

By: Senator(s) Wiggins, Dearing, McDaniel,  
Jackson (11th)

To: Judiciary, Division B

SENATE BILL NO. 2138

1 AN ACT TO AMEND SECTION 43-21-105, MISSISSIPPI CODE OF 1972,  
2 TO REDEFINE "ABUSED CHILD" TO INCLUDE A TRAFFICKED CHILD; AND FOR  
3 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.

17 (d) "Child" and "youth" are synonymous, and each means  
18 a person who has not reached his eighteenth birthday. A child who



19 has not reached his eighteenth birthday and is on active duty for  
20 a branch of the armed services or is married is not considered a  
21 "child" or "youth" for the purposes of this chapter.

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

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

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

30 (h) "Legal custodian" means a court-appointed custodian  
31 of the child.

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

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

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



43 (i) Is habitually disobedient of reasonable and  
44 lawful commands of his parent, guardian or custodian and is  
45 ungovernable; \* \* \*

46 (ii) While being required to attend school,  
47 willfully and habitually violates the rules thereof or willfully  
48 and habitually absents himself therefrom; \* \* \*

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

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

51 (1) "Neglected child" means a child:

52 (i) Whose parent, guardian or custodian or any  
53 person responsible for his care or support, neglects or refuses,  
54 when able so to do, to provide for him proper and necessary care  
55 or support, or education as required by law, or medical, surgical,  
56 or other care necessary for his well-being; however, a parent who  
57 withholds medical treatment from any child who in good faith is  
58 under treatment by spiritual means alone through prayer in  
59 accordance with the tenets and practices of a recognized church or  
60 religious denomination by a duly accredited practitioner thereof  
61 shall not, for that reason alone, be considered to be neglectful  
62 under any provision of this chapter; \* \* \*

63 (ii) Who is otherwise without proper care,  
64 custody, supervision or support; \* \* \*

65 (iii) Who, for any reason, lacks the special care  
66 made necessary for him by reason of his mental condition, whether



67 the mental condition is having mental illness or having an  
68 intellectual disability; or

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

71 (m) "Abused child" means a child:

72 (i) Whose parent, guardian or custodian or any  
73 person responsible for his care or support, whether legally  
74 obligated to do so or not, has caused or allowed to be caused,  
75 upon the child, sexual abuse, sexual exploitation, emotional  
76 abuse, mental injury, nonaccidental physical injury or other  
77 maltreatment.

78 (ii) Who is or has been trafficked within the  
79 meaning of the Mississippi Human Trafficking Act (Section 97-3-54  
80 et seq.) by any person, without regard to the relationship of the  
81 trafficker to the child.

82 However, physical discipline, including spanking, performed on a  
83 child by a parent, guardian or custodian in a reasonable manner  
84 shall not be deemed abuse under this section.

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



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

95           (p) A "dependent child" means any child who is not a  
96 child in need of supervision, a delinquent child, an abused child  
97 or a neglected child, and which child has been voluntarily placed  
98 in the custody of the Department of Human Services by his parent,  
99 guardian or custodian.

100           (q) "Custody" means the physical possession of the  
101 child by any person.

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

108           (s) "Detention" means the care of children in  
109 physically restrictive facilities.

110           (t) "Shelter" means care of children in physically  
111 nonrestrictive facilities.

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

114           (i) All youth court records as defined in Section  
115 43-21-251;



116 (ii) All social records as defined in Section  
117 43-21-253;

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

120 (iv) All agency records as defined in Section  
121 43-21-257; and

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

127 (v) "Any person responsible for care or support" means  
128 the person who is providing for the child at a given time. This  
129 term shall include, but is not limited to, stepparents, foster  
130 parents, relatives, nonlicensed baby-sitters or other similar  
131 persons responsible for a child and staff of residential care  
132 facilities and group homes that are licensed by the Department of  
133 Human Services.

134 (w) The singular includes the plural, the plural the  
135 singular and the masculine the feminine when consistent with the  
136 intent of this chapter.

137 (x) "Out-of-home" setting means the temporary  
138 supervision or care of children by the staff of licensed day care  
139 centers, the staff of public, private and state schools, the staff  
140 of juvenile detention facilities, the staff of unlicensed



141 residential care facilities and group homes and the staff of, or  
142 individuals representing, churches, civic or social organizations.

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

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

154 (aa) "Financially able" means a parent or child who is  
155 ineligible for a court-appointed attorney.

156 **SECTION 2.** This act shall take effect and be in force from  
157 and after its passage.

