

By: Senator(s) Nunnelee, Butler

To: Public Health and Welfare

SENATE BILL NO. 2862
(As Sent to Governor)

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, as
10 amended by House Bill No. 816 and House Bill No. 1500, 2004
11 Regular Session, is amended as follows:

12 [Until July 1, 2006, this section shall read as follows:]

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

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

22 (3) If the child has been adjudicated a delinquent child,
23 before entering a disposition order, the youth court should
24 consider, among others, the following relevant factors:

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

30 (e) The child's current medical history, including
31 medication and diagnosis;

32 (f) The child's mental health history, which may
33 include, but not be limited to, the Massachusetts Youth Screening
34 Instrument version 2 (MAYSI-2);

35 (g) The child's cumulative record from the last school
36 of record, including special education records, if applicable;

37 (h) Recommendation from the school of record based on
38 areas of remediation needed;

39 (i) Disciplinary records from the school of record; and

40 (j) Records of disciplinary actions outside of the
41 school setting.

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

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

46 (b) The family and home situation; and

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

48 (5) If the child has been adjudicated a neglected child or
49 an abused child, before entering a disposition order, the youth
50 court shall consider, among others, the following relevant
51 factors:

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

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

54 (c) The manner in which the parent, guardian or
55 custodian participated in, tolerated or condoned the abuse,
56 neglect or abandonment of the child;

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

59 (e) Relevant testimony and recommendations, where
60 available, from the foster parent of the child, the grandparents
61 of the child, the guardian ad litem of the child, representatives
62 of any private care agency that has cared for the child, the

63 social worker or child protection specialist assigned to the case,
64 and any other relevant testimony pertaining to the case.

65 (6) After consideration of all the evidence and the relevant
66 factors, the youth court shall enter a disposition order that
67 shall not recite any of the facts or circumstances upon which the
68 disposition is based, nor shall it recite that a child has been
69 found guilty; but it shall recite that a child is found to be a
70 delinquent child, a child in need of supervision, a neglected
71 child or an abused child.

72 (7) If the youth court orders that the custody or
73 supervision of a child who has been adjudicated abused or
74 neglected be placed with the Department of Human Services or any
75 other person or public or private agency, other than the child's
76 parent, guardian or custodian, the youth court shall find and the
77 disposition order shall recite that:

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

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

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

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

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

94 (ii) The parent has been convicted of murder of
95 another child of that parent, voluntary manslaughter of another

96 child of that parent, aided or abetted, attempted, conspired or
97 solicited to commit that murder or voluntary manslaughter, or a
98 felony assault that results in the serious bodily injury to the
99 surviving child or another child of that parent; or

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

102 (iv) That the effect of the continuation of the
103 child's residence within his own home would be contrary to the
104 welfare of the child and that placement of the child in foster
105 care is in the best interests of the child.

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

109 (8) Upon a written motion by a party, the youth court shall
110 make written findings of fact and conclusions of law upon which it
111 relies for the disposition order. If the disposition ordered by
112 the youth court includes placing the child in the custody of a
113 training school, an admission packet shall be prepared for the
114 child that contains the following information:

115 (a) The child's current medical history, including
116 medications and diagnosis;

117 (b) The child's mental health history;

118 (c) The child's cumulative record from the last school
119 of record, including special education records, if reasonably
120 available;

121 (d) Recommendation from the school of record based on
122 areas of remediation needed;

123 (e) Disciplinary records from the school of record; and

124 (f) Records of disciplinary actions outside of the
125 school setting, if reasonably available.

126 Only individuals who are permitted under the Health Insurance
127 Portability and Accountability Act of 1996 (HIPAA) shall have
128 access to a child's medical records which are contained in an

129 admission packet. The youth court shall provide the admission
130 packet to the training school at or before the child's arrival at
131 the training school. The admittance of any child to a training
132 school shall take place between the hours of 8:00 a.m. and 3:00
133 p.m. on designated admission days.

