

By: Senator(s) Doxey

To: Judiciary, Division B

## SENATE BILL NO. 2114

1 AN ACT TO AMEND SECTION 43-21-301, MISSISSIPPI CODE OF 1972,  
2 TO ALLOW REMOVAL FROM THE HOME OF A DELINQUENT CHILD OR CHILD IN  
3 NEED OF SUPERVISION WHO LIVES WITHIN 500 FEET OF THE CHILD'S  
4 VICTIM; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 43-21-301, Mississippi Code of 1972, is  
7 amended as follows:

8 43-21-301. (1) No court other than the youth court shall  
9 issue an arrest warrant or custody order for a child in a matter  
10 in which the youth court has exclusive original jurisdiction but  
11 shall refer the matter to the youth court.

12 (2) Except as otherwise provided, no child in a matter in  
13 which the youth court has exclusive original jurisdiction shall be  
14 taken into custody by a law enforcement officer, the Department of  
15 Human Services, or any other person unless the judge or his  
16 designee has issued a custody order to take the child into  
17 custody.

18 (3) The judge or his designee may issue an order to a law  
19 enforcement officer, the Department of Human Services, or any  
20 suitable person to take a child into custody for a period not  
21 longer than forty-eight (48) hours, excluding Saturdays, Sundays,  
22 and statutory state holidays if it appears that there is probable  
23 cause to believe that:

24 (a) The child is within the jurisdiction of the court;  
25 and

26 (b) Custody is necessary; custody shall be deemed  
27 necessary:

28 (i) When a child is endangered or any person would  
29 be endangered by the child; or

30 (ii) To insure the child's attendance in court at  
31 such time as required; or

32 (iii) When a parent, guardian or custodian is not  
33 available to provide for the care and supervision of the child;  
34 and

35 (c) There is no reasonable alternative to custody.

36 (4) The judge or his designee may order, orally or in  
37 writing, the immediate release of any child in the custody of any  
38 person or agency. Custody orders as provided by this chapter and  
39 authorizations of temporary custody may be written or oral, but,  
40 if oral, reduced to writing as soon as practicable. The written  
41 order shall:

42 (a) Specify the name and address of the child, or, if  
43 unknown, designate him or her by any name or description by which  
44 he or she can be identified with reasonable certainty;

45 (b) Specify the age of the child, or, if unknown, that  
46 he or she is believed to be of an age subject to the jurisdiction  
47 of the youth court;

48 (c) Except in cases where the child is alleged to be a  
49 delinquent child or a child in need of supervision, state that the  
50 effect of the continuation of the child's residing within his or  
51 her own home would be contrary to the welfare of the child, that  
52 the placement of the child in foster care is in the best interests  
53 of the child, and unless the reasonable efforts requirement is  
54 bypassed under Section 43-21-603(7)(c), also state that (i)  
55 reasonable efforts have been made to maintain the child within his  
56 or her own home, but that the circumstances warrant his removal  
57 and there is no reasonable alternative to custody; \* \* \* (ii)  
58 reasonable efforts have been made to maintain the child within his  
59 or her own home, but that the adjudicated child lives within five  
60 hundred (500) feet of the adjudicated child's victim and there is

61 no reasonable alternative to custody; or (iii) the circumstances  
62 are of such an emergency nature that no reasonable efforts have  
63 been made to maintain the child within his own home, and that  
64 there is no reasonable alternative to custody. If the court makes  
65 a finding in accordance with (iii) of this paragraph, the court  
66 shall order that reasonable efforts be made towards the  
67 reunification of the child with his or her family.

68 (d) State that the child shall be brought immediately  
69 before the youth court or be taken to a place designated by the  
70 order to be held pending review of the order;

71 (e) State the date issued and the youth court by which  
72 the order is issued; and

73 (f) Be signed by the judge or his designee with the  
74 title of his office.

75 (5) The taking of a child into custody shall not be  
76 considered an arrest except for evidentiary purposes.

77 (6) (a) No child who has been accused or adjudicated of any  
78 offense that would not be a crime if committed by an adult shall  
79 be placed in secure detention or in an adult jail or lockup.  
80 Further, no child who has been accused or adjudicated of an  
81 offense that would not be a crime if committed by an adult shall  
82 be held in a secure juvenile detention facility for a period in  
83 excess of twenty-four (24) hours, excluding Saturdays, Sundays and  
84 statutory state holidays, except that out-of-state runaways may be  
85 held pending return to their home state.

86 (b) No accused or adjudicated juvenile offender, except  
87 for an accused or adjudicated juvenile offender in cases where  
88 jurisdiction is waived to the adult criminal court, shall be  
89 detained or placed into custody of any adult jail or lockup for a  
90 period in excess of six (6) hours.

91 (c) If any county violates the provisions of paragraph  
92 (a) or (b) of this subsection, the state agency authorized to  
93 allocate federal funds received pursuant to the Juvenile Justice

94 and Delinquency Prevention Act of 1974, 88 Stat. 2750 (codified in  
95 scattered sections of 5, 18, 42 USCS), shall withhold the county's  
96 share of such funds.

97 (d) Any county that does not have a facility in which  
98 to detain its juvenile offenders in compliance with the provisions  
99 of paragraphs (a) and (b) of this subsection may enter into a  
100 contractual agreement with any county or municipality that does  
101 have such a facility, or with the State of Mississippi, or with  
102 any private entity that maintains a juvenile correctional  
103 facility, or with the State of Mississippi, to detain or place  
104 into custody the juvenile offenders of the county not having such  
105 a facility.

106 (e) Notwithstanding the provisions of paragraphs (a),  
107 (b), (c) and (d) of this subsection, all counties shall be allowed  
108 a one-year grace period from March 27, 1993, to comply with the  
109 provisions of this subsection.

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