

By: Representative Clark

To: Youth and Family
Affairs; Judiciary B

HOUSE BILL NO. 959
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 43-21-121, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THAT WHEN A COUNTY COURT IS SERVING AS A YOUTH COURT
3 THEN THE COUNTY COURT MAY APPOINT A SUITABLE ATTORNEY OR LAYMAN AS
4 A GUARDIAN AD LITEM; TO CREATE NEW SECTION 99-43-101, MISSISSIPPI
5 CODE OF 1972, TO ENACT CHILD WITNESS STANDARDS OF PROTECTION IN
6 ORDER TO GRANT APPROPRIATE ACCOMMODATIONS TO CHILDREN TESTIFYING
7 IN COURT TO LESSEN THE EFFECT OF MENTAL AND EMOTIONAL SUFFERING
8 UPON THE CHILD AND TO ENSURE AN ENVIRONMENT IN THE LEGAL OR
9 CRIMINAL PROCEEDING THAT IS CONDUCIVE TO THE SEARCH FOR THE TRUTH;
10 AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 43-21-121, Mississippi Code of 1972, is
13 amended as follows:

14 43-21-121. (1) The youth court shall appoint a guardian ad
15 litem for the child:

16 (a) When a child has no parent, guardian or custodian;

17 (b) When the youth court cannot acquire personal
18 jurisdiction over a parent, a guardian or a custodian;

19 (c) When the parent is a minor or a person of unsound
20 mind;



21 (d) When the parent is indifferent to the interest of
22 the child or if the interests of the child and the parent,
23 considered in the context of the cause, appear to conflict;

24 (e) In every case involving an abused or neglected
25 child which results in a judicial proceeding; or

26 (f) In any other instance where the youth court finds
27 appointment of a guardian ad litem to be in the best interest of
28 the child.

29 (2) The guardian ad litem shall be appointed by the court
30 when custody is ordered or at the first judicial hearing regarding
31 the case, whichever occurs first.

32 (3) In addition to all other duties required by law, a
33 guardian ad litem shall have the duty to protect the interest of a
34 child for whom he has been appointed guardian ad litem. The
35 guardian ad litem shall investigate, make recommendations to the
36 court or enter reports as necessary to hold paramount the child's
37 best interest. The guardian ad litem is not an adversary party
38 and the court shall insure that guardians ad litem perform their
39 duties properly and in the best interest of their wards. The
40 guardian ad litem shall be a competent person who has no adverse
41 interest to the minor. The court shall insure that the guardian
42 ad litem is adequately instructed on the proper performance of his
43 duties.

44 (4) The court, including a county court serving as a youth
45 court, may appoint either a suitable attorney or a suitable layman



46 as guardian ad litem. In cases where the court appoints a layman
47 as guardian ad litem, the court shall also appoint an attorney to
48 represent the child. From and after January 1, 1999, in order to
49 be eligible for an appointment as a guardian ad litem, such
50 attorney or layperson must have received child protection and
51 juvenile justice training provided by or approved by the
52 Mississippi Judicial College within the year immediately preceding
53 such appointment. The Mississippi Judicial College shall
54 determine the amount of child protection and juvenile justice
55 training which shall be satisfactory to fulfill the requirements
56 of this section. The Administrative Office of Courts shall
57 maintain a roll of all attorneys and laymen eligible to be
58 appointed as a guardian ad litem under this section and shall
59 enforce the provisions of this subsection.

60 (5) Upon appointment of a guardian ad litem, the youth court
61 shall continue any pending proceedings for a reasonable time to
62 allow the guardian ad litem to familiarize himself with the
63 matter, consult with counsel and prepare his participation in the
64 cause.

65 (6) Upon order of the youth court, the guardian ad litem
66 shall be paid a reasonable fee as determined by the youth court
67 judge or referee out of the county general fund as provided under
68 Section 43-21-123. To be eligible for such fee, the guardian ad
69 litem shall submit an accounting of the time spent in performance
70 of his duties to the court.



