

By: Representatives Gipson, Sykes, Campbell, To: Judiciary B
Hines

HOUSE BILL NO. 772

1 AN ACT TO AMEND SECTION 43-21-557, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE A YOUTH COURT JUDGE TO APPOINT COUNSEL TO REPRESENT
3 AN INDIGENT PARENT OR GUARDIAN; TO AMEND SECTION 99-40-1,
4 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; AND
5 FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 43-21-557, Mississippi Code of 1972, is
8 amended as follows:

9 43-21-557. (1) At the beginning of each adjudicatory
10 hearing, the youth court shall:

11 (a) Verify the name, age and residence of the child who
12 is the subject of the cause and ascertain the relationship of the
13 parties, each to the other;

14 (b) Ascertain whether all necessary parties are present
15 and identify all persons participating in the hearing;

16 (c) Ascertain whether the notice requirements have been
17 complied with and, if not, whether the affected parties
18 intelligently waived compliance in accordance with Section
19 43-21-507;



20 (d) Explain to the parties the purpose of the hearing
21 and the possible dispositional alternatives thereof; and

22 (e) Explain to the parties:

23 (i) The right to counsel;

24 (ii) The right to remain silent;

25 (iii) The right to subpoena witnesses;

26 (iv) The right to cross-examine witnesses
27 testifying against him; and

28 (v) The right to appeal.

29 (2) The youth court should then ascertain whether the
30 parties before the youth court are represented by counsel. If a
31 party before the youth court is not represented by counsel, the
32 youth court shall ascertain whether the party understands his
33 right to counsel. If the party wishes to retain counsel, the
34 youth court shall continue the hearing for a reasonable time to
35 allow the party to obtain and consult with counsel of his
36 choosing. If an indigent child does not have counsel, the youth
37 court shall appoint counsel to represent the child and shall
38 continue the hearing for a reasonable time to allow the child to
39 consult with his appointed counsel. If the court determines that
40 a parent or guardian in a termination of parental rights
41 proceedings is indigent, the youth court judge may appoint counsel
42 to represent such indigent parent or guardian in the proceeding.



43 (3) The youth court may then inquire whether the parties
44 admit or deny the allegations in the petition as provided in
45 Section 43-21-553.

46 (4) The youth court may at any time terminate the
47 proceedings and dismiss the petition if the youth court finds such
48 action to be conducive to the welfare of the child and in the best
49 interest of the state.

50 **SECTION 2.** Section 99-40-1, Mississippi Code of 1972, is
51 amended as follows:

52 99-40-1. (1) There is created the Indigent Appeals Division
53 within the Office of the State Public Defender. This office shall
54 consist of the Indigent Appeals Director who must be an attorney
55 in good standing with The Mississippi Bar, and staffed by any
56 necessary personnel as determined and hired by the State Defender.
57 The Indigent Appeals Director shall be appointed by the State
58 Defender. The remaining attorneys and other staff shall be
59 appointed by the State Defender and shall serve at the will and
60 pleasure of the State Defender. The Indigent Appeals Director and
61 all other attorneys in the office shall either be active members
62 of The Mississippi Bar, or, if a member in good standing of the
63 bar of another jurisdiction, must apply to and secure admission to
64 The Mississippi Bar within twelve (12) months of the commencement
65 of the person's employment by the office. The attorneys in the
66 office shall practice law exclusively for the office and shall not
67 engage in any other practice. The office shall not engage in any



68 litigation other than that related to the office. The salary for
69 the Indigent Appeals Director shall be equivalent to the salary of
70 district attorneys and the salary of the other attorneys in the
71 office shall be equivalent to the salary of an assistant district
72 attorney.

73 (2) The office shall provide representation on appeal for
74 indigent persons convicted of felonies but not under sentences of
75 death. Representation shall be provided by staff attorneys, or,
76 in the case of conflict or excessive workload as determined by the
77 State Defender, by attorneys selected, employed and compensated by
78 the office on a contract basis. Representation shall be provided
79 to indigent parents or guardians who have been appointed counsel
80 by a youth court judge in a termination of parental rights
81 proceeding, to the extent that funds are available for such
82 purpose. All fees charged by contract counsel and expenses
83 incurred by attorneys in the office and contract counsel must be
84 approved by the court. At the sole discretion of the State
85 Defender, the office may also represent indigent juveniles
86 adjudicated delinquent on appeals from a county court or chancery
87 court to the Mississippi Supreme Court or the Mississippi Court of
88 Appeals. The office shall provide advice, education and support
89 to attorneys representing persons under felony charges in the
90 trial courts.

91 (3) There is created in the State Treasury a special fund to
92 be known as the Indigent Appeals Fund. The purpose of the fund



93 shall be to provide funding for the Indigent Appeals Division.
94 Monies from the funds derived from assessments under Section
95 99-19-73 shall be distributed by the State Treasurer upon warrants
96 issued by the State Defender. The fund shall be a continuing
97 fund, not subject to fiscal-year limitations, and shall consist
98 of:

- 99 (a) Monies appropriated by the Legislature for the
100 purposes of funding the Indigent Appeals Division;
101 (b) The interest accruing to the fund;
102 (c) Monies received under the provisions of Section
103 99-19-73;
104 (d) Monies received from the federal government;
105 (e) Donations; and
106 (f) Monies received from such other sources as may be
107 provided by law.

108 (4) (a) There is created in the Office of the State Public
109 Defender the Public Defender Training Division. The division
110 shall be staffed by any necessary personnel as determined and
111 hired by the State Defender. The mission of the division shall be
112 to work closely with the Mississippi Public Defenders Association
113 to provide training and services to public defenders practicing in
114 all state, county and municipal courts. These services shall
115 include, but not be limited to, continuing legal education, case
116 updates and legal research. The division shall provide (i)
117 education and training for public defenders practicing in all



118 state, county, municipal and youth courts; (ii) technical
119 assistance for public defenders practicing in all state, county,
120 municipal and youth courts; and (iii) current and accurate
121 information for the Legislature pertaining to the needs of public
122 defenders practicing in all state, county, municipal and youth
123 courts.

124 (b) There is created in the State Treasury a special
125 fund to be known as the Public Defenders Education Fund. The
126 purpose of the fund shall be to provide funding for the training
127 of public defenders. Monies from the funds derived from
128 assessments under Section 99-19-73 shall be distributed by the
129 State Treasurer upon warrants issued by the State Defender. The
130 fund shall be a continuing fund, not subject to fiscal-year
131 limitations, and shall consist of:

132 (i) Monies appropriated by the Legislature for the
133 purposes of public defender training;

134 (ii) The interest accruing to the fund;

135 (iii) Monies received under the provisions of
136 Section 99-19-73;

137 (iv) Monies received from the federal government;

138 (v) Donations; and

139 (vi) Monies received from such other sources as
140 may be provided by law.

141 **SECTION 3.** This act shall take effect and be in force from
142 and after July 1, 2016.

