

By: Representatives Owen, Karriem

To: Judiciary A

HOUSE BILL NO. 1115

1 AN ACT TO AMEND SECTION 43-21-609, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THE AUTHORITY OF YOUTH COURT REGARDING DURABLE LEGAL
3 CUSTODY; TO AMEND SECTION 43-21-613, MISSISSIPPI CODE OF 1972, TO
4 REQUIRE ALL DISPOSITIONS AND MODIFICATIONS OF DURABLE LEGAL
5 CUSTODY TO BE REVIEWED BY YOUTH COURT; AND FOR RELATED PURPOSES.

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

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

9 43-21-609. In neglect and abuse cases, the disposition order
10 may include any of the following alternatives, giving precedence
11 in the following sequence:

12 (a) Release the child without further action;

13 (b) Place the child in the custody of his parents, a
14 relative or other person subject to any conditions and limitations
15 as the court may prescribe. If the court finds that temporary
16 relative placement, adoption or foster care placement is
17 inappropriate, unavailable or otherwise not in the best interest
18 of the child, durable legal custody may be granted by the court to
19 any person subject to any limitations and conditions the court may



20 prescribe; such durable legal custody will not take effect unless
21 the child or children have been in the physical custody of the
22 proposed durable custodians for at least six (6) months under the
23 supervision of the Department of Human Services. The youth court
24 of the county in which the child is located shall retain
25 jurisdiction of any matters related to durable legal custody. The
26 requirements of Section 43-21-613 as to disposition review
27 hearings do not apply to those matters in which the court has
28 granted durable legal custody. In such cases, the Department of
29 Human Services shall be released from any oversight or monitoring
30 responsibilities;

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

40 1. That reunification has been determined to
41 be inappropriate;

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



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

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

58 (d) Order terms of treatment calculated to assist the
59 child and the child's parent, guardian or custodian which are
60 within the ability of the parent, guardian or custodian to
61 perform;

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

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



69 (i) The Department of Child Protection Services
70 for appropriate placement; or

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

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

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

92 (ii) The circumstances are of such an emergency
93 nature that no reasonable efforts have been made to maintain the



94 child within his or her own home, and there is no reasonable
95 alternative to custody; or

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

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

106 **SECTION 2.** Section 43-21-613, Mississippi Code of 1972, is
107 amended as follows:

108 43-21-613. (1) If the youth court finds, after a hearing
109 which complies with the sections governing adjudicatory hearings,
110 that the terms of a delinquency or child in need of supervision
111 disposition order, probation or parole have been violated, the
112 youth court may, in its discretion, revoke the original
113 disposition and make any disposition which it could have
114 originally ordered. The hearing shall be initiated by the filing
115 of a petition that complies with the sections governing petitions
116 in this chapter and that includes a statement of the youth court's
117 original disposition order, probation or parole, the alleged
118 violation of that order, probation or parole, and the facts which



119 show the violation of that order, probation or parole. Summons
120 shall be served in the same manner as summons for an adjudicatory
121 hearing.

122 (2) On motion of a child or a child's parent, guardian or
123 custodian, the youth court may, in its discretion, conduct an
124 informal hearing to review the disposition order. If the youth
125 court finds a material change of circumstances relating to the
126 disposition of the child, the youth court may modify the
127 disposition order to any appropriate disposition of equal or
128 greater precedence which the youth court could have originally
129 ordered.

130 (3) (a) * * * All disposition orders for supervision,
131 probation or placement of a child with an individual or an agency
132 shall be reviewed by the youth court judge or referee at least
133 annually to determine if continued placement, probation or
134 supervision is in the best interest of the child or the public.
135 For children who have been adjudicated abused or neglected, the
136 youth court shall conduct a permanency hearing within twelve (12)
137 months after the earlier of:

138 (i) An adjudication that the child has been abused
139 or neglected; or

140 (ii) The date of the child's removal from the
141 allegedly abusive or neglectful custodian/parent. Notice of such
142 hearing shall be given in accordance with the provisions of
143 Section 43-21-505(5). In conducting the hearing, the judge or



144 referee shall require a written report and may require information
145 or statements from the child's youth court counselor, parent,
146 guardian or custodian, which includes, but is not limited to, an
147 evaluation of the child's progress and recommendations for further
148 supervision or treatment. The judge or referee shall, at the
149 permanency hearing determine the future status of the child,
150 including, but not limited to, whether the child should be
151 returned to the parent(s) or placed with suitable relatives,
152 placed for adoption, placed for the purpose of establishing
153 durable legal custody or should, because of the child's special
154 needs or circumstances, be continued in foster care on a permanent
155 or long-term basis. If the child is in an out-of-state placement,
156 the hearing shall determine whether the out-of-state placement
157 continues to be appropriate and in the best interest of the child.
158 At the permanency hearing the judge or referee shall determine,
159 and the youth court order shall recite that reasonable efforts
160 were made by the Department of Child Protection Services to
161 finalize the child's permanency plan that was in effect on the
162 date of the permanency hearing. The judge or referee may find
163 that reasonable efforts to maintain the child within his home
164 shall not be required in accordance with Section 43-21-603(7)(c),
165 and that the youth court shall continue to conduct permanency
166 hearings for a child who has been adjudicated abused or neglected,
167 at least annually thereafter, for as long as the child remains in



168 the custody of the Mississippi Department of Child Protection
169 Services.

170 (b) The court may find that the filing of a termination
171 of parental rights petition is not in the child's best interest
172 if:

173 (i) The child is being cared for by a relative;
174 and/or

175 (ii) The Department of Child Protection Services
176 has documented compelling and extraordinary reasons why
177 termination of parental rights would not be in the best interests
178 of the child.

179 (c) The provisions of this subsection shall also apply
180 to review of cases involving a dependent child; however, such
181 reviews shall take place not less frequently than once each one
182 hundred eighty (180) days, or upon the request of the child's
183 attorney, a parent's attorney, or a parent as deemed appropriate
184 by the youth court in protecting the best interests of the child.
185 A dependent child shall be ordered by the youth court judge or
186 referee to be returned to the custody and home of the child's
187 parent, guardian or custodian unless the judge or referee, upon
188 such review, makes a written finding that the return of the child
189 to the home would be contrary to the child's best interests.

190 (d) Reviews are not to be conducted unless explicitly
191 ordered by the youth court concerning those cases in which the
192 court has granted durable legal custody. In such cases, the



193 Department of Child Protection Services shall be released from any
194 oversight or monitoring responsibilities, and relieved of physical
195 and legal custody and supervision of the child.

196 (4) The provisions of this section do not apply to
197 proceedings concerning durable legal relative guardianship.

198 **SECTION 3.** This act shall take effect and be in force from
199 and after July 1, 2023.