71 (7) The court, in its sound discretion, may appoint a
72 volunteer trained layperson to assist children subject to the
73 provisions of this section in addition to the appointment of a
74 guardian ad litem.

75 **SECTION 2.** The following shall be codified as Section
76 99-43-101, Mississippi Code of 1972:

77 99-43-101. (1) The following terms have the meanings
78 ascribed:

79 (a) "Child" means any individual under the age of
80 eighteen (18) years of age who must testify in any legal or
81 criminal proceeding.

82 (b) "Proceeding," "criminal proceeding" or "legal
83 proceeding" means:

84 (i) Any criminal hearing, criminal trial or other
85 criminal proceeding in the circuit or county court in which a
86 child testifies as a victim of a crime or as a witness as to a
87 material issue; or

88 (ii) A youth court proceeding in which a child
89 testifies as a victim of a crime or delinquent act or as a witness
90 to a crime or delinquent act.

91 (2) In any proceeding in which a child testifies, a child
92 shall have the following rights to be enforced by the court on its
93 own motion or upon motion or notice of an attorney in the
94 proceeding:



95 (a) To be asked questions in a manner a child of that
96 age can reasonably understand, including, but not limited to, a
97 child-friendly oath.

98 (b) To be free of nuisance, vexatious or harassment
99 tactics in the proceeding.

100 (c) To have present in the courtroom and in a position
101 clearly visible in close proximity to the child, a support person,
102 if the support person is not a witness in the proceeding.

103 (d) To have the courtroom or the hearing room adjusted
104 to ensure the comfort and protection of the child.

105 (e) To have the relaxation of the formalities of the
106 proceedings in an effort to ensure the comfort of the child.

107 (f) To permit a properly trained facility animal or
108 comfort item or both to be present inside the courtroom or hearing
109 room.

110 (g) To permit the use of a properly constructed screen
111 that would permit the judge and jury in the courtroom or hearing
112 room to see the child but would obscure the child's view of the
113 defendant or the public or both.

114 (h) To have a secure and child-friendly waiting area
115 provided for the child during court proceedings and to have a
116 support person stay with the child while waiting.

117 (i) To have an advocate or support person inform the
118 court about the child's ability to understand the nature of the
119 proceedings, special accommodations that may be needed for the



120 child's testimony, and any other testimony relevant to any of the
121 rights set forth in this section.

122 (3) In circumstances where a defendant in a proceeding has
123 chosen to proceed without counsel, the court may appoint standby
124 counsel for that party and may order standby counsel to question a
125 child on behalf of the pro se party if the court finds that there
126 is a substantial likelihood that emotional harm would come to the
127 child if the pro se party were allowed to question the child
128 directly.

129 (4) (a) If the child is the victim of a crime, the court
130 shall ensure that all steps necessary to secure the physical
131 safety of the child, both in the courtroom and during periods of
132 time that the child may spend waiting for court, have been taken.

133 (b) The court and all attorneys involved in a
134 proceeding involving a child shall not disclose to any third party
135 any discovery, including, but not limited to, the personal
136 information of the child including the child's name, address and
137 date of birth, any and all interviews of the child, and any other
138 identifying information of a child. Upon written motion by a
139 party, the court may authorize by written order the production of
140 any discovery to a third party, if the third party agrees to
141 maintain the security and nondisclosure of the discovery and
142 return the discovery to the party upon conclusion of the case.
143 The court shall enforce any violations of this section through its
144 contempt powers.



145 (c) In any proceeding in which a child is alleged to
146 have been emotionally, sexually, or physically abused, the child
147 shall be given notice of all pretrial discovery motions, and the
148 notice must be given in sufficient time to allow the guardian ad
149 litem or counsel for the child to file any pleadings deemed
150 appropriate to that situation.

