

By: Senator(s) Nunnelee, Butler

To: Public Health and Welfare

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2862

1 AN ACT TO AMEND SECTION 43-21-603, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT WHEN THE DEPARTMENT OF HUMAN SERVICES FILES AN
3 AFFIDAVIT WITH THE YOUTH COURT THAT A CHILD COMMITTED TO ITS
4 CUSTODY IS BELIEVED TO BE IN NEED OF TREATMENT FOR A MENTAL OR
5 EMOTIONAL DISORDER, THE COURT SHALL REFER THE CHILD TO THE
6 COMMUNITY MENTAL HEALTH CENTER FOR EVALUATION AND CIVIL COMMITMENT
7 IF NECESSARY; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

28 (4) If the child has been adjudicated a child in need of
29 supervision, prior to entering a disposition order, the youth

30 court should consider, among others, the following relevant
31 factors:

32 (a) The nature and history of the child's conduct;

33 (b) The family and home situation; and

34 (c) The child's need of care and assistance.

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

39 (a) The child's physical and mental conditions;

40 (b) The child's need of assistance;

41 (c) The manner in which the parent, guardian or
42 custodian participated in, tolerated or condoned the abuse,
43 neglect or abandonment of the child;

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

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

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

59 (7) In the event that the youth court orders that the
60 custody or supervision of a child who has been adjudicated abused
61 or neglected be placed with the Department of Human Services or
62 any other person or public or private agency, other than the

63 child's parent, guardian or custodian, the youth court shall find
64 and the disposition order shall recite that:

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

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

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

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

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

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

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

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

93 Once the reasonable efforts requirement is bypassed, the
94 court shall have a permanency hearing pursuant to Section
95 43-21-613 within thirty (30) days of such finding.

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

99 (9) When a child in the jurisdiction of the Youth Court is
100 committed to the custody of the Mississippi Department of Human
101 Services and is believed to be in need of treatment for a mental
102 or emotional disability or infirmity, the Department of Human
103 Services shall file an affidavit alleging that the child is in
104 need of mental health services with the Youth Court. The Youth
105 Court shall refer the child to the appropriate community mental
106 health center for evaluation pursuant to Section 41-21-67. If
107 said pre-screening evaluation recommends residential care, the
108 Youth Court shall proceed with civil commitment pursuant to
109 Sections 41-21-61 et seq., 43-21-315 and 43-21-611.

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