

By: Dearing

To: Public Health and
Welfare

SENATE BILL NO. 2154

1 AN ACT TO AMEND SECTIONS 43-15-13, 43-16-9 AND 45-31-12,
2 MISSISSIPPI CODE OF 1972, TO REQUIRE CRIMINAL BACKGROUND RECORD
3 CHECKS AND HOME STUDIES TO BE COMPLETED PRIOR TO PLACEMENT OF
4 ABUSED OR NEGLECTED CHILDREN WITH RELATIVES OR OTHER PROPOSED
5 CUSTODIANS; AND FOR RELATED PURPOSES.

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

7 SECTION 1. Section 43-15-13, Mississippi Code of 1972, is
8 amended as follows:[RDD1]

9 43-15-13. (1) For purposes of this section, "children"
10 means persons found within the state who are under the age of
11 twenty-one (21) years, and who were placed in the custody of the
12 Department of Human Services by the youth court of the appropriate
13 county.

14 (2) The Department of Human Services shall establish a
15 foster care placement program for children whose custody lies with
16 the department, with the following objectives:

17 (a) Protecting and promoting the health, safety and
18 welfare of children;

19 (b) Preventing the unnecessary separation of children
20 from their families by identifying family problems, assisting
21 families in resolving their problems and preventing the breakup of
22 the family where the prevention of child removal is desirable and

23 possible when the child can be cared for at home without
24 endangering the child's health and safety;

25 (c) Remediating or assisting in the solution of problems
26 which may result in the neglect, abuse, exploitation or
27 delinquency of children;

28 (d) Restoring to their families children who have been
29 removed, by the provision of services to the child and the
30 families when the child can be cared for at home without
31 endangering the child's health and safety;

32 (e) Placing children in suitable adoptive homes
33 approved by a licensed adoption agency or licensed social worker,
34 in cases where restoration to the biological family is not safe,
35 possible or appropriate;

36 (f) Assuring safe and adequate care of children away
37 from their homes, in cases where the child cannot be returned home
38 or cannot be placed for adoption. At the time of placement, the
39 department shall implement concurrent planning, as described in
40 subsection (8) of this section, so that permanency may occur at
41 the earliest opportunity. Consideration of possible failure or
42 delay of reunification should be given, to the end that the
43 placement made is the best available placement to provide
44 permanency for the child; and

45 (g) Providing a social worker or social work team for a
46 family and child throughout the implementation of their permanent
47 living arrangement plan. Wherever feasible, the same social
48 worker or social work team shall remain on the case until the
49 child is no longer under the jurisdiction of the youth court.

50 (3) The State Department of Human Services shall administer
51 a system of individualized plans and reviews once every six (6)
52 months for each child under its custody within the State of
53 Mississippi, each child who has been adjudged a neglected,

54 abandoned or abused child and whose custody was changed by court
55 order as a result of such adjudication, and each public or private
56 facility licensed by the department. The State Department of
57 Human Services administrative review shall be completed on each
58 child within the first three (3) months and a Foster Care Review
59 once every six (6) months after the child's initial forty-eight
60 (48) hours shelter hearing. Such system shall be for the purpose
61 of enhancing potential family life for the child by the
62 development of individual plans to return the child to its natural
63 parent or parents, or to refer the child to the appropriate court
64 for termination of parental rights and placement in a permanent
65 relative's home, adoptive home or foster/adoptive home. The goal
66 of the State Department of Human Services shall be to return the
67 child to its natural parent(s) or refer the child to the
68 appropriate court for termination of parental rights and placement
69 in a permanent relative's home, adoptive home or foster/adoptive
70 home within the time periods specified in this subsection or in
71 subsection (4) of this section. In furthering this goal, the
72 department shall establish policy and procedures designed to
73 appropriately place children in permanent homes, such policy to
74 include a system of reviews for all children in foster care, as
75 follows: Foster care counselors in the department shall make all
76 possible contact with the child's natural parent(s) and any
77 interested relative for the first two (2) months following the
78 child's entry into the foster care system. For any child who was
79 in foster care before July 1, 1998, and has been in foster care
80 for fifteen (15) of the last twenty-two (22) months regardless of
81 whether the foster care was continuous for all of those twenty-two