151 (5) (a) In a proceeding involving an alleged offense
152 against a child, the prosecuting attorney, the child's attorney,
153 the child's parent or legal guardian, or the guardian ad litem may
154 apply for an order that a deposition be taken of the child's
155 testimony and that the deposition be recorded and preserved on
156 videotape and by stenographic means.

157 (b) The court shall make a preliminary finding as to
158 whether, at the time of trial, the child is likely to be unable to
159 testify in open court in the physical presence of the defendant,
160 jury, judge, or public for any of the following reasons:

161 (i) The child will be unable to testify because of
162 fear.

163 (ii) There is a substantial likelihood,
164 established by expert testimony, that the child would suffer
165 emotional trauma from testifying in open court.

166 (iii) The child suffers a mental or other
167 infirmity or medical condition which could potentially prevent the
168 child from being present to testify at the trial.



169 (iv) Conduct of the defendant or defense counsel
170 may cause or already has caused the child to be unable to testify
171 or continue to testify out of fear or emotional distress.

172 (c) If the court finds that the child is likely to be
173 unable to testify in open court for any of the reasons stated in
174 paragraph (b) of this subsection (5), the court shall order that
175 the child's deposition be taken and preserved by videotape and
176 stenographic means.

177 (d) The trial judge shall preside at the videotape
178 deposition of a child and shall rule on all questions as if at
179 trial. The only other persons who may be permitted to be present
180 at the proceeding are:

181 (i) The prosecuting attorney or attorneys;
182 (ii) The attorney or attorneys for the defendant;
183 (iii) The child's attorney or attorneys and
184 guardian ad litem;

185 (iv) Persons necessary to operate the videotape
186 equipment; and

187 (v) Other persons whose presence is determined by
188 the court to be necessary to the welfare and well-being of the
189 child.

190 The defendant shall be afforded the rights applicable to
191 defendants during trial, including the right to an attorney, the
192 right to be confronted with the witness against the defendant, and
193 the right to cross-examine the child.



194 (e) (i) If the court finds the child is unable to
195 testify in open court, based on evidence that the child is unable
196 to testify in the physical presence of the defendant, the court
197 may order that the defendant, including a defendant represented
198 pro se, be excluded from the room in which the deposition is
199 conducted. If the court orders that the defendant be excluded
200 from the deposition room, the court shall order that two-way
201 closed-circuit television equipment be used as provided in Section
202 13-1-405.

203 (ii) The complete record of the examination of the
204 child, including the image and voices of all persons who in any
205 way participated in the examination, shall be made and preserved
206 on videotape in addition to being stenographically recorded. The
207 videotape shall be transmitted to the clerk of the court in which
208 the action is pending and shall be made available for viewing to
209 the prosecuting attorney, the defendant, and the defendant's
210 attorney during ordinary business hours.

211 (f) If, at the time of trial, the court finds that the
212 child is unable to testify for a reason described in subsection
213 (5)(b), the court may admit into evidence the child's videotaped
214 deposition in lieu of the child's testimony at trial. The court's
215 ruling must be supported by findings on the record.

216 (g) Upon timely receipt of notice that new evidence has
217 been discovered after the original videotaping and before or
218 during trial, the court, for good cause shown, may order an



219 additional videotaped deposition. The testimony of the child
220 shall be restricted to the matters specified by the court as the
221 basis for granting the order.

222 (h) In connection with the taking of a videotaped
223 deposition, the court may enter a protective order for the purpose
224 of protecting the privacy or emotional well-being of the child or
225 for any other purposes.

226 (i) The videotape of a deposition taken under this
227 paragraph shall be destroyed five (5) years after the date on
228 which the trial court entered its judgment, but not before a final
229 judgment is entered on appeal, including Supreme Court review.
230 The videotape shall become part of the court record and be kept by
231 the court until it is destroyed.

232 **SECTION 3.** This act shall take effect and be in force from
233 and July 1, 2015.

