

By: Representative Dixon

To: Youth and Family Affairs

HOUSE BILL NO. 1071

1 AN ACT TO AMEND SECTION 43-21-609, MISSISSIPPI CODE OF 1972,
 2 TO REQUIRE THE DEPARTMENT OF CHILD PROTECTION SERVICES IN NEGLECT
 3 CASES TO NOTIFY THE COURT IN THE COUNTY WHERE THE CHILD RESIDES OR
 4 THE COURT THAT ISSUED THE INITIAL ORDER FOR REMOVAL OF THE CHILD
 5 FOR TEMPORARY PLACEMENT AFTER THE DEPARTMENT HAS FAILED THREE
 6 TIMES TO REMOVE THE CHILD; TO AMEND SECTION 43-21-353, MISSISSIPPI
 7 CODE OF 1972, TO PROVIDE THAT CERTAIN PUBLIC EMPLOYEES WHO HAVE
 8 REASONABLE CAUSE TO SUSPECT THAT A CHILD IS A NEGLECTED CHILD OR
 9 AN ABUSED CHILD AND WHO DO NOT MAKE THE REQUIRED REPORT SHALL BE
 10 SUBJECT TO TERMINATION FROM THEIR EMPLOYMENT WITH THE EMPLOYING
 11 AGENCY OR LOCAL GOVERNMENT; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 43-21-609, Mississippi Code of 1972, is
 14 amended as follows:

15 43-21-609. (1) In neglect and abuse cases, the disposition
 16 order may include any of the following alternatives, giving
 17 precedence in the following sequence:

- 18 (a) Release the child without further action;
- 19 (b) Place the child in the custody of his parents, a
 20 relative or other person subject to any conditions and limitations
 21 as the court may prescribe. If the court finds that temporary
 22 relative placement, adoption or foster care placement is



23 inappropriate, unavailable or otherwise not in the best interest
24 of the child, durable legal custody may be granted by the court to
25 any person subject to any limitations and conditions the court may
26 prescribe; such durable legal custody will not take effect unless
27 the child or children have been in the physical custody of the
28 proposed durable custodians for at least six (6) months under the
29 supervision of the Department of * * * Child Protection Services.
30 The requirements of Section 43-21-613 as to disposition review
31 hearings do not apply to those matters in which the court has
32 granted durable legal custody. In such cases, the Department
33 of * * * Child Protection Services shall be released from any
34 oversight or monitoring responsibilities;

35 (c) (i) Grant durable legal relative guardianship to a
36 relative or fictive kin licensed as a foster parent if the
37 licensed relative foster parent or licensed fictive kin foster
38 parent exercised physical custody of the child for at least six
39 (6) months before the grant of durable legal relative guardianship
40 and the Department of Child Protection Services had legal custody
41 or exercised supervision of the child for at least six (6) months.
42 In order to establish durable legal relative guardianship, the
43 youth court must find the following:

44 1. That both reunification and adoption have
45 been determined to be inappropriate;



46 2. That the relative guardian or fictive kin
47 guardian shows full commitment to the care, shelter, education,
48 nurture, and reasonable medical care of the child; and

49 3. That the youth court consulted with any
50 child twelve (12) years of age or older before granting durable
51 legal relative guardianship.

52 (ii) The requirements of Section 43-21-613 as to
53 disposition review hearings do not apply to a hearing concerning
54 durable legal relative guardianship. However, the Department of
55 Child Protection Services must conduct an annual review and
56 recertification of the durable legal relative guardianship to
57 determine whether it remains in the best interest of the child.
58 If a material change in circumstances occurs adverse to the best
59 interest of the child, the parent, relative guardian, fictive kin
60 guardian, or Department of Child Protection Services may petition
61 the court to review the durable legal relative guardianship;

62 (d) Order terms of treatment calculated to assist the
63 child and the child's parent, guardian or custodian which are
64 within the ability of the parent, guardian or custodian to
65 perform;

66 (e) Order youth court personnel, the Department of
67 Child Protection Services or child care agencies to assist the
68 child and the child's parent, guardian or custodian to secure
69 social or medical services to provide proper supervision and care
70 of the child;



71 (f) Give legal custody of the child to any of the
72 following but in no event to any state training school:

73 (i) The Department of Child Protection Services
74 for appropriate placement; or

75 (ii) Any private or public organization,
76 preferably community-based, able to assume the education, care and
77 maintenance of the child, which has been found suitable by the
78 court. Prior to assigning the custody of any child to any private
79 institution or agency, the youth court through its designee shall
80 first inspect the physical facilities to determine that they
81 provide a reasonable standard of health and safety for the child;

