

By: Representatives Dixon, Paden

To: Youth and Family
Affairs; Judiciary B

HOUSE BILL NO. 480

1 AN ACT TO AMEND SECTION 43-21-311, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT WHEN A YOUTH WHO IS 15 YEARS OF AGE OR YOUNGER IS
 3 TAKEN INTO CUSTODY FOR COMMITTING A DELINQUENT ACT, THE YOUTH
 4 SHALL CONSULT WITH LEGAL COUNSEL BEFORE WAIVING HIS OR HER RIGHTS;
 5 TO REQUIRE THE YOUTH COURT TO CONSIDER THE EFFECT OF THE FAILURE
 6 TO COMPLY WITH THE REQUIREMENT OF CONSULTING WITH LEGAL COUNSEL,
 7 WHEN APPLICABLE, BEFORE WAIVING HIS OR HER RIGHTS WHEN
 8 ADJUDICATING THE ADMISSIBILITY OF CERTAIN STATEMENTS; TO REQUIRE
 9 THE GOVERNOR TO CONVENE A PANEL TO EXAMINE THE EFFECTS AND
 10 OUTCOMES RELATED TO THE REQUIREMENT THAT LEGAL COUNSEL BE
 11 CONSULTED BEFORE CERTAIN RIGHTS ARE WAIVED BY CERTAIN YOUTH; TO
 12 AMEND SECTION 43-21-405, MISSISSIPPI CODE OF 1972, TO CONFORM TO
 13 THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 43-21-311, Mississippi Code of 1972, is
 16 amended as follows:

17 43-21-311. (1) Subject to the requirements prescribed under
 18 subsection (2) of this section, when applicable, when a child is
 19 taken into custody, he shall immediately be informed of:

- 20 (a) The reason for his custody;
- 21 (b) The time within which review of the custody shall
- 22 be held;



23 (c) His rights during custody including his right to
24 counsel;

25 (d) All rules and regulations of the place at which he
26 is held;

27 (e) The time and place of the detention hearing when
28 the time and place is set; and

29 (f) The conditions of his custody which shall be in
30 compliance with the detention requirements provided in Section
31 43-21-301(6).

32 These rights shall be posted where the child may read them,
33 and such rights must be read to the child when he or she is taken
34 into custody.

35 (2) (a) Before a custodial interrogation of a youth who has
36 been accused of committing a delinquent act, and before the waiver
37 of any Miranda rights or any rights prescribed under subsection
38 (1) of this section, a youth fifteen (15) years of age or younger
39 shall consult with legal counsel in person, by telephone, or by
40 video conference. The consultation may not be waived.

41 (b) The court shall, in adjudicating the admissibility
42 of statements of a youth fifteen (15) years of age or younger made
43 during or after a custodial interrogation, consider the effect of
44 failure to comply with this subsection.

45 (c) This subsection shall not apply to the
46 admissibility of statements of a youth fifteen (15) years of age
47 or younger if both of the following criteria are met:



48 (i) The officer who questioned the youth
49 reasonably believed the information he or she sought was necessary
50 to protect life or property from an imminent threat; and

51 (ii) The officer's questions were limited to those
52 questions that were reasonably necessary to obtain that
53 information.

54 (d) This subsection shall not require a probation or
55 parole officer who is monitoring a youth who is under the
56 jurisdiction of youth court to comply with this subsection in the
57 normal performance of his or her duties.

58 (* * *3) When a child is taken into custody, the child may
59 immediately telephone his parent, guardian or custodian; his
60 counsel; and personnel of the youth court. Thereafter, he shall
61 be allowed to telephone his counsel or any personnel of the youth
62 court at reasonable intervals. Unless the judge or his designee
63 finds that it is against the best interest of the child, he may
64 telephone his parent, guardian or custodian at reasonable
65 intervals.

66 (* * *4) When a child is taken into custody, the child may
67 be visited by his counsel and authorized personnel of the youth
68 court at any time. Unless the judge or his designee finds it to
69 be against the best interest of the child, he may be visited by
70 his parent, guardian or custodian during visiting hours which
71 shall be regularly scheduled at least three (3) days per week.



72 The youth court may establish rules permitting visits by other
73 persons.

74 (* * *5) Except for the child's counsel, guardian ad litem
75 and authorized personnel of the youth court, no person shall
76 interview or interrogate a child held in a detention or shelter
77 facility unless approval therefor has first been obtained from the
78 judge or his designee. When a child in a detention or shelter
79 facility is represented by counsel or has a guardian ad litem, no
80 person may interview or interrogate the child concerning the
81 violation of a state or federal law, or municipal or county
82 ordinance by the child unless in the presence of his counsel or
83 guardian ad litem or with their consent.

