

By: Representative Baker (74th)

To: Juvenile Justice

## HOUSE BILL NO. 537

1 AN ACT TO AMEND SECTION 43-21-105, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE DEFINITION OF DESIGNEE IN THE YOUTH COURT ACT; AND  
3 FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 43-21-105, Mississippi Code of 1972, is  
6 amended as follows:

7 43-21-105. The following words and phrases, for purposes of  
8 this chapter, shall have the meanings ascribed herein unless the  
9 context clearly otherwise requires:

10 (a) "Youth court" means the Youth Court Division.

11 (b) "Judge" means the judge of the Youth Court  
12 Division.

13 (c) "Designee" means any person licensed to practice  
14 law in the State of Mississippi that the judge appoints to perform  
15 a duty which this chapter requires to be done by the judge or his  
16 designee. The judge may not appoint a person who is involved in  
17 law enforcement to be his designee.

18 (d) "Child" and "youth" are synonymous, and each means  
19 a person who has not reached his eighteenth birthday. A child who  
20 has not reached his eighteenth birthday and is on active duty for  
21 a branch of the armed services or is married is not considered a  
22 "child" or "youth" for the purposes of this chapter.

23 (e) "Parent" means the father or mother to whom the  
24 child has been born, or the father or mother by whom the child has  
25 been legally adopted.

26 (f) "Guardian" means a court-appointed guardian of the  
27 person of a child.

28           (g) "Custodian" means any person having the present  
29 care or custody of a child whether such person be a parent or  
30 otherwise.

31           (h) "Legal custodian" means a court-appointed custodian  
32 of the child.

33           (i) "Delinquent child" means a child who has reached  
34 his tenth birthday and who has committed a delinquent act.

35           (j) "Delinquent act" is any act, which if committed by  
36 an adult, is designated as a crime under state or federal law, or  
37 municipal or county ordinance other than offenses punishable by  
38 life imprisonment or death. A delinquent act includes escape from  
39 lawful detention and violations of the Uniform Controlled  
40 Substances Law and violent behavior.

41           (k) "Child in need of supervision" means a child who  
42 has reached his seventh birthday and is in need of treatment or  
43 rehabilitation because the child:

44               (i) Is habitually disobedient of reasonable and  
45 lawful commands of his parent, guardian or custodian and is  
46 ungovernable; or

47               (ii) While being required to attend school,  
48 willfully and habitually violates the rules thereof or willfully  
49 and habitually absents himself therefrom; or

50               (iii) Runs away from home without good cause; or

51               (iv) Has committed a delinquent act or acts.

52           (l) "Neglected child" means a child:

53               (i) Whose parent, guardian or custodian or any  
54 person responsible for his care or support, neglects or refuses,  
55 when able so to do, to provide for him proper and necessary care  
56 or support, or education as required by law, or medical, surgical,  
57 or other care necessary for his well-being; provided, however, a  
58 parent who withholds medical treatment from any child who in good  
59 faith is under treatment by spiritual means alone through prayer  
60 in accordance with the tenets and practices of a recognized church

61 or religious denomination by a duly accredited practitioner  
62 thereof shall not, for that reason alone, be considered to be  
63 neglectful under any provision of this chapter; or

64 (ii) Who is otherwise without proper care,  
65 custody, supervision or support; or

66 (iii) Who, for any reason, lacks the special care  
67 made necessary for him by reason of his mental condition, whether  
68 said mental condition be mentally retarded or mentally ill; or

69 (iv) Who, for any reason, lacks the care necessary  
70 for his health, morals or well-being.

71 (m) "Abused child" means a child whose parent, guardian  
72 or custodian or any person responsible for his care or support,  
73 whether legally obligated to do so or not, has caused or allowed  
74 to be caused upon said child sexual abuse, sexual exploitation,  
75 emotional abuse, mental injury, nonaccidental physical injury or  
76 other maltreatment. Provided, however, that physical discipline,  
77 including spanking, performed on a child by a parent, guardian or  
78 custodian in a reasonable manner shall not be deemed abuse under  
79 this section.

80 (n) "Sexual abuse" means obscene or pornographic  
81 photographing, filming or depiction of children for commercial  
82 purposes, or the rape, molestation, incest, prostitution or other  
83 such forms of sexual exploitation of children under circumstances  
84 which indicate that the child's health or welfare is harmed or  
85 threatened.

86 (o) "A child in need of special care" means a child  
87 with any mental or physical illness that cannot be treated with  
88 the dispositional alternatives ordinarily available to the youth  
89 court.

90 (p) A "dependent child" means any child who is not a  
91 child in need of supervision, a delinquent child, an abused child  
92 or a neglected child, and which child has been voluntarily placed

93 in the custody of the Department of Human Services by his parent,  
94 guardian or custodian.

95 (q) "Custody" means the physical possession of the  
96 child by any person.

97 (r) "Legal custody" means the legal status created by a  
98 court order which gives the legal custodian the responsibilities  
99 of physical possession of the child and the duty to provide him  
100 with food, shelter, education and reasonable medical care, all  
101 subject to residual rights and responsibilities of the parent or  
102 guardian of the person.

103 (s) "Detention" means the care of children in  
104 physically restrictive facilities.

105 (t) "Shelter" means care of children in physically  
106 nonrestrictive facilities.

107 (u) "Records involving children" means any of the  
108 following from which the child can be identified:

109 (i) All youth court records as defined in Section  
110 43-21-251;

111 (ii) All social records as defined in Section  
112 43-21-253;

113 (iii) All law enforcement records as defined in  
114 Section 43-21-255;

115 (iv) All agency records as defined in Section  
116 43-21-257; and

117 (v) All other documents maintained by any  
118 representative of the state, county, municipality or other public  
119 agency insofar as they relate to the apprehension, custody,  
120 adjudication or disposition of a child who is the subject of a  
121 youth court cause.

122 (v) "Any person responsible for care or support" means  
123 the person who is providing for the child at a given time. This  
124 term shall include, but is not limited to, stepparents, foster  
125 parents, relatives, nonlicensed babysitters or other similar

126 persons responsible for a child and staff of residential care  
127 facilities and group homes that are licensed by the Department of  
128 Human Services.

129           (w) The singular includes the plural, the plural the  
130 singular and the masculine the feminine when consistent with the  
131 intent of this chapter.

132           (x) "Out-of-home" setting means the temporary  
133 supervision or care of children by the staff of licensed day care  
134 centers, the staff of public, private and state schools, the staff  
135 of juvenile detention facilities, the staff of unlicensed  
136 residential care facilities and group homes and the staff of, or  
137 individuals representing, churches, civic or social organizations.

138           (y) "Durable legal custody" means the legal status  
139 created by a court order which gives the durable legal custodian  
140 the responsibilities of physical possession of the child and the  
141 duty to provide him with care, nurture, welfare, food, shelter,  
142 education and reasonable medical care. All these duties as  
143 enumerated are subject to the residual rights and responsibilities  
144 of the natural parent(s) or guardian(s) of the child or children.

145       **SECTION 2.** This act shall take effect and be in force from  
146 and after July 1, 2005.