134 (9) When a child in the jurisdiction of the Youth Court is
135 committed to the custody of the Mississippi Department of Human
136 Services and is believed to be in need of treatment for a mental
137 or emotional disability or infirmity, the Department of Human
138 Services shall file an affidavit alleging that the child is in
139 need of mental health services with the Youth Court. The Youth
140 Court shall refer the child to the appropriate community mental
141 health center for evaluation pursuant to Section 41-21-67. If
142 said pre-screening evaluation recommends residential care, the
143 Youth Court shall proceed with civil commitment pursuant to
144 Sections 41-21-61 et seq., 43-21-315 and 43-21-611, and the
145 Department of Mental Health, once commitment is ordered, shall
146 provide appropriate care, treatment and services for at least as
147 many adolescents as were provided services in fiscal year 2004 in
148 its facilities.

149 **[From and after July 1, 2006, this section shall read as**
150 **follows:]**

151 43-21-603. (1) At the beginning of each disposition
152 hearing, the judge shall inform the parties of the purpose of the
153 hearing.

154 (2) All testimony shall be under oath unless waived by all
155 parties and may be in narrative form. The court may consider any
156 evidence that is material and relevant to the disposition of the
157 cause, including hearsay and opinion evidence. At the conclusion
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- 171 (a) The nature and history of the child's conduct;
- 172 (b) The family and home situation; and
- 173 (c) The child's need of care and assistance.

174 (5) If the child has been adjudicated a neglected child or
175 an abused child, before entering a disposition order, the youth
176 court shall consider, among others, the following relevant
177 factors:

- 178 (a) The child's physical and mental conditions;
- 179 (b) The child's need of assistance;
- 180 (c) The manner in which the parent, guardian or
181 custodian participated in, tolerated or condoned the abuse,
182 neglect or abandonment of the child;
- 183 (d) The ability of a child's parent, guardian or
184 custodian to provide proper supervision and care of a child; and
- 185 (e) Relevant testimony and recommendations, where
186 available, from the foster parent of the child, the grandparents
187 of the child, the guardian ad litem of the child, representatives
188 of any private care agency which has cared for the child, the
189 social worker or child protection specialist assigned to the case,
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211 (b) That the effect of the continuation of the child's
212 residence within his own home would be contrary to the welfare of
213 the child and that the placement of the child in foster care is in
214 the best interests of the child; or

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218 aggravated circumstances, including, but not limited to,
219 abandonment, torture, chronic abuse and sexual abuse; or

220 (ii) The parent has been convicted of murder of
221 another child of such parent, voluntary manslaughter of another
222 child of that parent, aided or abetted, attempted, conspired or
223 solicited to commit that murder or voluntary manslaughter, or a
224 felony assault that results in the serious bodily injury to the
225 surviving child or another child of that parent; or

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

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229 child's residence within his own home would be contrary to the
230 welfare of the child and that placement of the child in foster
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233 court shall have a permanency hearing under Section 43-21-613
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236 make written findings of fact and conclusions of law upon which it
237 relies for the disposition order.

238 (9) When a child in the jurisdiction of the Youth Court is
239 committed to the custody of the Mississippi Department of Human
240 Services and is believed to be in need of treatment for a mental
241 or emotional disability or infirmity, the Department of Human
242 Services shall file an affidavit alleging that the child is in
243 need of mental health services with the Youth Court. The Youth
244 Court shall refer the child to the appropriate community mental
245 health center for evaluation pursuant to Section 41-21-67. If
246 said pre-screening evaluation recommends residential care, the
247 Youth Court shall proceed with civil commitment pursuant to
248 Sections 41-21-61 et seq., 43-21-315 and 43-21-611, and the
249 Department of Mental Health, once commitment is ordered, shall
250 provide appropriate care, treatment and services for at least as
251 many adolescents as were provided services in fiscal year 2004 in
252 its facilities.

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