

By: Representative Massengill

To: Judiciary B

HOUSE BILL NO. 1147

1 AN ACT TO AMEND SECTION 43-21-105, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITION OF CHILD ABUSE TO INCLUDE GENDER
3 REASSIGNMENT; AND FOR 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 or who is an employee of the
17 Mississippi Department of Human Services or the Mississippi
18 Department of Child Protection Services to be his designee.



19 (d) "Child" and "youth" are synonymous, and each means
20 a person who has not reached his eighteenth birthday. A child who
21 has not reached his eighteenth birthday and is on active duty for
22 a branch of the armed services or is married is not considered a
23 "child" or "youth" for the purposes of this chapter.

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

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

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

32 (h) "Legal custodian" means a court-appointed custodian
33 of the child.

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

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



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

45 (i) Is habitually disobedient of reasonable and
46 lawful commands of his parent, guardian or custodian and is
47 ungovernable; or

48 (ii) While being required to attend school,
49 willfully and habitually violates the rules thereof or willfully
50 and habitually absents himself therefrom; or

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

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

53 (l) "Neglected child" means a child:

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

65 (ii) Who is otherwise without proper care,
66 custody, supervision or support; or



67 (iii) Who, for any reason, lacks the special care
68 made necessary for him by reason of his mental condition, whether
69 the mental condition is having mental illness or having an
70 intellectual disability; or

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

73 (m) "Abused child" means a child whose parent, guardian
74 or custodian or any person responsible for his care or support,
75 whether legally obligated to do so or not, has caused or allowed
76 to be caused, upon the child, sexual abuse, sexual exploitation,
77 commercial sexual exploitation, emotional abuse, mental injury,
78 nonaccidental physical injury or other maltreatment. This term
79 also means a child whose parent has administered, supplied or
80 consented to or assisted in the administration or supply of, a
81 puberty suppression prescription drug or cross-sex hormone to a
82 child, other than an intersex child, for the purpose of gender
83 transitioning or gender reassignment; or performed or consented to
84 the performance of surgery or another medical procedure on a
85 child, other than an intersex child, for the purpose of gender
86 reassignment. However, physical discipline, including spanking,
87 performed on a child by a parent, guardian or custodian in a
88 reasonable manner shall not be deemed abuse under this section.
89 "Abused child" also means a child who is or has been trafficked
90 within the meaning of the Mississippi Human Trafficking Act by any



91 person, without regard to the relationship of the person to the
92 child.

93 (n) "Sexual abuse" means obscene or pornographic
94 photographing, filming or depiction of children for commercial
95 purposes, or the rape, molestation, incest, prostitution or other
96 such forms of sexual exploitation of children under circumstances
97 which indicate that the child's health or welfare is harmed or
98 threatened.

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

103 (p) A "dependent child" means any child who is not a
104 child in need of supervision, a delinquent child, an abused child
105 or a neglected child, and which child has been voluntarily placed
106 in the custody of the Department of Child Protection Services by
107 his parent, guardian or custodian.

108 (q) "Custody" means the physical possession of the
109 child by any person.

110 (r) "Legal custody" means the legal status created by a
111 court order which gives the legal custodian the responsibilities
112 of physical possession of the child and the duty to provide him
113 with food, shelter, education and reasonable medical care, all
114 subject to residual rights and responsibilities of the parent or
115 guardian of the person.



116 (s) "Detention" means the care of children in
117 physically restrictive facilities.

118 (t) "Shelter" means care of children in physically
119 nonrestrictive facilities.

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

122 (i) All youth court records as defined in Section
123 43-21-251;

124 (ii) All forensic interviews conducted by a child
125 advocacy center in abuse and neglect investigations;

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

128 (iv) All agency records as defined in Section
129 43-21-257; and

130 (v) All other documents maintained by any
131 representative of the state, county, municipality or other public
132 agency insofar as they relate to the apprehension, custody,
133 adjudication or disposition of a child who is the subject of a
134 youth court cause.

135 (v) "Any person responsible for care or support" means
136 the person who is providing for the child at a given time. This
137 term shall include, but is not limited to, stepparents, foster
138 parents, relatives, nonlicensed babysitters or other similar
139 persons responsible for a child and staff of residential care



140 facilities and group homes that are licensed by the Department of
141 Human Services or the Department of Child Protection Services.

142 (w) The singular includes the plural, the plural the
143 singular and the masculine the feminine when consistent with the
144 intent of this chapter.

145 (x) "Out-of-home" setting means the temporary
146 supervision or care of children by the staff of licensed day care
147 centers, the staff of public, private and state schools, the staff
148 of juvenile detention facilities, the staff of unlicensed
149 residential care facilities and group homes and the staff of, or
150 individuals representing, churches, civic or social organizations.

151 (y) "Durable legal custody" means the legal status
152 created by a court order which gives the durable legal custodian
153 the responsibilities of physical possession of the child and the
154 duty to provide him with care, nurture, welfare, food, shelter,
155 education and reasonable medical care. All these duties as
156 enumerated are subject to the residual rights and responsibilities
157 of the natural parent(s) or guardian(s) of the child or children.

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

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

163 (bb) "Assessment" means an individualized examination
164 of a child to determine the child's psychosocial needs and



165 problems, including the type and extent of any mental health,
166 substance abuse or co-occurring mental health and substance abuse
167 disorders and recommendations for treatment. The term includes,
168 but is not limited to, a drug and alcohol, psychological or
169 psychiatric evaluation, records review, clinical interview or the
170 administration of a formal test and instrument.

171 (cc) "Screening" means a process, with or without the
172 administration of a formal instrument, that is designed to
173 identify a child who is at increased risk of having mental health,
174 substance abuse or co-occurring mental health and substance abuse
175 disorders that warrant immediate attention, intervention or more
176 comprehensive assessment.

177 (dd) "Durable legal relative guardianship" means the
178 legal status created by a youth court order that conveys the
179 physical and legal custody of a child or children by durable legal
180 guardianship to a relative or fictive kin who is licensed as a
181 foster or resource parent.

182 (ee) "Relative" means a person related to the child by
183 affinity or consanguinity within the third degree.

184 (ff) "Fictive kin" means a person not related to the
185 child legally or biologically but who is considered a relative due
186 to a significant, familial-like and ongoing relationship with the
187 child and family.

188 (gg) "Reasonable efforts" means the exercise of
189 reasonable care and due diligence by the Department of Human



190 Services, the Department of Child Protection Services, or any
191 other appropriate entity or person to use appropriate and
192 available services to prevent the unnecessary removal of the child
193 from the home or provide other services related to meeting the
194 needs of the child and the parents.

195 (hh) "Commercial sexual exploitation" means any sexual
196 act or crime of a sexual nature, which is committed against a
197 child for financial or economic gain, to obtain a thing of value
198 for quid pro quo exchange of property or for any other purpose.

199 (ii) "Intersex child" means a child who has inborn
200 gonadal, genital, or endocrine characteristics, or a combination
201 of those characteristics, that are not suited to the typical
202 definition of male or female or are atypical for the determined
203 sex of the child; or is considered by a physician to have inborn
204 chromosomal, gonadal, genital, or endocrine characteristics that
205 are ambiguous or atypical for the determined sex of the child.

206 **SECTION 2.** This act shall take effect and be in force from
207 and after July 1, 2022.

