

By: Representative Holland

To: Juvenile Justice

HOUSE BILL NO. 1449

1 AN ACT TO AMEND SECTION 43-21-603, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A CHILD COMMITTED TO THE CUSTODY OF THE DEPARTMENT
3 OF HUMAN SERVICES BY THE YOUTH COURT SHALL BE TRANSFERRED TO THE
4 CUSTODY OF THE DEPARTMENT OF MENTAL HEALTH IF THE CHILD IS FOUND
5 TO BE IN NEED OF TREATMENT FOR A MENTAL OR EMOTIONAL DISABILITY;
6 AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 43-21-603, Mississippi Code of 1972, is
9 amended as follows:

10 43-21-603. (1) At the beginning of each disposition
11 hearing, the judge shall inform the parties of the purpose of the
12 hearing.

13 (2) All testimony shall be under oath unless waived by all
14 parties and may be in narrative form. The court may consider any
15 evidence which is material and relevant to the disposition of the
16 cause, including hearsay and opinion evidence. At the conclusion
17 of the evidence, the youth court shall give the parties an
18 opportunity to present oral argument.

19 (3) If the child has been adjudicated a delinquent child,
20 prior to entering a disposition order, the youth court should
21 consider, among others, the following relevant factors:

- 22 (a) The nature of the offense;
- 23 (b) The manner in which the offense was committed;
- 24 (c) The nature and number of a child's prior
25 adjudicated offenses; and
- 26 (d) The child's need for care and assistance.

27 (4) If the child has been adjudicated a child in need of
28 supervision, before entering a disposition order, the youth court
29 should consider, among others, the following relevant factors:

- 30 (a) The nature and history of the child's conduct;
31 (b) The family and home situation; and
32 (c) The child's need of care and assistance.

33 (5) If the child has been adjudicated a neglected child or
34 an abused child, before entering a disposition order, the youth
35 court shall consider, among others, the following relevant
36 factors:

- 37 (a) The child's physical and mental conditions;
38 (b) The child's need of assistance;
39 (c) The manner in which the parent, guardian or
40 custodian participated in, tolerated or condoned the abuse,
41 neglect or abandonment of the child;

42 (d) The ability of a child's parent, guardian or
43 custodian to provide proper supervision and care of a child; and

44 (e) Relevant testimony and recommendations, where
45 available, from the foster parent of the child, the grandparents
46 of the child, the guardian ad litem of the child, representatives
47 of any private care agency which has cared for the child, the
48 social worker assigned to the case, and any other relevant
49 testimony pertaining to the case.

50 (6) After consideration of all the evidence and the relevant
51 factors, the youth court shall enter a disposition order that
52 shall not recite any of the facts or circumstances upon which the
53 disposition is based, nor shall it recite that a child has been
54 found guilty; but it shall recite that a child is found to be a
55 delinquent child, a child in need of supervision, a neglected
56 child or an abused child.

57 (7) If the youth court orders that the custody or
58 supervision of a child who has been adjudicated abused or
59 neglected be placed with the Department of Human Services or any
60 other person or public or private agency, other than the child's
61 parent, guardian or custodian, the youth court shall find and the
62 disposition order shall recite that:

63 (a) (i) Reasonable efforts have been made to maintain
64 the child within his own home, but that the circumstances warrant
65 his removal and there is no reasonable alternative to custody; or

66 (ii) The circumstances are of such an emergency
67 nature that no reasonable efforts have been made to maintain the
68 child within his own home, and that there is no reasonable
69 alternative to custody; and

70 (b) That the effect of the continuation of the child's
71 residence within his own home would be contrary to the welfare of
72 the child and that the placement of the child in foster care is in
73 the best interests of the child; or

74 (c) Reasonable efforts to maintain the child within his
75 home shall not be required if the court determines that:

76 (i) The parent has subjected the child to
77 aggravated circumstances including, but not limited to,
78 abandonment, torture, chronic abuse and sexual abuse; or

79 (ii) The parent has been convicted of murder of
80 another child of the parent, voluntary manslaughter of another
81 child of the parent, aided or abetted, attempted, conspired or
82 solicited to commit that murder or voluntary manslaughter, or a
83 felony assault that results in the serious bodily injury to the
84 surviving child or another child of the parent; or

85 (iii) The parental rights of the parent to a
86 sibling have been terminated involuntarily; and

87 (iv) That the effect of the continuation of the
88 child's residence within his own home would be contrary to the
89 welfare of the child and that placement of the child in foster
90 care is in the best interests of the child.

91 Once the reasonable efforts requirement is bypassed, the
92 court shall have a permanency hearing under Section 43-21-613
93 within thirty (30) days of that finding.

94 (8) Upon a written motion by a party, the youth court shall
95 make written findings of fact and conclusions of law upon which it
96 relies for the disposition order.

97 (9) When a child in the jurisdiction of the youth court is
98 committed to the custody of the Department of Human Services and
99 is found, through a psychological evaluation or screening, to be
100 in need of treatment for a mental or emotional disability or
101 infirmity, as defined in Diagnostic and Statistical Manual of
102 Mental Disorders (DSM-IV, Revised) the youth court shall be
103 notified and custody of the child shall be immediately given to
104 the Department of Mental Health or the regional mental health
105 center serving the county in which the court is located. If
106 residential care is required and the appropriate treatment is not
107 available within the mental health district, either because of the
108 lack of a facility that provides the necessary treatment or the
109 overcrowding of facilities that provide that treatment, the
110 regional mental health center shall notify the Department of
111 Mental Health, which shall have the custody of the child, and it
112 shall be the Department of Mental Health's responsibility to
113 provide the necessary services for the child, whether in or out of
114 state, and to inform the court of the availability of those
115 services. The court shall then issue the necessary order of
116 commitment or for custody.

117 **SECTION 2.** This act shall take effect and be in force from
118 and after July 1, 2004.