

By: Robertson, Formby, Ishee, Mayo, Roberson To: Juvenile Justice

## HOUSE BILL NO. 471

1 AN ACT TO AMEND SECTION 43-21-105, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE DEFINITION OF CHILD AND YOUTH FOR FELONY PURPOSES;  
3 TO AMEND SECTIONS 43-21-151 AND 43-21-621, MISSISSIPPI CODE OF  
4 1972, TO REVISE OFFENSES FOR WHICH A JUVENILE MAY BE TRIED AS AN  
5 ADULT; AND FOR RELATED PURPOSES.

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

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. Any child  
24 aged seventeen (17) years or older who is charged with a felony  
25 shall not be considered a child or youth for purposes of this  
26 chapter.

27 (e) "Parent" means the father or mother to whom the  
28 child has been born, or the father or mother by whom the child has  
29 been legally adopted.

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

32 (g) "Custodian" means any person having the present  
33 care or custody of a child whether such person be a parent or  
34 otherwise.

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

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

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

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

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

54 ungovernable; or

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

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

59                   (iv) Has committed a delinquent act or acts.

60           (1) "Neglected child" means a child:

61                   (i) Whose parent, guardian or custodian or any  
62 person responsible for his care or support, neglects or refuses,  
63 when able so to do, to provide for him proper and necessary care  
64 or support, or education as required by law, or medical, surgical,  
65 or other care necessary for his well-being; provided, however, a  
66 parent who withholds medical treatment from any child who in good  
67 faith is under treatment by spiritual means alone through prayer  
68 in accordance with the tenets and practices of a recognized church  
69 or religious denomination by a duly accredited practitioner  
70 thereof shall not, for that reason alone, be considered to be  
71 neglectful under any provision of this chapter; or

72                   (ii) Who is otherwise without proper care,  
73 custody, supervision or support; or

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

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

79                   (m) "Abused child" means a child whose parent,  
80 guardian or custodian or any person responsible for his care or  
81 support, whether legally obligated to do so or not, has caused or

82 allowed to be caused upon said child sexual abuse, sexual  
83 exploitation, emotional abuse, mental injury, nonaccidental  
84 physical injury or other maltreatment. Provided, however, that  
85 physical discipline, including spanking, performed on a child by a  
86 parent, guardian or custodian in a reasonable manner shall not be  
87 deemed abuse under this section.

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

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

98 (p) A "dependent child" means any child who is not a  
99 child in need of supervision, a delinquent child, an abused child  
100 or a neglected child, and which child has been voluntarily placed  
101 in the custody of the Department of Human Services by his parent,  
102 guardian or custodian.

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

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

110 guardian of the person.

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

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

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

117 (i) All youth court records as defined in Section  
118 43-21-251;

119 (ii) All social records as defined in Section  
120 43-21-253;

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

123 (iv) All agency records as defined in Section  
124 43-21-257; and

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

130 (v) "Any person responsible for care or support" means  
131 the person who is providing for the child at a given time. This  
132 term shall include, but is not limited to, stepparents, foster  
133 parents, relatives, nonlicensed babysitters or other similar  
134 persons responsible for a child and staff of residential care  
135 facilities and group homes that are licensed by the Department of  
136 Human Services.

137 (w) The singular includes the plural, the plural the

138 singular and the masculine the feminine when consistent with the  
139 intent of this chapter.

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

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

153 SECTION 2. Section 43-21-151, Mississippi Code of 1972, is  
154 amended as follows:

155 43-21-151. (1) The youth court shall have exclusive  
156 original jurisdiction in all proceedings concerning a delinquent  
157 child, a child in need of supervision, a neglected child, an  
158 abused child or a dependent child except in the following  
159 circumstances:

160 (a) Any act attempted or committed by a child, which if  
161 committed by an adult would be punishable under state or federal  
162 law by life imprisonment or death, will be in the original  
163 jurisdiction of the circuit court;

164 (b) Any act attempted or committed by a child with the  
165 use of a deadly weapon, the carrying of which concealed is

166 prohibited by Section 97-37-1, or a shotgun or a rifle, which  
167 would be a felony if committed by an adult, will be in the  
168 original jurisdiction of the circuit court; \* \* \*

169 (c) Any act attempted or committed by a child through  
170 the use of threats or intimidation to inflict some injury to a  
171 person's person or property or to the person of any member of his  
172 family or relative; and

173 (d) When a charge of abuse of a child first arises in  
174 the course of a custody action between the parents of the child  
175 already pending in the chancery court and no notice of such abuse  
176 was provided prior to such chancery proceedings, the chancery  
177 court may proceed with the investigation, hearing and  
178 determination of such abuse charge as a part of its hearing and  
179 determination of the custody issue as between the parents,  
180 notwithstanding the other provisions of the Youth Court Law. The  
181 proceedings in chancery court on the abuse charge shall be  
182 confidential in the same manner as provided in youth court  
183 proceedings.

