

By: Senator(s) Huggins

To: Public Health and Welfare

SENATE BILL NO. 2856

1 AN ACT TO AMEND SECTION 43-21-105, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITION OF THE TERM "DELINQUENT CHILD AND
3 DELINQUENT ACT" FOR PURPOSES OF JURISDICTION UNDER THE YOUTH COURT
4 LAW; AND FOR RELATED PURPOSES.

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

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

8 43-21-105. The following words and phrases, for purposes of
9 this chapter, shall have the meanings ascribed herein unless the
10 context clearly otherwise requires:

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

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

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

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

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

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

28 (g) "Custodian" means any person having the present
29 care or custody of a child whether such person be a parent or
30 otherwise.

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

33 (i) "Delinquent child" means a child who has reached
34 his tenth birthday and who has committed a delinquent act * * *.

35 (j) "Delinquent act" is any act, which if committed by
36 an adult, is designated as a crime under state or federal law, or
37 municipal or county ordinance other than offenses punishable by
38 life imprisonment or death. A delinquent act includes escape from
39 lawful detention and * * * violations of the Uniform Controlled
40 Substances Law and violent behavior.

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

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

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

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

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

52 (l) "Neglected child" means a child:

53 (i) Whose parent, guardian or custodian or any
54 person responsible for his care or support, neglects or refuses,
55 when able so to do, to provide for him proper and necessary care
56 or support, or education as required by law, or medical, surgical,
57 or other care necessary for his well-being; provided, however, a
58 parent who withholds medical treatment from any child who in good
59 faith is under treatment by spiritual means alone through prayer
60 in accordance with the tenets and practices of a recognized church

61 or religious denomination by a duly accredited practitioner
62 thereof shall not, for that reason alone, be considered to be
63 neglectful under any provision of this chapter; or

64 (ii) Who is otherwise without proper care,
65 custody, supervision or support; or

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

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

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

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

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

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

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

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

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

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

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

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

109 (i) All youth court records as defined in Section
110 43-21-251;

111 (ii) All social records as defined in Section
112 43-21-253;

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

115 (iv) All agency records as defined in Section
116 43-21-257; and

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

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

126 persons responsible for a child and staff of residential care
127 facilities and group homes that are licensed by the Department of
128 Human Services.

129 (w) The singular includes the plural, the plural the
130 singular and the masculine the feminine when consistent with the
131 intent of this chapter.

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

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

145 SECTION 2. This act shall take effect and be in force from
146 and after July 1, 2001.