

By: Representative Hines

To: Judiciary B; Youth and Family Affairs

HOUSE BILL NO. 227

1 AN ACT TO AMEND SECTION 43-21-301, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT WHEN THE YOUTH COURT PLACES A YOUTH INTO CUSTODY
3 THE COURT MAY UTILIZE ELECTRONIC MONTITORING OF THE YOUTH AS AN
4 ALTERNATIVE TO DETENTION; TO AMEND SECTION 43-21-605, MISSISSIPPI
5 CODE OF 1972, TO AUTHORIZE THE COURT TO USE SUCH MONITORING AS A
6 DISPOSITION ALTERNATIVE IN DELINQUENCY CASES; AND FOR RELATED
7 PURPOSES.

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

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

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

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



21 (3) The judge or his designee may require a law enforcement
22 officer, the Department of Human Services, the Department of Child
23 Protection Services, or any suitable person to take a child into
24 custody for a period not longer than forty-eight (48) hours,
25 excluding Saturdays, Sundays, and statutory state holidays.

26 (a) Custody orders under this subsection may be issued
27 if it appears that there is probable cause to believe that:

28 (i) The child is within the jurisdiction of the
29 court;

30 (ii) Custody is necessary because of any of the
31 following reasons: the child is endangered, any person would be
32 endangered by the child, to ensure the child's attendance in court
33 at such time as required, or a parent, guardian or custodian is
34 not available to provide for the care and supervision of the
35 child; and

36 (iii) There is no reasonable alternative to
37 custody.

38 A finding of probable cause, as prescribed under this
39 paragraph, shall not be based solely upon a positive drug test of
40 a child's parent for marijuana; however, a finding of probable
41 cause may be based upon an evidence-based finding of harm to the
42 child or a parent's inability to provide for the care and
43 supervision of the child due to the parent's use of marijuana.

44 (b) Custody orders under this subsection shall be
45 written. In emergency cases, a judge or his designee may issue an



46 oral custody order, but the order shall be reduced to writing
47 within forty-eight (48) hours of its issuance.

48 (c) Each youth court judge shall develop and make
49 available to law enforcement a list of designees who are available
50 after hours, on weekends and on holidays.

51 (4) The judge or his designee may order, orally or in
52 writing, the immediate release of any child in the custody of any
53 person or agency. Except as otherwise provided in subsection (3)
54 of this section, custody orders as provided by this chapter and
55 authorizations of temporary custody may be written or oral, but,
56 if oral, reduced to writing as soon as practicable. The written
57 order shall:

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

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

64 (c) Except in cases where the child is alleged to be a
65 delinquent child or a child in need of supervision, state that the
66 effect of the continuation of the child's residing within his or
67 her own home would be contrary to the welfare of the child, that
68 the placement of the child in foster care is in the best interests
69 of the child, and unless the reasonable efforts requirement is
70 bypassed under Section 43-21-603(7)(c), also state that (i)



71 reasonable efforts have been made to maintain the child within his
72 or her own home, but that the circumstances warrant his removal
73 and there is no reasonable alternative to custody; or (ii) the
74 circumstances are of such an emergency nature that no reasonable
75 efforts have been made to maintain the child within his own home,
76 and that there is no reasonable alternative to custody. If the
77 court makes a finding in accordance with (ii) of this paragraph,
78 the court shall order that reasonable efforts be made towards the
79 reunification of the child with his or her family;

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

83 (e) State the date issued and the youth court by which
84 the order is issued; and

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

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

89 (6) (a) No child who has been accused or adjudicated of any
90 offense that would not be a crime if committed by an adult shall
91 be placed in an adult jail or lockup. An accused status offender
92 shall not be held in secure detention longer than twenty-four (24)
93 hours prior to and twenty-four (24) hours after an initial court
94 appearance, excluding Saturdays, Sundays and statutory state
95 holidays, except under the following circumstances: a status



96 offender may be held in secure detention for violating a valid
97 court order pursuant to the criteria as established by the federal
98 Juvenile Justice and Delinquency Prevention Act of 2002, and any
99 subsequent amendments thereto, and out-of-state runaways may be
100 detained pending return to their home state.