(22) months, the department shall file a petition to terminate the parental rights of the child's parents. The time period starts to run from the date the court makes a finding of abuse and/or neglect or sixty (60) days from when the child was removed from his or her home, whichever is earlier. The department can choose not to file a termination of parental rights petition if the following apply:

(a) The child is being cared for by a relative; and/or

(b) The department has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child.

(4) In the case of any child who is placed in foster care on or after July 1, 1998, except in cases of aggravated circumstances prescribed in Section 43-21-603(7)(c) or (d), the child's natural parent(s) will have a reasonable time to be determined by the court, which shall not exceed a six-month period of time, in which to meet the service agreement with the department for the benefit of the child unless the department has documented extraordinary and compelling reasons for extending the time period in the best interest of the child. If this agreement has not been satisfactorily met, simultaneously the child will be referred to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or a foster/adoptive home. For children under the age of three (3) years, termination of parental rights shall be initiated within six (6) months, unless the department has documented compelling and extraordinary circumstances, and placement in a permanent relative's home, adoptive home or foster/adoptive home within two

(2) months. For children who have been abandoned pursuant to the provisions of Section 97-5-1, termination of parental rights shall be initiated within thirty (30) days and placement in an adoptive home shall be initiated without necessity for placement in a foster home. The department need not initiate termination of parental rights proceedings where the child has been placed in durable legal custody or long-term or formalized foster care by a court of competent jurisdiction.

(5) The Foster Care Review once every six (6) months shall be conducted by personnel within the State Department of Human Services or by a designee or designees of the department and may include others appointed by the department, and the review shall include at a minimum an evaluation of the child based on the following:

(a) The extent of the care and support provided by the parents or parent, while the child is in temporary custody;

(b) The extent of communication with the child by parents, parent or guardian;

(c) The degree of compliance by the agency and the parents with the social service plan established;

(d) The methods of achieving the goal and the plan establishing a permanent home for the child;

(e) Social services offered and/or utilized to facilitate plans for establishing a permanent home for the child; and

(f) Relevant testimony and recommendations from the foster parent of the child, the grandparents of the child, the guardian ad litem of the child, representatives of any private

care agency which has cared for the child, the social worker assigned to the case, and any other relevant testimony pertaining to the case.

Each child's review plan once every six (6) months shall be filed with the court which awarded custody and shall be made available to natural parents or foster parents upon approval of the court. The court shall make a finding as to the degree of compliance by the agency and the parent(s) with the child's social service plan. The court also shall find that the child's health and safety are the paramount concern. In the interest of the child, the court shall, where appropriate, initiate proceedings on its own motion. The State Department of Human Services shall report to the Legislature as to the number of such children, the findings of the foster care review board and relevant statistical information in foster care in a semiannual report to the Legislature to be submitted to the Joint Oversight Committee of the Department of Human Services. The report shall not refer to the specific name of any child in foster care.

(6) The State Department of Human Services, with the cooperation and assistance of the State Department of Health, shall develop and implement a training program for foster care parents to indoctrinate them as to their proper responsibilities upon a child's entry into their foster care. The program shall provide a minimum of twelve (12) clock hours of training. The foster care training program shall be satisfactorily completed by such foster care parents prior to, or within ninety (90) days after child placement with such parent. Record of such foster care parent's training program participation shall be filed with

the court as part of a foster care child's review plan once every six (6) months.

