

By: Senator(s) Huggins

To: Judiciary

SENATE BILL NO. 2495

1 AN ACT TO AMEND SECTIONS 43-15-13, 11-46-8 AND 93-13-2,
 2 MISSISSIPPI CODE OF 1972, TO AUTHORIZE FOSTER PARENTS TO CONSENT
 3 TO AN APPLICATION FOR A DRIVER'S LICENSE AND ANY OTHER ACTIVITY
 4 REQUIRING PARENTAL CONSENT, TO INCLUDE CLAIMS OR DAMAGES ARISING
 5 OUT OF A FOSTER CHILD'S OPERATION OF A MOTOR VEHICLE UNDER THE
 6 TORT CLAIMS ACT, AND TO PROVIDE CIVIL IMMUNITY FOR THE DEPARTMENT
 7 OF HUMAN SERVICES AND ANY FOSTER PARENT FOR ANY ACT OR OMISSION OF
 8 A FOSTER CHILD, INCLUDING ANY DAMAGES CAUSED BY THE OPERATION OF A
 9 MOTOR VEHICLE; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 43-15-13, Mississippi Code of 1972, is
 12 amended as follows:

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

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

21 (a) Protecting and promoting the health, safety and
 22 welfare of children;

23 (b) Preventing the unnecessary separation of children
 24 from their families by identifying family problems, assisting
 25 families in resolving their problems and preventing the breakup of
 26 the family where the prevention of child removal is desirable and
 27 possible when the child can be cared for at home without
 28 endangering the child's health and safety;



29 (c) Remedying or assisting in the solution of problems
30 which may result in the neglect, abuse, exploitation or
31 delinquency of children;

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

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

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

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

54 (3) The State Department of Human Services shall administer
55 a system of individualized plans and reviews once every six (6)
56 months for each child under its custody within the State of
57 Mississippi, each child who has been adjudged a neglected,
58 abandoned or abused child and whose custody was changed by court
59 order as a result of such adjudication, and each public or private
60 facility licensed by the department. The State Department of
61 Human Services administrative review shall be completed on each



62 child within the first three (3) months and a foster care review
63 once every six (6) months after the child's initial
64 forty-eight-hour shelter hearing. Such system shall be for the
65 purpose of enhancing potential family life for the child by the
66 development of individual plans to return the child to its natural
67 parent or parents, or to refer the child to the appropriate court
68 for termination of parental rights and placement in a permanent
69 relative's home, adoptive home or foster/adoptive home. The goal
70 of the State Department of Human Services shall be to return the
71 child to its natural parent(s) or refer the child to the
72 appropriate court for termination of parental rights and placement
73 in a permanent relative's home, adoptive home or foster/adoptive
74 home within the time periods specified in this subsection or in
75 subsection (4) of this section. In furthering this goal, the
76 department shall establish policy and procedures designed to
77 appropriately place children in permanent homes, such policy to
78 include a system of reviews for all children in foster care, as
79 follows: foster care counselors in the department shall make all
80 possible contact with the child's natural parent(s) and any
81 interested relative for the first two (2) months following the
82 child's entry into the foster care system. For any child who was
83 in foster care before July 1, 1998, and has been in foster care
84 for fifteen (15) of the last twenty-two (22) months regardless of
85 whether the foster care was continuous for all of those twenty-two
86 (22) months, the department shall file a petition to terminate the
87 parental rights of the child's parents. The time period starts to
88 run from the date the court makes a finding of abuse and/or
89 neglect or sixty (60) days from when the child was removed from
90 his or her home, whichever is earlier. The department can choose
91 not to file a termination of parental rights petition if the
92 following apply:

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



94 (b) The department has documented compelling and
95 extraordinary reasons why termination of parental rights would not
96 be in the best interests of the child. Prior to granting or
97 denying a request by the department for an extension of time for
98 filing a termination of parental rights action, the court shall
99 receive a written report on the progress which a parent of such
100 child has made in treatment, to be made to the court in writing by
101 a mental health/substance abuse therapist or counselor.

