

By: Senator(s) Nunnelee

To: Judiciary, Division B

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2366

1 AN ACT TO AMEND SECTION 43-21-603, MISSISSIPPI CODE OF 1972,  
2 TO AUTHORIZE THE TRANSFER OF COPIES OF A CHILD'S ORIGINAL  
3 CUMULATIVE SCHOOL RECORD AS A PREREQUIREMENT TO COMMITMENT TO A  
4 STATE TRAINING SCHOOL, AND TO DELETE THE AUTOMATIC REVERTER ON THE  
5 CODE SECTION PROVIDING YOUTH COURT DISPOSITION HEARING PROCEDURES  
6 AND ALTERNATIVES IN DELINQUENCY, CHILD ABUSE AND CHILD NEGLECT  
7 MATTERS; TO AMEND SECTION 43-21-605, MISSISSIPPI CODE OF 1972, TO  
8 RESTRICT THE CONDUCT FOR WHICH A CHILD MAY BE COMMITTED TO A  
9 TRAINING SCHOOL; AND FOR RELATED PURPOSES.

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

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

13 \* \* \*

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

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

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

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

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

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

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

39 (h) Recommendation from the school of record based on  
40 areas of remediation needed;

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

42 (j) Records of disciplinary actions outside of the  
43 school setting.

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

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

48 (b) The family and home situation; and

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

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

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

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

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

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

61 (e) Relevant testimony and recommendations, where  
62 available, from the foster parent of the child, the grandparents  
63 of the child, the guardian ad litem of the child, representatives

64 of any private care agency that has cared for the child, the  
65 social worker or child protection specialist assigned to the case,  
66 and any other relevant testimony pertaining to the case.

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

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

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

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

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

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

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

96                   (ii) The parent has been convicted of murder of  
97 another child of that parent, voluntary manslaughter of another  
98 child of that parent, aided or abetted, attempted, conspired or  
99 solicited to commit that murder or voluntary manslaughter, or a  
100 felony assault that results in the serious bodily injury to the  
101 surviving child or another child of that parent; or

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

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

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

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

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

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

120                   (c) Copies of the child's cumulative record from the  
121 last school of record, including special education records, if  
122 reasonably available;

123                   (d) Recommendation from the school of record based on  
124 areas of remediation needed;

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

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

128           Only individuals who are permitted under the Health Insurance  
129 Portability and Accountability Act of 1996 (HIPAA) shall have  
130 access to a child's medical records which are contained in an  
131 admission packet. The youth court shall provide the admission  
132 packet to the training school at or before the child's arrival at  
133 the training school. The admittance of any child to a training  
134 school shall take place between the hours of 8:00 a.m. and 3:00  
135 p.m. on designated admission days.

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

151           \* \* \*

152           **SECTION 2.** Section 43-21-605, Mississippi Code of 1972, is  
153 amended as follows:

154           43-21-605. (1) In delinquency cases, the disposition order  
155 may include any of the following alternatives:

156                   (a) Release the child without further action;

157                   (b) Place the child in the custody of the parents, a  
158 relative or other persons subject to any conditions and  
159 limitations, including restitution, as the youth court may  
160 prescribe;

161 (c) Place the child on probation subject to any  
162 reasonable and appropriate conditions and limitations, including  
163 restitution, as the youth court may prescribe;

164 (d) Order terms of treatment calculated to assist the  
165 child and the child's parents or guardian which are within the  
166 ability of the parent or guardian to perform;

167 (e) Order terms of supervision which may include  
168 participation in a constructive program of service or education or  
169 civil fines not in excess of Five Hundred Dollars (\$500.00), or  
170 restitution not in excess of actual damages caused by the child to  
171 be paid out of his own assets or by performance of services  
172 acceptable to the victims and approved by the youth court and  
173 reasonably capable of performance within one (1) year;

174 (f) Suspend the child's driver's license by taking and  
175 keeping it in custody of the court for not more than one (1) year;

176 (g) Give legal custody of the child to any of the  
177 following:

178 (i) The Department of Human Services for  
179 appropriate placement; or

180 (ii) Any public or private organization,  
181 preferably community-based, able to assume the education, care and  
182 maintenance of the child, which has been found suitable by the  
183 court; or

184 (iii) The Department of Human Services for  
185 placement in a wilderness training program or a state-supported  
186 training school, except that no child under the age of ten (10)  
187 years shall be committed to a state training school. The training  
188 school may retain custody of the child until the child's twentieth  
189 birthday but for no longer. The superintendent of a state  
190 training school may parole a child at any time he may deem it in  
191 the best interest and welfare of such child. Twenty (20) days  
192 prior to such parole, the training school shall notify the  
193 committing court of the pending release. The youth court may then

