

By: Representative Baker (74th)

To: Juvenile Justice

HOUSE BILL NO. 738

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 that the judge appoints
14 to perform a duty which this chapter requires to be done by the
15 judge or his designee. The judge may not appoint a person who is
16 involved in law enforcement to be his designee. Each designee
17 shall be subject to the Code of Judicial Conduct and shall govern
18 himself or herself accordingly.

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (i) Whose parent, guardian or custodian or any
55 person responsible for his care or support, neglects or refuses,
56 when able so to do, to provide for him proper and necessary care
57 or support, or education as required by law, or medical, surgical,
58 or other care necessary for his well-being; provided, however, a
59 parent who withholds medical treatment from any child who in good

60 faith is under treatment by spiritual means alone through prayer
61 in accordance with the tenets and practices of a recognized church
62 or religious denomination by a duly accredited practitioner
63 thereof shall not, for that reason alone, be considered to be
64 neglectful under any provision of this chapter; or

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

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

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

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

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

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

91 (p) A "dependent child" means any child who is not a
92 child in need of supervision, a delinquent child, an abused child

93 or a neglected child, and which child has been voluntarily placed
94 in the custody of the Department of Human Services by his parent,
95 guardian or custodian.

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

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

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

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

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

110 (i) All youth court records as defined in Section
111 43-21-251;

112 (ii) All social records as defined in Section
113 43-21-253;

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

116 (iv) All agency records as defined in Section
117 43-21-257; and

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

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

126 parents, relatives, nonlicensed baby-sitters or other similar
127 persons responsible for a child and staff of residential care
128 facilities and group homes that are licensed by the Department of
129 Human Services.

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

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

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

146 (z) "Status offense" means conduct subject to
147 adjudication by the youth court that would not be a crime if
148 committed by an adult.

149 **SECTION 2.** This act shall take effect and be in force from
150 and after July 1, 2006.