(7) When the Department of Human Services is considering placement of a child in a foster home and when the department deems it to be in the best interest of the child, the department shall give first priority to placing the child in the home of one (1) of the child's relatives within the third degree, as computed by the civil law rule. In placing the child in a relative's home, the department may waive any rule, regulation or policy applicable to placement in foster care that would otherwise require the child to have a separate bed or bedroom or have a bedroom of a certain size, if placing the child in a relative's home would be in the best interest of the child and such requirements cannot be met in the relative's home. Provided, however, that prior to placement of the child with a relative or any other person, the court shall require the proposed custodian to comply with the criminal history record information check provisions of Sections 43-16-9 and 45-31-12, Mississippi Code of 1972, and shall require the department to conduct a home study investigation of the relative to determine whether the relative care placement is in the best interest of the child, except for a nonoffending parent with no history of abuse or neglect on record.

(8) The Legislature recognizes that the best interests of the child require that the child be placed in the most permanent living arrangement as soon as is practicably possible. To achieve this goal, the Department of Human Services is directed to conduct concurrent planning so that a permanent living arrangement may occur at the earliest opportunity. Permanent living arrangements

may include prevention of placement of a child outside the home of the family when the child can be cared for at home without endangering the child's health or safety; reunification with the family, when safe and appropriate, if temporary placement is necessary; or movement of the child toward the most permanent living arrangement and permanent legal status. When a child is placed in foster care or relative care, the department shall first ensure and document that reasonable efforts were made to prevent or eliminate the need to remove the child from the child's home. The department's first priority shall be to make reasonable efforts to reunify the family when temporary placement of the child occurs or shall request a finding from the court that reasonable efforts are not appropriate or have been unsuccessful.

A decision to place a child in foster care or relative care shall be made with consideration of the child's health, safety and best interests. At the time of placement, consideration should also be given so that if reunification fails or is delayed, the placement made is the best available placement to provide a permanent living arrangement for the child. The department shall adopt rules addressing concurrent planning for reunification and a permanent living arrangement. The department shall consider the following factors when determining appropriateness of concurrent planning:

- (a) The likelihood of prompt reunification;
- (b) The past history of the family;
- (c) The barriers to reunification being addressed by the family;
- (d) The level of cooperation of the family;
- (e) The foster parents' willingness to work with the

family to reunite;

(f) The willingness and ability of the foster family or relative placement to provide an adoptive home or long-term placement;

(g) The age of the child; and

(h) Placement of siblings.

(9) If the department has placed a child in foster care or relative care pursuant to a court order, the department may not change the child's placement unless the department specifically documents to the court that the current placement is unsafe or unsuitable or that another placement is in the child's best interests unless the new placement is in an adoptive home or other permanent placement. Except in emergency circumstances as determined by the department or where the court orders placement of the child pursuant to Section 43-21-303, the foster parents, grandparents or other relatives of the child shall be given an opportunity to contest the specific reasons documented by the department at least seventy-two (72) hours prior to any such departure, and the court may conduct a review of such placement unless the new placement is in an adoptive home or other permanent placement. When a child is returned to foster care or relative care, the former foster parents or relative placement shall be given the prior right of return placement in order to eliminate additional trauma to the child.

(10) The Department of Human Services shall provide the foster parents, grandparents or other relatives with at least a seventy-two-hour notice of departure for any child placed in their foster care or relative care, except in emergency circumstances as

determined by the department or where the court orders placement of the child pursuant to Section 43-21-303. The parent/legal guardian, grandparents of the child, guardian ad litem and the court exercising jurisdiction shall be notified in writing when the child leaves foster care or relative care placement, regardless of whether the child's departure was planned or unplanned. The only exceptions to giving a written notice to the parent(s) are when a parent has voluntarily released the child for adoption or the parent's legal rights to the child have been terminated through the appropriate court with jurisdiction.

(11) The Department of Human Services shall extend the following rights to foster care parents:

(a) A clear understanding of their role as foster parents and the roles of the birth parent(s) and the placement agency in respect to the child in care;

(b) Respect, consideration, trust and value as a family who is making an important contribution to the agency's objectives;

(c) Involvement in all the agency's crucial decisions regarding the foster child as team members who have pertinent information based on their day-to-day knowledge of the child in care;

(d) Support from the social worker in efforts to do a better day-to-day job in caring for the child and in working to achieve the agency's objectives for the child and the birth family through provision of:

(i) Pertinent information about the child and the birth family.

