

By: Representative Malone

To: Penitentiary

## HOUSE BILL NO. 1312

1       AN ACT TO AMEND SECTIONS 47-5-99 THROUGH 47-5-104,  
2 MISSISSIPPI CODE OF 1972, TO ABOLISH THE CLASSIFICATION COMMITTEES  
3 AND CREATE THE CLASSIFICATION HEARING OFFICERS AND DISCIPLINARY  
4 HEARING OFFICERS; TO AMEND SECTION 43-21-261 IN CONFORMITY  
5 THERETO; AND FOR RELATED PURPOSES.

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

7       SECTION 1. Section 47-5-99, Mississippi Code of 1972, is  
8 amended as follows:

9       47-5-99. There are hereby created classification hearing  
10 officers and disciplinary hearing officers of the correctional  
11 system to be appointed by the commissioner. \* \* \*

12       SECTION 2. Section 47-5-101, Mississippi Code of 1972, is  
13 amended as follows:

14       47-5-101. The classification hearing officers and  
15 disciplinary hearing officers shall maintain a record of all  
16 actions and orders by minutes \* \* \*. The classification hearing  
17 officers and disciplinary hearing officers shall meet on a regular  
18 basis \* \* \*.

19       SECTION 3. Section 47-5-103, Mississippi Code of 1972, is  
20 amended as follows:

21       47-5-103. The classification hearing officer shall be  
22 responsible for assigning a classification to each offender within  
23 forty (40) days after the offender's commitment to the custody of  
24 the department. The classification shall determine the offender's  
25 work duties, living quarters, educational, vocational or other  
26 rehabilitation programs, and privileges to be accorded the  
27 offender while in custody of the department. The classification  
28 hearing officer, in assigning classifications, shall consider the

29 offender's age, offense and surrounding circumstances, the  
30 complete record of the offender's criminal history including  
31 records of law enforcement agencies or of a youth court regarding  
32 that offender's juvenile criminal history, family background,  
33 education, practical or employment experience, interests and  
34 abilities as evidenced by mental and psychological examination and  
35 knowledge obtained by the classification hearing officer in  
36 personal interview with the offender. The classification hearing  
37 officer shall use the above criteria to assign each offender a  
38 classification which will serve and enhance the best interests and  
39 general welfare of the offender. The classification hearing  
40 officer shall provide the State Parole Board with a copy of the  
41 classification assigned to each offender in the custody of the  
42 department who is eligible for parole.

43 \* \* \* The classification board, consisting of the  
44 commissioner, or designee, deputy commissioner of institutions and  
45 the director of offender services may change an action of the  
46 classification or disciplinary hearing officer if the board makes  
47 a determination that the action of the classification or  
48 disciplinary hearing officer was not supported by sufficient  
49 factual information. The commissioner, in emergency situations,  
50 may suspend the classification of an offender or offenders for a  
51 period of not exceeding fifteen (15) days to relieve the emergency  
52 situation. The classification of each offender may be reviewed by  
53 a classification hearing officer at least once each year. In no  
54 case shall an offender serve as a servant in the home of any  
55 employee other than authorized by the commissioner.

56 The classification board shall establish substantive and  
57 procedural rules and regulations governing the assignment and  
58 alteration of inmate classifications, and shall make such rules  
59 and regulations available to any offender upon request.

60 SECTION 4. Section 47-5-104, Mississippi Code of 1972, is  
61 amended as follows:

62       47-5-104. The commissioner shall designate individual  
63 disciplinary hearing officers to hear evidence and make decisions  
64 in all cases where an offender has been issued a rule violation  
65 report and is subject to being demoted or having earned time taken  
66 away. All proceedings conducted by the disciplinary hearing  
67 officer shall be taped and retained for at least three (3) years.  
68 The commissioner shall not attend any hearings whereby an offender  
69 is subject to be demoted or having earned time taken away.