82 (g) If the court makes a finding that custody is
83 necessary as defined in Section 43-21-301(3)(b), and that the
84 child, in the action pending before the youth court had not
85 previously been taken into custody, the disposition order shall
86 recite that the effect of the continuation of the child's residing
87 within his or her own home would be contrary to the welfare of the
88 child, that the placement of the child in foster care is in the
89 best interests of the child, and unless the reasonable efforts
90 requirement is bypassed under Section 43-21-603(7)(c), the order
91 also must state:

92 (i) That reasonable efforts have been made to
93 maintain the child within his or her own home, but that the
94 circumstances warrant his or her removal, and there is no
95 reasonable alternative to custody; or



96 (ii) The circumstances are of such an emergency
97 nature that no reasonable efforts have been made to maintain the
98 child within his or her own home, and there is no reasonable
99 alternative to custody; or

100 (iii) If the court makes a finding in accordance
101 with subparagraph (ii) of this paragraph, the court shall order
102 that reasonable efforts be made towards the reunification of the
103 child with his or her family; or

104 (h) If the court had, before the disposition hearing in
105 the action pending before the court, taken the child into custody,
106 the judge or referee shall determine, and the youth court order
107 shall recite that reasonable efforts were made by the Department
108 of Child Protection Services to finalize the child's permanency
109 plan that was in effect on the date of the disposition hearing.

110 (2) In neglect cases, after the Department of Child
111 Protection Services has failed three (3) times to remove the child
112 for temporary placement, the department shall notify the court in
113 the county where the child resides or the court that issued the
114 initial order for removal of the child.

115 **SECTION 2.** Section 43-21-353, Mississippi Code of 1972, is
116 amended as follows:

117 43-21-353. (1) Any attorney, physician, dentist, intern,
118 resident, nurse, psychologist, social worker, family protection
119 worker, family protection specialist, child caregiver, minister,
120 law enforcement officer, public or private school employee or any



121 other person having reasonable cause to suspect that a child is a
122 neglected child or an abused child, shall cause an oral report to
123 be made immediately by telephone or otherwise and followed as soon
124 thereafter as possible by a report in writing to the Department
125 of * * * Child Protection Services, and immediately a referral
126 shall be made by the Department of * * * Child Protection Services
127 to the youth court intake unit, which unit shall promptly comply
128 with Section 43-21-357. In the course of an investigation, at the
129 initial time of contact with the individual(s) about whom a report
130 has been made under this Youth Court Act or with the individual(s)
131 responsible for the health or welfare of a child about whom a
132 report has been made under this chapter, the Department of * * *
133 Child Protection Services shall inform the individual of the
134 specific complaints or allegations made against the individual.
135 Consistent with subsection (4), the identity of the person who
136 reported his or her suspicion shall not be disclosed. Where
137 appropriate, the Department of * * * Child Protection Services
138 shall additionally make a referral to the youth court prosecutor.

139 Upon receiving a report that a child has been sexually
140 abused, or burned, tortured, mutilated or otherwise physically
141 abused in such a manner as to cause serious bodily harm, or upon
142 receiving any report of abuse that would be a felony under state
143 or federal law, the Department of * * * Child Protection Services
144 shall immediately notify the law enforcement agency in whose
145 jurisdiction the abuse occurred and shall notify the appropriate



146 prosecutor within forty-eight (48) hours, and the Department
147 of * * * Child Protection Services shall have the duty to provide
148 the law enforcement agency all the names and facts known at the
149 time of the report; this duty shall be of a continuing nature.
150 The law enforcement agency and the Department of * * * Child
151 Protection Services shall investigate the reported abuse
152 immediately and shall file a preliminary report with the
153 appropriate prosecutor's office within twenty-four (24) hours and
154 shall make additional reports as new or additional information or
155 evidence becomes available. The Department of * * * Child
156 Protection Services shall advise the clerk of the youth court and
157 the youth court prosecutor of all cases of abuse reported to the
158 department within seventy-two (72) hours and shall update such
159 report as information becomes available.

160 (2) Any report to the Department of * * * Child Protection
161 Services shall contain the names and addresses of the child and
162 his parents or other persons responsible for his care, if known,
163 the child's age, the nature and extent of the child's injuries,
164 including any evidence of previous injuries * * *, any other
165 information that might be helpful in establishing the cause of the
166 injury, and the identity of the perpetrator.

167 (3) The Department of * * * Child Protection Services shall
168 maintain a statewide incoming wide-area telephone service or
169 similar service for the purpose of receiving reports of suspected
170 cases of child abuse; provided that any attorney, physician,



171 dentist, intern, resident, nurse, psychologist, social worker,
172 family protection worker, family protection specialist, child
173 caregiver, minister, law enforcement officer or public or private
174 school employee who is required to report under subsection (1) of
175 this section shall report in the manner required in subsection
176 (1).