194 arrange subsequent placement after a reconvened disposition  
195 hearing except that the youth court may not recommit the child to  
196 the training school or any other secure facility without an  
197 adjudication of a new offense or probation or parole violation.  
198 Prior to assigning the custody of any child to any private  
199 institution or agency, the youth court through its designee shall  
200 first inspect the physical facilities to determine that they  
201 provide a reasonable standard of health and safety for the child.  
202 No child shall be placed in the custody of a state training school  
203 for a status offense or for contempt of or revocation of a status  
204 offense adjudication unless the child is contemporaneously  
205 adjudicated for having committed an act of delinquency that is not  
206 a status offense;

207 (h) Recommend to the child and the child's parents or  
208 guardian that the child attend and participate in the Youth  
209 Challenge Program under the Mississippi National Guard, as created  
210 in Section 43-27-203, subject to the selection of the child for  
211 the program by the National Guard; however, the child must  
212 volunteer to participate in the program. The youth court may not  
213 order any child to apply or attend the program;

214 (i) (i) Adjudicate the juvenile to the Statewide  
215 Juvenile Work Program if the program is established in the court's  
216 jurisdiction. The juvenile and his parents or guardians must sign  
217 a waiver of liability in order to participate in the work program.  
218 The judge will coordinate with the youth services counselors as to  
219 placing participants in the work program;

220 (ii) The severity of the crime, whether or not the  
221 juvenile is a repeat offender or is a felony offender will be  
222 taken into consideration by the judge when adjudicating a juvenile  
223 to the work program. The juveniles adjudicated to the work  
224 program will be supervised by police officers or reserve officers.  
225 The term of service will be from twenty-four (24) to one hundred  
226 twenty (120) hours of community service. A juvenile will work the

227 hours to which he was adjudicated on the weekends during school  
228 and week days during the summer. Parents are responsible for a  
229 juvenile reporting for work. Noncompliance with an order to  
230 perform community service will result in a heavier adjudication.  
231 A juvenile may be adjudicated to the community service program  
232 only two (2) times;

233 (iii) The judge shall assess an additional fine on  
234 the juvenile which will be used to pay the costs of implementation  
235 of the program and to pay for supervision by police officers and  
236 reserve officers. The amount of the fine will be based on the  
237 number of hours to which the juvenile has been adjudicated;

238 (j) Order the child to participate in a youth court  
239 work program as provided in Section 43-21-627; or

240 (k) Order the child into a juvenile detention center  
241 operated by the county or into a juvenile detention center  
242 operated by any county with which the county in which the court is  
243 located has entered into a contract for the purpose of housing  
244 delinquents. The time period for such detention cannot exceed  
245 ninety (90) days. The youth court judge may order that the number  
246 of days specified in the detention order be served either  
247 throughout the week or on weekends only.

248 (2) In addition to any of the disposition alternatives  
249 authorized under subsection (1) of this section, the disposition  
250 order in any case in which the child is adjudicated delinquent for  
251 an offense under Section 63-11-30 shall include an order denying  
252 the driver's license and driving privileges of the child as  
253 required under subsection (8) of Section 63-11-30.

254 (3) If the youth court places a child in a state-supported  
255 training school, the court may order the parents or guardians of  
256 the child and other persons living in the child's household to  
257 receive counseling and parenting classes for rehabilitative  
258 purposes while the child is in the legal custody of the training  
259 school. A youth court entering an order under this subsection (3)

260 shall utilize appropriate services offered either at no cost or  
261 for a fee calculated on a sliding scale according to income unless  
262 the person ordered to participate elects to receive other  
263 counseling and classes acceptable to the court at the person's  
264 sole expense.

265 (4) Fines levied under this chapter shall be paid into the  
266 general fund of the county but, in those counties wherein the  
267 youth court is a branch of the municipal government, it shall be  
268 paid into the municipal treasury.

269 (5) Any institution or agency to which a child has been  
270 committed shall give to the youth court any information concerning  
271 the child as the youth court may at any time require.

272 (6) The youth court shall not place a child in another  
273 school district who has been expelled from a school district for  
274 the commission of a violent act. For the purpose of this  
275 subsection, "violent act" means any action which results in death  
276 or physical harm to another or an attempt to cause death or  
277 physical harm to another.

278 (7) The youth court may require drug testing as part of a  
279 disposition order. If a child tests positive, the court may  
280 require treatment, counseling and random testing, as it deems  
281 appropriate. The costs of such tests shall be paid by the parent,  
282 guardian or custodian of the child unless the court specifically  
283 finds that the parent, guardian or custodian is unable to pay.

284 **SECTION 3.** This act shall take effect and be in force from  
285 and after July 1, 2005.