70       SECTION 5. Section 43-21-261, Mississippi Code of 1972, is  
71 amended as follows:

72       43-21-261. (1) Except as otherwise provided in this  
73 section, records involving children shall not be disclosed, other  
74 than to necessary staff of the youth court, except pursuant to an  
75 order of the youth court specifying the person or persons to whom  
76 the records may be disclosed, the extent of the records which may  
77 be disclosed and the purpose of the disclosure. Such court orders  
78 for disclosure shall be limited to those instances in which the  
79 youth court concludes, in its discretion, that disclosure is  
80 required for the best interests of the child, the public safety or  
81 the functioning of the youth court and then only to the following  
82 persons:

83               (a) The judge of another youth court or member of  
84 another youth court staff;

85               (b) The court of the parties in a child custody or  
86 adoption cause in another court;

87               (c) A judge of any other court or members of another  
88 court staff;

89               (d) Representatives of a public or private agency  
90 providing supervision or having custody of the child under order  
91 of the youth court;

92               (e) Any person engaged in a bona fide research purpose,  
93 provided that no information identifying the subject of the  
94 records shall be made available to the researcher unless it is

95       absolutely essential to the research purpose and the judge gives  
96       prior written approval, and the child, through his or her  
97       representative, gives permission to release the information;

98                 (f) The Mississippi Employment Security Commission, or  
99       its duly authorized representatives, for the purpose of a child's  
100      enrollment into the Job Corps Training Program as authorized by  
101     Title IV of the Comprehensive Employment Training Act of 1973 (29  
102     USCS Section 923 et seq.). However, no records, reports,  
103     investigations or information derived therefrom pertaining to  
104     child abuse or neglect shall be disclosed; and

105                 (g) To any person pursuant to a finding by a judge of  
106       the youth court of compelling circumstances affecting the health  
107       or safety of a child and that such disclosure is in the best  
108       interests of the child.

109       Law enforcement agencies may disclose information to the  
110       public concerning the taking of a child into custody for the  
111       commission of a delinquent act without the necessity of an order  
112       from the youth court. The information released shall not identify  
113       the child or his address unless the information involves a child  
114       convicted as an adult.

115                 (2) Any records involving children which are disclosed under  
116       an order of the youth court and the contents thereof shall be kept  
117       confidential by the person or agency to whom the record is  
118       disclosed except as provided in the order. Any further disclosure  
119       of any records involving children shall be made only under an  
120       order of the youth court as provided in this section.

121                 (3) Upon request, the parent, guardian or custodian of the  
122       child who is the subject of a youth court cause or any attorney  
123       for such parent, guardian or custodian, shall have the right to  
124       inspect any record, report or investigation which is to be  
125       considered by the youth court at a hearing, except that the  
126       identity of the reporter shall not be released, nor the name of  
127       any other person where the person or agency making the information

128 available finds that disclosure of the information would be likely  
129 to endanger the life or safety of such person.

130 (4) Upon request, the child who is the subject of a youth  
131 court cause shall have the right to have his counsel inspect and  
132 copy any record, report or investigation which is filed with the  
133 youth court.

134 (5) (a) The youth court prosecutor or prosecutors, the  
135 county attorney, the district attorney, the youth court defender  
136 or defenders, or any attorney representing a child shall have the  
137 right to inspect any law enforcement record involving children.

138 (b) The Department of Human Services shall disclose to  
139 a county prosecuting attorney or district attorney any and all  
140 records resulting from an investigation into suspected child abuse  
141 or neglect when the case has been referred by the Department of  
142 Human Services to the county prosecuting attorney or district  
143 attorney for criminal prosecution.

144 (c) Agency records made confidential under the  
145 provisions of this section may be disclosed to a court of  
146 competent jurisdiction.

147 (6) Information concerning an investigation into a report of  
148 child abuse or child neglect may be disclosed by the Department of  
149 Human Services without order of the youth court to any attorney,  
150 physician, dentist, intern, resident, nurse, psychologist, social  
151 worker, child care giver, minister, law enforcement officer,  
152 public or private school employee making that report pursuant to  
153 Section 43-21-353(1) if the reporter has a continuing professional  
154 relationship with the child and a need for such information in  
155 order to protect or treat the child.