(ii) Help in using appropriate resources to meet the child's needs.

(iii) Direct interviews between the social worker and the child, previously discussed and understood by the foster parents.

(e) The opportunity to develop confidence in making day-to-day decisions in regard to the child;

(f) The opportunity to learn and grow in their vocation through planned foster parent education;

(g) The opportunity to be heard regarding agency practices that they may question; and

(h) Reimbursement for costs of the foster child's care in the form of a board payment based on the age of the foster child as prescribed in Section 43-15-17.

(12) The Department of Human Services shall require the following responsibilities from participating foster parents:

(a) Understanding the department's function in regard to the foster care program and related social service programs;

(b) Sharing with the department any information which may contribute to the care of foster children;

(c) Functioning within the established goals and objectives to improve the general welfare of the foster child;

(d) Recognizing the problems in foster home placement that will require professional advice and assistance and that such help should be utilized to its full potential;

(e) Recognizing that the foster family will be one of the primary resources for preparing a child for any future plans that are made, including return to birth parent(s), termination of

parental rights or reinstitutionalization;

(f) Expressing their view of agency practices which relate to the foster child with the appropriate staff member;

(g) Understanding that all information shared with the foster parents about the child and his/her birth parent(s) must be held in the strictest of confidence;

(h) Cooperating with any plan to reunite the foster child with his birth family and work with the birth family to achieve this goal; and

(i) Attending dispositional review hearings and termination of parental rights hearings conducted by a court of competent jurisdiction, or providing their recommendations to the court in writing.

SECTION 2. Section 43-16-9, Mississippi Code of 1972, is amended as follows:[RDD2]

43-16-9. Such notification shall be filed by the executive director of the child residential home, or by the relative of the child to whom placement of the child is being considered, to the department upon forms provided by the department and shall contain the following information:

(a) Name, street address, mailing address and phone number of the home.

(b) Name of the executive director and all staff members of the home.

(c) Name and description of the agency or organization operating the home, which shall include a statement as to whether or not the agency or organization is incorporated.

(d) Name and address of the sponsoring organization of

334 the home, if applicable.

335 (e) The names of all children living at the home which
336 shall include the following personal data:

337 (i) Full name and a copy of the child's birth
338 certificate;

339 (ii) Name and address of parent(s) or guardian(s);
340 and

341 (iii) Name and address of other nearest relative.

342 (f) School(s) attended by the children served by such
343 home.

344 (g) Fire department or State Fire Marshal inspection
345 certificate.

346 (h) Local health department inspection certificate.

347 (i) Proof, to be shown by the sworn affidavit of the
348 executive director of the home, or the relative of the child if
349 applicable, that the home has complied with Section 45-31-12,
350 Mississippi Code of 1972, by having performed (i) sex offense
351 criminal history record information checks, and (ii) felony
352 conviction record information checks on all employees, prospective
353 employees, volunteers and prospective volunteers at such home, and
354 that such records are maintained to the extent permitted by law,
355 for every such employee, prospective employee, volunteer and
356 prospective volunteer.

357 (j) Proof, to be shown by the sworn affidavit of the
358 executive director of the home, that medical records are
359 maintained for each child.

360 SECTION 3. Section 45-31-12, Mississippi Code of 1972, is
361 amended as follows:[RDD3]

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

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

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

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

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

(3) Each entity to which subsection (2) applies shall complete, through the appropriate governmental authority, sex offense criminal history record information, as authorized under Section 45-31-1 et seq., and felony conviction record information checks for each employee, prospective employee, volunteer or prospective volunteer of the entity who provides or would provide services to children for the entity. In order to determine the

applicant's suitability for employment, the entity shall ensure that the applicant be fingerprinted by local law enforcement, and the results forwarded to the Department of Public Safety. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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