

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2862

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 MISSISSIPPI DEPARTMENT OF MENTAL HEALTH IF THE  
5 CHILD IS FOUND TO BE IN NEED OF TREATMENT FOR A MENTAL OR  
6 EMOTIONAL DISABILITY; 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, prior to entering a disposition order, the youth

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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