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

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

112 (d) Any county that does not have a facility in which
113 to detain its juvenile offenders in compliance with the provisions
114 of paragraphs (a) and (b) of this subsection may enter into a
115 contractual agreement to detain or place into custody the juvenile
116 offenders of that county with any county or municipality that does
117 have such a facility, or with the State of Mississippi, or with
118 any private entity that maintains a juvenile correctional
119 facility.



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

124 (7) As an alternative to detention, the youth court may
125 utilize electronic monitoring subject to any conditions and
126 limitations prescribed by the court.

127 **SECTION 2.** Section 43-21-605, Mississippi Code of 1972, is
128 amended as follows:

129 43-21-605. (1) In delinquency cases, the disposition order
130 may include any of the following alternatives:

131 (a) Release the child without further action;

132 (b) Place the child in the custody of the parents, a
133 relative or other persons subject to any conditions and
134 limitations, including restitution, as the youth court may
135 prescribe;

136 (c) Place the child on probation subject to any
137 reasonable and appropriate conditions and limitations, including
138 restitution, as the youth court may prescribe;

139 (d) Order terms of treatment calculated to assist the
140 child and the child's parents or guardian which are within the
141 ability of the parent or guardian to perform and which are not in
142 conflict with a provider's determination of medical necessity;

143 (e) Order terms of supervision which may include
144 participation in a constructive program of service or education or



145 civil fines not in excess of Five Hundred Dollars (\$500.00), or
146 restitution not in excess of actual damages caused by the child to
147 be paid out of his own assets or by performance of services
148 acceptable to the victims and approved by the youth court and
149 reasonably capable of performance within one (1) year;

150 (f) Suspend the child's driver's license by taking and
151 keeping it in custody of the court for not more than one (1) year;

152 (g) Place the child on electronic monitoring subject to
153 any conditions and limitations the youth court may prescribe;

154 (* * * h) Give legal custody of the child to any of the
155 following:

156 (i) The Department of Human Services for
157 appropriate placement; or

158 (ii) Any public or private organization,
159 preferably community-based, able to assume the education, care and
160 maintenance of the child, which has been found suitable by the
161 court; or

162 (iii) The Division of Youth Services for placement
163 in the least restrictive environment, except that no child under
164 the age of ten (10) years shall be committed to the state training
165 school. Only a child who has been adjudicated delinquent for a
166 felony may be committed to the training school. In the event a
167 child is committed to the Oakley Youth Development Center by the
168 court, the child shall be deemed to be committed to the custody of



169 the Department of Human Services which may place the child in the
170 Oakley Youth Development Center or another appropriate facility.

171 The training school may retain custody of the child until the
172 child's twentieth birthday but for no longer. When the child is
173 committed to the training school, the child shall remain in the
174 legal custody of the training school until the child has made
175 sufficient progress in treatment and rehabilitation and it is in
176 the best interest of the child to release the child. However, the
177 superintendent of the state training school, in consultation with
178 the treatment team, may parole a child at any time he or she may
179 deem it in the best interest and welfare of such child. Ten (10)
180 business days before the parole, the training school shall notify
181 the committing court of the pending release. This notice may be
182 made in less than ten (10) days if Oakley Youth Development Center
183 needs to manage population limitations. The youth court may then
184 arrange subsequent placement after a reconvened disposition
185 hearing, except that the youth court may not recommit the child to
186 the training school or any other secure facility without an
187 adjudication of a new offense or probation or parole violation.
188 The Department of Human Services shall ensure that staffs create
189 transition planning for youth leaving the facilities. Plans shall
190 include providing the youth and his or her parents or guardian
191 with copies of the youth's training school education and health
192 records, information regarding the youth's home community,
193 referrals to mental and counseling services when appropriate, and



194 providing assistance in making initial appointments with community
195 service providers. Before assigning the custody of any child to
196 any private institution or agency, the youth court through its
197 designee shall first inspect the physical facilities to determine
198 that they provide a reasonable standard of health and safety for
199 the child. No child shall be placed in the custody of the state
200 training school for a status offense or for contempt of or
201 revocation of a status offense adjudication unless the child is
202 contemporaneously adjudicated for having committed an act of
203 delinquency that is not a status offense. A disposition order
204 rendered under this subparagraph shall meet the following
205 requirements:

206 1. The disposition is the least restrictive
207 alternative appropriate to the best interest of the child and the
208 community;

209 2. The disposition allows the child to be in
210 reasonable proximity to the family home community of each child
211 given the dispositional alternatives available and the best
212 interest of the child and the state; and

213 3. The disposition order provides that the
214 court has considered the medical, educational, vocational, social
215 and psychological guidance, training, social education,
216 counseling, substance abuse treatment and other rehabilitative
217 services required by that child as determined by the court;



218 (* * *i) Recommend to the child and the child's
219 parents or guardian that the child attend and participate in the
220 Youth Challenge Program under the Mississippi National Guard, as
221 created in Section 43-27-203, subject to the selection of the
222 child for the program by the National Guard; however, the child
223 must volunteer to participate in the program. The youth court
224 shall not order any child to apply for or attend the program;

225 (* * *j) Adjudicate the juvenile to the Statewide
226 Juvenile Work Program if the program is established in the court's
227 jurisdiction. The juvenile and his or her parents or guardians
228 must sign a waiver of liability in order to participate in the
229 work program. The judge will coordinate with the youth services
230 counselors as to placing participants in the work program as
231 follows:

232 (i) The severity of the crime, whether or not the
233 juvenile is a repeat offender or is a felony offender will be
234 taken into consideration by the judge when adjudicating a juvenile
235 to the work program. The juveniles adjudicated to the work
236 program will be supervised by police officers or reserve officers.
237 The term of service will be from twenty-four (24) to one hundred
238 twenty (120) hours of community service. A juvenile will work the
239 hours to which he or she was adjudicated on the weekends during
240 school and weekdays during the summer. Parents are responsible
241 for a juvenile reporting for work. Noncompliance with an order to
242 perform community service will result in a heavier adjudication.



243 A juvenile may be adjudicated to the community service program
244 only two (2) times;

245 (ii) The judge shall assess an additional fine on
246 the juvenile which will be used to pay the costs of implementation
247 of the program and to pay for supervision by police officers and
248 reserve officers. The amount of the fine will be based on the
249 number of hours to which the juvenile has been adjudicated;

250 (* * *k) Order the child to participate in a youth
251 court work program as provided in Section 43-21-627;

252 (* * *l) Order terms of house arrest under the
253 intensive supervision program as created in Sections 47-5-1001
254 through 47-5-1015. The Department of Human Services shall take
255 bids for the placement of juveniles in the intensive supervision
256 program. The Department of Human Services shall promulgate rules
257 regarding the supervision of juveniles placed in the intensive
258 supervision program. For each county there shall be seventy-five
259 (75) slots created in the intensive supervision program for
260 juveniles. Any youth ordered into the intensive home-based
261 supervision program shall receive comprehensive strength-based
262 needs assessments and individualized treatment plans. Based on
263 the assessment, an individualized treatment plan shall be
264 developed that defines the supervision and programming that is
265 needed by a youth. The treatment plan shall be developed by a
266 multidisciplinary team that includes the family of the youth
267 whenever possible. The juvenile shall pay Ten Dollars (\$10.00) to



268 offset the cost of administering the alcohol and drug test. The
269 juvenile must attend school, alternative school or be in the
270 process of working toward a High School Equivalency Diploma
271 certificate;

272 (* * *m) (i) Order the child into a juvenile
273 detention center operated by the county or into a juvenile
274 detention center operated by any county with which the county in
275 which the court is located has entered into a contract for the
276 purpose of housing delinquents. The time period for detention
277 cannot exceed ninety (90) days, and any detention exceeding
278 forty-five (45) days shall be administratively reviewed by the
279 youth court no later than forty-five (45) days after the entry of
280 the order. At that time the youth court counselor shall review
281 the status of the youth in detention and shall report any concerns
282 to the court. The youth court judge may order that the number of
283 days specified in the detention order be served either throughout
284 the week or on weekends only. No first-time nonviolent youth
285 offender shall be committed to a detention center for a period in
286 excess of ninety (90) days until all other options provided for in
287 this section have been considered and the court makes a specific
288 finding of fact by a preponderance of the evidence by assessing
289 what is in the best rehabilitative interest of the child and the
290 public safety of communities and that there is no reasonable
291 alternative to a nonsecure setting and therefore commitment to a
292 detention center is appropriate.