184 When a child is expelled from the public schools, the youth  
185 court shall be notified of the act of expulsion and the act or  
186 acts constituting the basis for expulsion.

187 (2) Jurisdiction of the child in the cause shall attach at  
188 the time of the offense and shall continue thereafter for that  
189 offense until the child's twentieth birthday, unless sooner  
190 terminated by order of the youth court. The youth court shall not  
191 have jurisdiction over offenses committed by a child on or after  
192 his eighteenth birthday, or over offenses committed by a child on  
193 or after his seventeenth birthday where such offenses would be a

194 felony if committed by an adult.

195 (3) No child who has not reached his thirteenth birthday  
196 shall be held criminally responsible or criminally prosecuted for  
197 a misdemeanor or felony; however, the parent, guardian or  
198 custodian of such child may be civilly liable for any criminal  
199 acts of such child. No child under the jurisdiction of the youth  
200 court shall be held criminally responsible or criminally  
201 prosecuted by any court for any act designated as a delinquent  
202 act, unless jurisdiction is transferred to another court under  
203 Section 43-21-157.

204 (4) The youth court shall also have jurisdiction of offenses  
205 committed by a child which have been transferred to the youth  
206 court by an order of a circuit court of this state having original  
207 jurisdiction of the offense, as provided by Section 43-21-159.

208 (5) The youth court shall regulate and approve the use of  
209 teen court as provided in Section 43-21-753.

210 SECTION 3. Section 43-21-621, Mississippi Code of 1972, is  
211 amended as follows:

212 43-21-621. (1) The youth court may, in compliance with the  
213 laws governing education of children, order any state-supported  
214 public school in its jurisdiction after notice and hearing to  
215 enroll or reenroll any compulsory-school-age child in school, and  
216 further order appropriate educational services. Provided,  
217 however, that the youth court shall not order the enrollment or  
218 reenrollment of a student that has been suspended or expelled by a  
219 public school pursuant to Section 37-9-71 or 37-7-301 for  
220 possession of a weapon on school grounds, for an offense involving  
221 a threat to the safety of other persons or for the commission of a



222 violent act. For the purpose of this section "violent act" means  
223 any action which results in death or physical harm to another or  
224 an attempt to cause death or physical harm to another. The  
225 superintendent of the school district to which such child is  
226 ordered may, in his discretion, assign such child to the  
227 alternative school program of such school established pursuant to  
228 Section 37-13-92, Mississippi Code of 1972. The court shall have  
229 jurisdiction to enforce school and education laws. Nothing in  
230 this section shall be construed to affect the attendance of a  
231 child in a legitimate home instruction program.

232 (2) The youth court may specify the following conditions of  
233 probation related to any juvenile ordered to enroll or reenroll in  
234 school: That the juvenile maintain passing grades in up to four  
235 (4) courses during each grading period and meet with the court  
236 counselor and a representative of the school to make a plan for  
237 how to maintain those passing grades.

238 (3) If the adjudication of delinquency was for an offense  
239 involving a threat to the safety of the juvenile or others and  
240 school attendance is a condition of probation and the threat did  
241 not require the child to be tried in the criminal court as  
242 provided in Section 43-21-151, the youth court judge shall make a  
243 finding that the principal of the juvenile's school should be  
244 notified. If the judge orders that the principal be notified, the  
245 youth court counselor shall within five (5) days or before the  
246 juvenile begins to attend school, whichever occurs first, notify  
247 the principal of the juvenile's school in writing of the nature of  
248 the offense and the probation requirements related to school  
249 attendance. A principal notified by a juvenile court counselor

250 shall handle the report according to the guidelines and rules  
251 adopted by the State Board of Education.

252 (4) The Administrative Office of the Courts shall report to  
253 the Legislature on the number of juveniles reported to principals  
254 in accordance with this section no later than January 1, 1996.

255 SECTION 4. This act shall take effect and be in force from  
256 and after July 1, 2000.