84 (6) (a) The Governor or his designee, shall convene a panel
85 of at least seven (7) experts to review the implementation of
86 subsection (2) of this section and to examine the effects and
87 outcomes related to the implementation of subsection (2) of this
88 section, including, but not limited to, the appropriate age of
89 youth to whom subsection (2) should apply. The panel shall be
90 composed of the following:

91 (i) A representative of the Mississippi Public
92 Defenders Association;

93 (ii) A representative of the Mississippi
94 Prosecutors Association;

95 (iii) A representative of a statewide association
96 representing law enforcement;



97 (iv) A representative of the judiciary;
98 (v) A member of the public possessing expertise
99 and experience in any or all of the following:

100 1. The juvenile delinquency or dependency
101 systems.

102 2. Child development or special needs
103 children.

104 3. The representation of children in juvenile
105 court;

106 (vi) A member of the public who, as a youth, was
107 involved in the criminal justice system; and

108 (vii) A criminologist with experience in
109 interpreting crime data.

110 (b) The panel shall be convened no later than August 1,
111 2019, and shall review the implementation of this section and
112 examine the effects and outcomes related to the implementation of
113 this section, including, but not limited to, the appropriate age
114 of youth to whom this section should apply.

115 (c) No later than December 31, 2020, the panel shall
116 provide a report to all members of the Legislature and the
117 Governor, including, but not limited to, relevant data on the
118 effects and outcomes associated with the implementation of
119 subsection (2) of this section as well as any recommendations
120 pertaining to the implementation of the subsection.



121 (d) Members of the panel shall serve without
122 compensation.

123 (e) This subsection (6) shall be repealed from and
124 after December 31, 2020.

125 **SECTION 2.** Section 43-21-405, Mississippi Code of 1972, is
126 amended as follows:

127 43-21-405. (1) The informal adjustment process shall be
128 initiated with an informal adjustment conference conducted by an
129 informal adjustment counselor appointed by the judge or his
130 designee.

131 (2) If the child and his parent, guardian or custodian
132 appear at the informal adjustment conference without counsel, the
133 informal adjustment counselor shall, at the commencement of the
134 conference, inform them of their right to counsel, the child's
135 right to appointment of counsel and the right of the child to
136 remain silent. If either the child or his parent, guardian or
137 custodian indicates a desire to be represented by counsel, the
138 informal adjustment counselor shall adjourn the conference to
139 afford an opportunity to secure counsel, and the requirements of
140 Section 43-21-311(2), when appropriate due to a child's alleged
141 commitment of a delinquent act as well as the age of the child as
142 provided in that subsection, shall be applicable.

143 (3) At the beginning of the informal adjustment conference,
144 the informal adjustment counselor shall inform the child and his
145 parent, guardian or custodian:



146 (a) That information has been received concerning the
147 child which appears to establish jurisdiction of the youth court;

148 (b) The purpose of the informal adjustment conference;

149 (c) That during the informal adjustment process no
150 petition will be filed;

151 (d) That the informal adjustment process is voluntary
152 with the child and his parent, guardian or custodian and that they
153 may withdraw from the informal adjustment at any time; and

154 (e) The circumstances under which the informal
155 adjustment process can be terminated under Section 43-21-407.

156 (4) The informal adjustment counselor shall then discuss
157 with the child and his parent, guardian or custodian:

158 (a) Recommendations for actions or conduct in the
159 interest of the child to correct the conditions of behavior or
160 environment which may exist;

161 (b) Continuing conferences and contacts with the child
162 and his parent, guardian or custodian by the informal adjustment
163 counselor or other authorized persons; and

164 (c) The child's general behavior, his home and school
165 environment and other factors bearing upon the proposed informal
166 adjustment.

167 (5) After the parties have agreed upon the appropriate terms
168 and conditions of informal adjustment, the informal adjustment
169 counselor and the child and his parent, guardian or custodian
170 shall sign a written informal adjustment agreement setting forth



171 the terms and conditions of the informal adjustment. The informal
172 adjustment agreement may be modified at any time upon the consent
173 of all parties to the informal adjustment conference.

174 (6) The informal adjustment process shall not continue
175 beyond a period of six (6) months from its commencement unless
176 extended by the youth court for an additional period not to exceed
177 six (6) months by court authorization prior to the expiration of
178 the original six-month period. In no event shall the custody or
179 supervision of a child which has been placed with the Department
180 of Public Welfare be continued or extended except upon a written
181 finding by the youth court judge or referee that reasonable
182 efforts have been made to maintain the child within his own home,
183 but that the circumstances warrant his removal and there is no
184 reasonable alternative to custody, and that reasonable efforts
185 will continue to be made towards reunification of the family.

186 **SECTION 3.** This act shall take effect and be in force from
187 and after July 1, 2019.

