

By: Senator(s) Doxey

To: Judiciary, Division B

SENATE BILL NO. 2464

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 subparagraph (iii) of this paragraph,
66 the court 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 an adult jail or lockup. An accused status offender
80 shall not be held in secure detention longer than twenty-four (24)
81 hours prior to and twenty-four (24) hours after an initial court
82 appearance, excluding Saturdays, Sundays and statutory state
83 holidays, except under the following circumstances: a status
84 offender may be held in secure detention for violating a valid
85 court order pursuant to the criteria as established by the federal
86 Juvenile Justice and Delinquency Prevention Act of 2002, and any
87 subsequent amendments thereto, and out-of-state runaways may be
88 detained pending return to their home state.

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

94 (c) If any county violates the provisions of paragraph
95 (a) or (b) of this subsection, the state agency authorized to
96 allocate federal funds received pursuant to the Juvenile Justice
97 and Delinquency Prevention Act of 1974, 88 Stat. 2750 (codified in
98 scattered Sections of 5, 18, 42 USCS), shall withhold the county's
99 share of such funds.

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

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

113 **SECTION 2.** This act shall take effect and be in force from
114 and after July 1, 2007.