

By: Representative Dixon

To: Youth and Family
Affairs; Public Health and
Human Services

HOUSE BILL NO. 728

1 AN ACT TO AMEND SECTION 43-21-605, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT IF THE YOUTH COURT PLACES A YOUTH IN A YOUTH
3 DETENTION CENTER AND/OR MENTAL HEALTH FACILITY, THE COURT SHALL
4 REQUIRE CERTAIN BEHAVIORAL ASSESSMENTS BE PERFORMED ON THE YOUTH;
5 TO PROVIDE THAT BEFORE ANY MEDICATION IS PRESCRIBED FOR A YOUTH
6 WHO IS NOT ON MEDICATION FOR BEHAVIORAL AND MENTAL HEALTH ISSUES,
7 THE YOUTH SHALL RECEIVE A SECOND INDEPENDENT CLINICAL OPINION FROM
8 A PROFESSIONAL WHO IS NOT AFFILIATED, IN ANY MANNER, WITH THE
9 ENTITY PROVIDING THE INITIAL ASSESSMENT; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 43-21-605, Mississippi Code of 1972, is
12 amended as follows:

13 43-21-605. (1) In delinquency cases, the disposition order
14 may include any of the following alternatives:

- 15 (a) Release the child without further action;
- 16 (b) Place the child in the custody of the parents, a
17 relative or other persons subject to any conditions and
18 limitations, including restitution, as the youth court may
19 prescribe;



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

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

27 (e) Order terms of supervision which may include
28 participation in a constructive program of service or education or
29 civil fines not in excess of Five Hundred Dollars (\$500.00), or
30 restitution not in excess of actual damages caused by the child to
31 be paid out of his own assets or by performance of services
32 acceptable to the victims and approved by the youth court and
33 reasonably capable of performance within one (1) year;

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

36 (g) Give legal custody of the child to any of the
37 following:

38 (i) The Department of Human Services for
39 appropriate placement; or

40 (ii) Any public or private organization,
41 preferably community-based, able to assume the education, care and
42 maintenance of the child, which has been found suitable by the
43 court; or



44 (iii) The Division of Youth Services for placement
45 in the least restrictive environment, except that no child under
46 the age of ten (10) years shall be committed to the state training
47 school. Only a child who has been adjudicated delinquent for a
48 felony may be committed to the training school. In the event a
49 child is committed to the Oakley Youth Development Center by the
50 court, the child shall be deemed to be committed to the custody of
51 the Department of Human Services which may place the child in the
52 Oakley Youth Development Center or another appropriate facility.

53 The training school may retain custody of the child until the
54 child's twentieth birthday but for no longer. When the child is
55 committed to the training school, the child shall remain in the
56 legal custody of the training school until the child has made
57 sufficient progress in treatment and rehabilitation and it is in
58 the best interest of the child to release the child. However, the
59 superintendent of the state training school, in consultation with
60 the treatment team, may parole a child at any time he or she may
61 deem it in the best interest and welfare of such child. Ten (10)
62 business days before the parole, the training school shall notify
63 the committing court of the pending release. This notice may be
64 made in less than ten (10) days if Oakley Youth Development Center
65 needs to manage population limitations. The youth court may then
66 arrange subsequent placement after a reconvened disposition
67 hearing, except that the youth court may not recommit the child to
68 the training school or any other secure facility without an



69 adjudication of a new offense or probation or parole violation.
70 The Department of Human Services shall ensure that staffs create
71 transition planning for youth leaving the facilities. Plans shall
72 include providing the youth and his or her parents or guardian
73 with copies of the youth's training school education and health
74 records, information regarding the youth's home community,
75 referrals to mental and counseling services when appropriate, and
76 providing assistance in making initial appointments with community
77 service providers. Before assigning the custody of any child to
78 any private institution or agency, the youth court through its
79 designee shall first inspect the physical facilities to determine
80 that they provide a reasonable standard of health and safety for
81 the child. No child shall be placed in the custody of the state
82 training school for a status offense or for contempt of or
83 revocation of a status offense adjudication unless the child is
84 contemporaneously adjudicated for having committed an act of
85 delinquency that is not a status offense. A disposition order
86 rendered under this subparagraph shall meet the following
87 requirements:

88 1. The disposition is the least restrictive
89 alternative appropriate to the best interest of the child and the
90 community;

91 2. The disposition allows the child to be in
92 reasonable proximity to the family home community of each child



