrest, and initial consideration of
250 prediscretionary leave, passes and furloughs.

251 (e) "Court" means all * * * courts of the state with
252 the exception of the juvenile courts. The policy and procedure
253 for assuring the rights of victims in the youth courts shall be
254 administered as provided in Sections 1 through 21 of House Bill
255 No. _____, 2000 Regular Session.

256 (f) "Victim assistance coordinator" means a person who
257 is employed or authorized by a public entity or a private entity
258 that receives public funding primarily to provide counseling,
259 treatment or other supportive assistance to crime victims.

260 (g) "Criminal offense" means conduct that gives a law
261 enforcement officer or prosecutor probable cause to believe that a
262 felony involving physical injury, the threat of physical injury,
263 or a sexual offense, or any offense involving spousal abuse,
264 domestic violence or burglary of a dwelling house has been
265 committed.

266 (h) "Criminal proceeding" means a hearing, argument or
267 other matter scheduled by and held before a trial court but does
268 not include a lineup, grand jury proceeding or other matter not
269 held in the presence of the court.

270 (i) "Custodial agency" means a municipal or county
271 jail, the Department of Corrections * * * or a secure mental
272 health facility having custody of a person who is arrested or is
273 in custody for a criminal offense.

274 (j) "Defendant" means a person or entity that is
275 formally charged by complaint, indictment or information of
276 committing a criminal offense.

277 (k) "Final disposition" means the ultimate termination
278 of the criminal prosecution of a defendant by a trial court,
279 including dismissal, acquittal or imposition of a sentence.

280 (l) "Immediate family" means the spouse, parent, child,
281 sibling, grandparent or guardian of the victim, unless that person
282 is in custody for an offense or is the accused.

283 (m) "Lawful representative" means a person who is a

284 member of the immediate family or who is designated as provided in
285 Section 99-43-5; no person in custody for an offense or who is the
286 accused may serve as lawful representative.

287 (n) "Post-arrest release" means the discharge of the
288 accused from confinement on recognizance, bond or other condition.

289 (o) "Post-conviction release" means parole, or
290 discharge from confinement by an agency having custody of the
291 prisoner.

292 (p) "Post-conviction relief proceeding" means a
293 hearing, argument or other matter that is held in any court and
294 that involves a request for relief from a conviction, sentence or
295 adjudication.

296 (q) "Prisoner" means a person who has been convicted or
297 adjudicated of a criminal offense against a victim and who has
298 been sentenced to the custody of the sheriff, the Department of
299 Corrections, Department of Youth Services, juvenile detention
300 facility, a municipal jail or a secure mental health facility.

301 (r) "Prosecuting attorney" means the district attorney,
302 county prosecuting attorney, municipal prosecuting attorney, youth
303 court prosecuting attorney, special prosecuting attorney or
304 Attorney General.

305 (s) "Right" means any right granted to the victim by
306 the laws of this state.

307 (t) "Victim" means a person against whom the criminal
308 offense has been committed, or if the person is deceased or
309 incapacitated, the lawful representative.

310 SECTION 22. This act shall take effect and be in force from
311 and after July 1, 2000.