102 (4) In the case of any child who is placed in foster care on
103 or after July 1, 1998, except in cases of aggravated circumstances
104 prescribed in Section 43-21-603(7)(c) or (d), the child's natural
105 parent(s) will have a reasonable time to be determined by the
106 court, which shall not exceed a six-month period of time, in which
107 to meet the service agreement with the department for the benefit
108 of the child unless the department has documented extraordinary
109 and compelling reasons for extending the time period in the best
110 interest of the child. If this agreement has not been
111 satisfactorily met, simultaneously the child will be referred to
112 the appropriate court for termination of parental rights and
113 placement in a permanent relative's home, adoptive home or a
114 foster/adoptive home. For children under the age of three (3)
115 years, termination of parental rights shall be initiated within
116 six (6) months, unless the department has documented compelling
117 and extraordinary circumstances, and placement in a permanent
118 relative's home, adoptive home or foster/adoptive home within two
119 (2) months. For children who have been abandoned pursuant to the
120 provisions of Section 97-5-1, termination of parental rights shall
121 be initiated within thirty (30) days and placement in an adoptive
122 home shall be initiated without necessity for placement in a
123 foster home. The department need not initiate termination of
124 parental rights proceedings where the child has been placed in
125 durable legal custody or long-term or formalized foster care by a
126 court of competent jurisdiction.



127 (5) The foster care review once every six (6) months shall
128 be conducted by the youth court or its designee(s), and/or by
129 personnel within the State Department of Human Services or by a
130 designee or designees of the department and may include others
131 appointed by the department, and the review shall include at a
132 minimum an evaluation of the child based on the following:

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

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

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

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

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

144 (f) Relevant testimony and recommendations from the
145 foster parent of the child, the grandparents of the child, the
146 guardian ad litem of the child, representatives of any private
147 care agency which has cared for the child, the social worker
148 assigned to the case, and any other relevant testimony pertaining
149 to the case.

150 Each child's review plan once every six (6) months shall be
151 filed with the court which awarded custody and shall be made
152 available to natural parents or foster parents upon approval of
153 the court. The court shall make a finding as to the degree of
154 compliance by the agency and the parent(s) with the child's social
155 service plan. The court also shall find that the child's health
156 and safety are the paramount concern. In the interest of the
157 child, the court shall, where appropriate, initiate proceedings on
158 its own motion. The State Department of Human Services shall
159 report to the Legislature as to the number of such children, the



160 findings of the foster care review board and relevant statistical
161 information in foster care in a semiannual report to the
162 Legislature to be submitted to the Joint Oversight Committee of
163 the Department of Human Services. The report shall not refer to
164 the specific name of any child in foster care.

165 (6) The State Department of Human Services, with the
166 cooperation and assistance of the State Department of Health,
167 shall develop and implement a training program for foster care
168 parents to indoctrinate them as to their proper responsibilities
169 upon a child's entry into their foster care. The program shall
170 provide a minimum of twelve (12) clock hours of training. The
171 foster care training program shall be satisfactorily completed by
172 such foster care parents prior to or within ninety (90) days after
173 child placement with such parent. Record of such foster care
174 parent's training program participation shall be filed with the
175 court as part of a foster care child's review plan once every six
176 (6) months.

177 (7) When the Department of Human Services is considering
178 placement of a child in a foster home and when the department
179 deems it to be in the best interest of the child, the department
180 shall give first priority to placing the child in the home of one
181 (1) of the child's relatives within the third degree, as computed
182 by the civil law rule. In placing the child in a relative's home,
183 the department may waive any rule, regulation or policy applicable
184 to placement in foster care that would otherwise require the child
185 to have a separate bed or bedroom or have a bedroom of a certain
186 size, if placing the child in a relative's home would be in the
187 best interest of the child and such requirements cannot be met in
188 the relative's home.

189 (8) The Legislature recognizes that the best interests of
190 the child require that the child be placed in the most permanent
191 living arrangement as soon as is practicably possible. To achieve
192 this goal, the Department of Human Services is directed to conduct



193 concurrent planning so that a permanent living arrangement may
194 occur at the earliest opportunity. Permanent living arrangements
195 may include prevention of placement of a child outside the home of
196 the family when the child can be cared for at home without
197 endangering the child's health or safety; reunification with the
198 family, when safe and appropriate, if temporary placement is
199 necessary; or movement of the child toward the most permanent
200 living arrangement and permanent legal status. When a child is
201 placed in foster care or relative care, the department shall first
202 ensure and document that reasonable efforts were made to prevent
203 or eliminate the need to remove the child from the child's home.
204 The department's first priority shall be to make reasonable
205 efforts to reunify the family when temporary placement of the
206 child occurs or shall request a finding from the court that
207 reasonable efforts are not appropriate or have been unsuccessful.
208 A decision to place a child in foster care or relative care shall
209 be made with consideration of the child's health, safety and best
210 interests. At the time of placement, consideration should also be
211 given so that if reunification fails or is delayed, the placement
212 made is the best available placement to provide a permanent living
213 arrangement for the child. The department shall adopt rules
214 addressing concurrent planning for reunification and a permanent
215 living arrangement. The department shall consider the following
216 factors when determining appropriateness of concurrent planning:
217 (a) The likelihood of prompt reunification;
218 (b) The past history of the family;
219 (c) The barriers to reunification being addressed by
220 the family;
221 (d) The level of cooperation of the family;
222 (e) The foster parents' willingness to work with the
223 family to reunite;



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

227 (g) The age of the child; and

228 (h) Placement of siblings.