177 (4) Reports of abuse and neglect made under this chapter and
178 the identity of the reporter are confidential except when the
179 court in which the investigation report is filed, in its
180 discretion, determines the testimony of the person reporting to be
181 material to a judicial proceeding or when the identity of the
182 reporter is released to law enforcement agencies and the
183 appropriate prosecutor pursuant to subsection (1). Reports made
184 under this section to any law enforcement agency or prosecutorial
185 officer are for the purpose of criminal investigation and
186 prosecution only and no information from these reports may be
187 released to the public except as provided by Section 43-21-261.
188 Disclosure of any information by the prosecutor shall be according
189 to the Mississippi Uniform Rules of Circuit and County Court
190 Procedure. The identity of the reporting party shall not be
191 disclosed to anyone other than law enforcement officers or
192 prosecutors without an order from the appropriate youth court.
193 Any person disclosing any reports made under this section in a
194 manner not expressly provided for in this section or Section



195 43-21-261 shall be guilty of a misdemeanor and subject to the
196 penalties prescribed by Section 43-21-267.

197 (5) All final dispositions of law enforcement investigations
198 described in subsection (1) of this section shall be determined
199 only by the appropriate prosecutor or court. All final
200 dispositions of investigations by the Department of * * * Child
201 Protection Services as described in subsection (1) of this section
202 shall be determined only by the youth court. Reports made under
203 subsection (1) of this section by the Department of * * * Child
204 Protection Services to the law enforcement agency and to the
205 district attorney's office shall include the following, if known
206 to the department:

- 207 (a) The name and address of the child;
- 208 (b) The names and addresses of the parents;
- 209 (c) The name and address of the suspected perpetrator;
- 210 (d) The names and addresses of all witnesses, including
211 the reporting party if a material witness to the abuse;
- 212 (e) A brief statement of the facts indicating that the
213 child has been abused and any other information from the agency
214 files or known to the family protection worker or family
215 protection specialist making the investigation, including medical
216 records or other records, which may assist law enforcement or the
217 district attorney in investigating and/or prosecuting the case;
- 218 and



219 (f) What, if any, action is being taken by the
220 Department of * * * Child Protection Services.

221 (6) In any investigation of a report made under this chapter
222 of the abuse or neglect of a child as defined in Section
223 43-21-105(1) or (m), the Department of * * * Child Protection
224 Services may request the appropriate law enforcement officer with
225 jurisdiction to accompany the department in its investigation, and
226 in such cases the law enforcement officer shall comply with such
227 request.

228 (7) (a) Anyone who willfully violates any provision of this
229 section shall be, upon being found guilty, punished by a fine not
230 to exceed Five Thousand Dollars (\$5,000.00), or by imprisonment in
231 jail not to exceed one (1) year, or both.

232 (b) Any social worker, family protection worker or
233 family protection specialist of the Department of Human Services
234 or the Department of Child Protection Services, law enforcement
235 officer, school employee or other state or local government
236 employee who has reasonable cause to suspect that a child is a
237 neglected child or an abused child and who does not make the
238 report required under subsection (1) of this section shall be
239 subject to termination from his or her employment with the
240 employing agency or local government, in accordance with the
241 statutory procedures for termination of employment for his or her
242 position.



243 (8) If a report is made directly to the Department of * * *
244 Child Protection Services that a child has been abused or
245 neglected in an out-of-home setting, a referral shall be made
246 immediately to the law enforcement agency in whose jurisdiction
247 the abuse occurred and the department shall notify the district
248 attorney's office within forty-eight (48) hours of such report.
249 The Department of * * * Child Protection Services shall
250 investigate the out-of-home setting report of abuse or neglect to
251 determine whether the child who is the subject of the report, or
252 other children in the same environment, comes within the
253 jurisdiction of the youth court and shall report to the youth
254 court the department's findings and recommendation as to whether
255 the child who is the subject of the report or other children in
256 the same environment require the protection of the youth court.
257 The law enforcement agency shall investigate the reported abuse
258 immediately and shall file a preliminary report with the district
259 attorney's office within forty-eight (48) hours and shall make
260 additional reports as new information or evidence becomes
261 available. If the out-of-home setting is a licensed facility, an
262 additional referral shall be made by the Department of * * * Child
263 Protection Services to the licensing agency. The licensing agency
264 shall investigate the report and shall provide the Department
265 of * * * Child Protection Services, the law enforcement agency and
266 the district attorney's office with their written findings from



267 such investigation as well as that licensing agency's
268 recommendations and actions taken.

269 (9) If a child protective investigation does not result in
270 an out-of-home placement, a child protective investigator must
271 provide information to the parent or guardians about community
272 service programs that provide respite care, voluntary guardianship
273 or other support services for families in crisis.

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