93 given the dispositional alternatives available and the best
94 interest of the child and the state; and

95 3. The disposition order provides that the
96 court has considered the medical, educational, vocational, social
97 and psychological guidance, training, social education,
98 counseling, substance abuse treatment and other rehabilitative
99 services required by that child as determined by the court;

100 (h) Recommend to the child and the child's parents or
101 guardian that the child attend and participate in the Youth
102 Challenge Program under the Mississippi National Guard, as created
103 in Section 43-27-203, subject to the selection of the child for
104 the program by the National Guard; however, the child must
105 volunteer to participate in the program. The youth court shall
106 not order any child to apply for or attend the program;

107 (i) Adjudicate the juvenile to the Statewide Juvenile
108 Work Program if the program is established in the court's
109 jurisdiction. The juvenile and his or her parents or guardians
110 must sign a waiver of liability in order to participate in the
111 work program. The judge will coordinate with the youth services
112 counselors as to placing participants in the work program as
113 follows:

114 (i) The severity of the crime, whether or not the
115 juvenile is a repeat offender or is a felony offender will be
116 taken into consideration by the judge when adjudicating a juvenile
117 to the work program. The juveniles adjudicated to the work



118 program will be supervised by police officers or reserve officers.
119 The term of service will be from twenty-four (24) to one hundred
120 twenty (120) hours of community service. A juvenile will work the
121 hours to which he or she was adjudicated on the weekends during
122 school and weekdays during the summer. Parents are responsible
123 for a juvenile reporting for work. Noncompliance with an order to
124 perform community service will result in a heavier adjudication.
125 A juvenile may be adjudicated to the community service program
126 only two (2) times;

127 (ii) The judge shall assess an additional fine on
128 the juvenile which will be used to pay the costs of implementation
129 of the program and to pay for supervision by police officers and
130 reserve officers. The amount of the fine will be based on the
131 number of hours to which the juvenile has been adjudicated;

132 (j) Order the child to participate in a youth court
133 work program as provided in Section 43-21-627;

134 (k) Order terms of house arrest under the intensive
135 supervision program as created in Sections 47-5-1001 through
136 47-5-1015. The Department of Human Services shall take bids for
137 the placement of juveniles in the intensive supervision program.
138 The Department of Human Services shall promulgate rules regarding
139 the supervision of juveniles placed in the intensive supervision
140 program. For each county there shall be seventy-five (75) slots
141 created in the intensive supervision program for juveniles. Any
142 youth ordered into the intensive home-based supervision program



143 shall receive comprehensive strength-based needs assessments and
144 individualized treatment plans. Based on the assessment, an
145 individualized treatment plan shall be developed that defines the
146 supervision and programming that is needed by a youth. The
147 treatment plan shall be developed by a multidisciplinary team that
148 includes the family of the youth whenever possible. The juvenile
149 shall pay Ten Dollars (\$10.00) to offset the cost of administering
150 the alcohol and drug test. The juvenile must attend school,
151 alternative school or be in the process of working toward a High
152 School Equivalency Diploma certificate;

153 (1) (i) Order the child into a juvenile detention
154 center operated by the county or into a juvenile detention center
155 operated by any county with which the county in which the court is
156 located has entered into a contract for the purpose of housing
157 delinquents. The time period for detention cannot exceed ninety
158 (90) days, and any detention exceeding forty-five (45) days shall
159 be administratively reviewed by the youth court no later than
160 forty-five (45) days after the entry of the order. At that time
161 the youth court counselor shall review the status of the youth in
162 detention and shall report any concerns to the court. The youth
163 court judge may order that the number of days specified in the
164 detention order be served either throughout the week or on
165 weekends only. No first-time nonviolent youth offender shall be
166 committed to a detention center for a period in excess of ninety
167 (90) days until all other options provided for in this section



168 have been considered and the court makes a specific finding of
169 fact by a preponderance of the evidence by assessing what is in
170 the best rehabilitative interest of the child and the public
171 safety of communities and that there is no reasonable alternative
172 to a nonsecure setting and therefore commitment to a detention
173 center is appropriate.