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

247 (10) The Department of Human Services shall provide the
248 foster parents, grandparents or other relatives with at least a
249 seventy-two-hour notice of departure for any child placed in their
250 foster care or relative care, except in emergency circumstances as
251 determined by the department or where the court orders placement
252 of the child pursuant to Section 43-21-303. The parent/legal
253 guardian, grandparents of the child, guardian ad litem and the
254 court exercising jurisdiction shall be notified in writing when
255 the child leaves foster care or relative care placement,
256 regardless of whether the child's departure was planned or



257 unplanned. The only exceptions to giving a written notice to the
258 parent(s) are when a parent has voluntarily released the child for
259 adoption or the parent's legal rights to the child have been
260 terminated through the appropriate court with jurisdiction.

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

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

266 (b) Respect, consideration, trust and value as a family
267 who is making an important contribution to the agency's
268 objectives. Unless modified by a court order, the foster parent
269 or any other party with whom the Department of Human Services has
270 placed a foster child shall have the authority to consent to
271 application for a motor vehicle and driver's license, application
272 for admission into a college or university, and any other such
273 activities which require parental consent. The foster parent
274 shall have the responsibility of informing the department of any
275 such actions in a timely manner. Neither the Mississippi
276 Department of Human Services or any party with whom the department
277 has placed a foster child shall be liable for claims or damages
278 arising out of any act or omission of a foster child, including,
279 but not limited to, claims for damages caused by a foster child's
280 operation of a motor vehicle. These claims shall be covered under
281 Section 11-46-11 et seq., Mississippi Code of 1972;

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

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



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

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

294 (iii) Direct interviews between the social worker
295 and the child, previously discussed and understood by the foster
296 parents;

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

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

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

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

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

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

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

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

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

317 (e) Recognizing that the foster family will be one of
318 the primary resources for preparing a child for any future plans
319 that are made, including return to birth parent(s), termination of
320 parental rights or reinstitutionalization;

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



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

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

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

333 **SECTION 2.** Section 11-46-8, Mississippi Code of 1972, is
334 amended as follows:

335 11-46-8. Mississippi Department of Human Services licensed
336 foster parents and foster children shall be covered under this
337 chapter for claims made by parties other than the foster child
338 which are based on inadequate supervision or inadequate care of
339 the foster child on the part of the foster parent or claims or
340 damages arising out of any act or omission of a foster child,
341 including, but not limited to, claims for damages caused by a
342 foster child's operation of a motor vehicle. Neither the
343 Mississippi Department of Human Services or any party with whom
344 the department has placed a foster child shall be liable for
345 damages for any and all claims, including but not limited to, the
346 operation of a motor vehicle by a foster child. These claims
347 shall be covered under this section.

348 **SECTION 3.** Section 93-13-2, Mississippi Code of 1972, is
349 amended as follows:

350 93-13-2. (1) Any property owner shall be entitled to
351 recover damages in an amount not to exceed Five Thousand Dollars
352 (\$5,000.00), plus necessary court costs, from the parents of any
353 minor under the age of eighteen (18) years and over the age of ten
354 (10), who maliciously and willfully damages or destroys property
355 belonging to such owner. However, this section shall not apply to



356 parents whose parental custody and control of such child have been
357 removed by court order or decree.

358 (2) The action authorized in this section shall be in
359 addition to all other actions which the owner is entitled to
360 maintain and nothing in this section shall preclude recovery in a
361 greater amount from the minor or from any person, including the
362 parents, for damages to which such minor or other person would
363 otherwise be liable.

364 (3) It is the purpose of this section to authorize recovery
365 from parents in situations where they are not otherwise liable and
366 to limit the amount of recovery. The provisions of this section
367 shall apply only to acts committed on and after July 1, 1978.

368 (4) Notwithstanding subsections (1), (2) and (3) of this
369 section, neither the Mississippi Department of Human Services nor
370 any party with whom the department has placed a foster child shall
371 be liable for claims or damages arising out of any act or omission
372 of a foster child, including, but not limited to, claims for
373 damages caused by a foster child's operation of a motor vehicle.
374 These claims shall be covered under Section 11-46-1 et seq.,
375 Mississippi Code of 1972.

376 **SECTION 4.** This act shall take effect and be in force from
377 and after July 1, 2002.