293 (ii) If a child is committed to a detention center
294 for ninety (90) days, the disposition order shall meet the
295 following requirements:

296 1. The disposition order is the least
297 restrictive alternative appropriate to the best interest of the
298 child and the community;

299 2. The disposition order allows the child to
300 be in reasonable proximity to the family home community of each
301 child given the dispositional alternatives available and the best
302 interest of the child and the state; and

303 3. The disposition order provides that the
304 court has considered the medical, educational, vocational, social
305 and psychological guidance, training, social education,
306 counseling, substance abuse treatment and other rehabilitative
307 services required by that child as determined by the court;

308 (* * * n) The judge may consider house arrest in an
309 intensive supervision program as a reasonable prospect of
310 rehabilitation within the juvenile justice system. The Department
311 of Human Services shall promulgate rules regarding the supervision
312 of juveniles placed in the intensive supervision program;

313 (* * * o) Referral to A-team provided system of care
314 services; or

315 (* * * p) Place the child on electronic monitoring
316 subject to any conditions and limitations as the youth court may
317 prescribe.



318 (2) If a disposition order requires that a child miss school
319 due to other placement, the youth court shall notify a child's
320 school while maintaining the confidentiality of the youth court
321 process. If a disposition order requires placement of a child in
322 a juvenile detention facility, the facility shall comply with the
323 educational services and notification requirements of Section
324 43-21-321.

325 (3) In addition to any of the disposition alternatives
326 authorized under subsection (1) of this section, the disposition
327 order in any case in which the child is adjudicated delinquent for
328 an offense under Section 63-11-30 shall include an order denying
329 the driver's license and driving privileges of the child as
330 required under Section 63-11-30(9).

331 (4) If the youth court places a child in a state-supported
332 training school, the court may order the parents or guardians of
333 the child and other persons living in the child's household to
334 receive counseling and parenting classes for rehabilitative
335 purposes while the child is in the legal custody of the training
336 school. A youth court entering an order under this subsection (4)
337 shall utilize appropriate services offered either at no cost or
338 for a fee calculated on a sliding scale according to income unless
339 the person ordered to participate elects to receive other
340 counseling and classes acceptable to the court at the person's
341 sole expense.



342 (5) Fines levied under this chapter shall be paid into the
343 general fund of the county but, in those counties wherein the
344 youth court is a branch of the municipal government, it shall be
345 paid into the municipal treasury.

346 (6) Any institution or agency to which a child has been
347 committed shall give to the youth court any information concerning
348 the child as the youth court may at any time require.

349 (7) The youth court shall not place a child in another
350 school district who has been expelled from a school district for
351 the commission of a violent act. For the purpose of this
352 subsection, "violent act" means any action which results in death
353 or physical harm to another or an attempt to cause death or
354 physical harm to another.

355 (8) The youth court may require drug testing as part of a
356 disposition order. If a child tests positive, the court may
357 require treatment, counseling and random testing, as it deems
358 appropriate. The costs of such tests shall be paid by the parent,
359 guardian or custodian of the child unless the court specifically
360 finds that the parent, guardian or custodian is unable to pay.

361 (9) The Mississippi Department of Human Services, Division
362 of Youth Services, shall operate and maintain services for youth
363 adjudicated delinquent at the Oakley Youth Development Center.
364 The program shall be designed for children committed to the
365 training schools by the youth courts. The purpose of the program
366 is to promote good citizenship, self-reliance, leadership and



367 respect for constituted authority, teamwork, cognitive abilities
368 and appreciation of our national heritage. The program must use
369 evidenced-based practices and gender-specific programming and must
370 develop an individualized and specific treatment plan for each
371 youth. The Division of Youth Services shall issue credit towards
372 academic promotions and high school completion. The Division of
373 Youth Services may award credits to each student who meets the
374 requirements for a general education development certification.
375 The Division of Youth Services must also provide to each special
376 education eligible youth the services required by that youth's
377 individualized education plan.

378 **SECTION 3.** This act shall take effect and be in force from
379 and after July 1, 2018.