156 (7) Information concerning an investigation into a report of  
157 child abuse or child neglect may be disclosed without further  
158 order of the youth court to any interagency child abuse task force  
159 established in any county or municipality by order of the youth  
160 court of that county or municipality.

161                 (8) Names and addresses of juveniles twice adjudicated as  
162 delinquent for an act which would be a felony if committed by an  
163 adult or for the unlawful possession of a firearm shall not be  
164 held confidential and shall be made available to the public.

165                 (9) Names and addresses of juveniles adjudicated as  
166 delinquent for murder, manslaughter, burglary, arson, armed  
167 robbery, aggravated assault, any sex offense as defined in Section  
168 45-33-23, for any violation of Section 41-29-139(a)(1) or for any  
169 violation of Section 63-11-30, shall not be held confidential and  
170 shall be made available to the public.

171                 (10) The judges of the circuit and county courts, and  
172 presentence investigators for the circuit courts, as provided in  
173 Section 47-7-9, shall have the right to inspect any youth court  
174 records of a person convicted of a crime for sentencing purposes  
175 only.

176                 (11) The victim of an offense committed by a child who is  
177 the subject of a youth court cause shall have the right to be  
178 informed of the child's disposition by the youth court.

179                 (12) The Classification Board of the State Department of  
180 Corrections, as provided in Section 47-5-103, shall have the right  
181 to inspect any youth court records, excluding abuse and neglect  
182 records, of any offender in the custody of the department who as a  
183 child or minor was a juvenile offender or was the subject of a  
184 youth court cause of action, and the State Parole Board, as  
185 provided in Section 47-7-17, shall have the right to inspect such  
186 records when said offender becomes eligible for parole.

187                 (13) The youth court shall notify the Department of Public  
188 Safety of the name, and any other identifying information such  
189 department may require, of any child who is adjudicated delinquent  
190 as a result of a violation of the Uniform Controlled Substances  
191 Law.

192                 (14) The Administrative Office of Courts shall have the  
193 right to inspect any youth court records in order that the number

194 of youthful offenders, abused, neglected, truant and dependent  
195 children, as well as children in need of special care and children  
196 in need of supervision, may be tracked with specificity through  
197 the youth court and adult justice system, and to utilize tracking  
198 forms for such purpose.

199 (15) Upon a request by a youth court, the Administrative  
200 Office of Courts shall disclose all information at its disposal  
201 concerning any previous youth court intakes alleging that a child  
202 was a delinquent child, child in need of supervision, child in  
203 need of special care, truant child, abused child or neglected  
204 child, as well as any previous youth court adjudications for the  
205 same and all dispositional information concerning a child who at  
206 the time of such request comes under the jurisdiction of the youth  
207 court making such request.

208 (16) In every case where an abuse or neglect allegation has  
209 been made, the confidentiality provisions of this section shall  
210 not apply to prohibit access to a child's records by any state  
211 regulatory agency, any state or local prosecutorial agency or law  
212 enforcement agency; provided, however, that no identifying  
213 information concerning the child in question may be released to  
214 the public by such agency except as otherwise provided herein.

215 (17) In every case where there is any indication or  
216 suggestion of either abuse or neglect and a child's physical  
217 condition is medically labeled as medically "serious" or  
218 "critical" or a child dies, the confidentiality provisions of this  
219 section shall not apply.

220 (18) Any member of a foster care review board designated by  
221 the Department of Human Services shall have the right to inspect  
222 youth court records relating to the abuse, neglect or child in  
223 need of supervision cases assigned to such member for review.

224 (19) Information concerning an investigation into a report  
225 of child abuse or child neglect may be disclosed without further  
226 order of the youth court in any administrative or due process

227 hearing held, pursuant to Section 43-21-257, by the Department of  
228 Human Services for individuals whose names will be placed on the  
229 central registry as substantiated perpetrators.

230 SECTION 6. This act shall take effect and be in force from  
231 and after July 1, 2001.