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

177 1. The disposition order is the least
178 restrictive alternative appropriate to the best interest of the
179 child and the community;

180 2. The disposition order allows the child to
181 be in reasonable proximity to the family home community of each
182 child given the dispositional alternatives available and the best
183 interest of the child and the state; and

184 3. The disposition order provides that the
185 court has considered the medical, educational, vocational, social
186 and psychological guidance, training, social education,
187 counseling, substance abuse treatment and other rehabilitative
188 services required by that child as determined by the court;

189 (m) The judge may consider house arrest in an intensive
190 supervision program as a reasonable prospect of rehabilitation
191 within the juvenile justice system. The Department of Human



192 Services shall promulgate rules regarding the supervision of
193 juveniles placed in the intensive supervision program;

194 (n) Referral to A-team provided system of care
195 services; or

196 (o) Place the child on electronic monitoring subject to
197 any conditions and limitations as the youth court may prescribe.

198 (2) If a disposition order requires that a child miss school
199 due to other placement, the youth court shall notify a child's
200 school while maintaining the confidentiality of the youth court
201 process. If a disposition order requires placement of a child in
202 a juvenile detention facility, the facility shall comply with the
203 educational services and notification requirements of Section
204 43-21-321.

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

211 (4) If the youth court places a child in the state-supported
212 training school, the court may order the parents or guardians of
213 the child and other persons living in the child's household to
214 receive counseling and parenting classes for rehabilitative
215 purposes while the child is in the legal custody of the training
216 school. A youth court entering an order under this subsection (4)



217 shall utilize appropriate services offered either at no cost or
218 for a fee calculated on a sliding scale according to income unless
219 the person ordered to participate elects to receive other
220 counseling and classes acceptable to the court at the person's
221 sole expense.

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

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

229 (7) The youth court shall not place a child in another
230 school district who has been expelled from a school district for
231 the commission of a violent act. For the purpose of this
232 subsection, "violent act" means any action which results in death
233 or physical harm to another or an attempt to cause death or
234 physical harm to another.

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



241 (9) The Mississippi Department of Human Services, Division
242 of Youth Services, shall operate and maintain services for youth
243 adjudicated delinquent at the Oakley Youth Development Center.
244 The program shall be designed for children committed to the
245 training schools by the youth courts. The purpose of the program
246 is to promote good citizenship, self-reliance, leadership and
247 respect for constituted authority, teamwork, cognitive abilities
248 and appreciation of our national heritage. The program must use
249 evidenced-based practices and gender-specific programming and must
250 develop an individualized and specific treatment plan for each
251 youth. The Division of Youth Services shall issue credit towards
252 academic promotions and high school completion. The Division of
253 Youth Services may award credits to each student who meets the
254 requirements for a general education development certification.
255 The Division of Youth Services must also provide to each special
256 education eligible youth the services required by that youth's
257 individualized education plan.

258 (10) If the youth court places a child in a youth detention
259 center and/or mental health facility, the court shall require a
260 behavioral and mental health assessment for the youth. If it is
261 determined that medication is needed for a youth who is not on
262 medication prescribed for behavioral and mental health issues,
263 then the court shall require that a second independent clinical
264 opinion be provided before medication is prescribed for the youth.
265 The second independent clinical opinion be performed by a



266 professional specified in this subsection who is not affiliated,
267 in any manner, with the entity that provided the initial
268 assessment and shall be paid by the county where the youth court
269 is located. In the event the second independent clinical opinion
270 is different from the initial clinical opinion, then the clinical
271 opinion with the lowest dosage of medication recommended shall be
272 prescribed to the youth. No youth court detention center or state
273 or county mental health facility shall be liable to any party nor
274 shall it indemnify or hold harmless any party for any liabilities,
275 obligations, losses, damages, penalties, settlements, claims,
276 actions, suits, proceedings or judgments of any kind and nature,
277 costs, expenses, or attorney's fees incurred by a party or parties
278 for any act or action arising out of or in connection with any
279 second independent clinical opinion that is provided as authorized
280 under this subsection. The second independent clinical opinion
281 must be submitted in writing and may be offered after evaluation
282 of the youth by any of the following:

- 283 (a) A physician;
284 (b) A psychologist or psychiatrist;
285 (c) An advanced practice registered nurse;
286 (d) A physician assistant;
287 (e) A licensed certified social worker;
288 (f) A licensed professional counselor;
289 (g) A licensed behavior analyst;
290 (h) A licensed mental health specialist; or



291 (i) A medical professional employed with the State
292 Department of Health.

293 **SECTION 2.** This act shall take effect and be in force from
294 and after July 1, 2018.

