

By: Representatives Owen, Karriem

To: Judiciary A

HOUSE BILL NO. 1115  
(As Sent to Governor)

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. After granting  
24 durable legal custody of a minor child, the youth court shall  
25 retain original and exclusive jurisdiction of all matters related  
26 to durable legal custody, including, but not limited to, petitions  
27 to modify the durable legal custody. The requirements of Section  
28 43-21-613 as to disposition review hearings do not apply to those  
29 matters in which the court has granted durable legal custody. In  
30 such cases, the Department of Human Services shall be released  
31 from any oversight or monitoring responsibilities;

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



118 original disposition order, probation or parole, the alleged  
119 violation of that order, probation or parole, and the facts which  
120 show the violation of that order, probation or parole. Summons  
121 shall be served in the same manner as summons for an adjudicatory  
122 hearing.

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

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

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

141 (ii) The date of the child's removal from the  
142 allegedly abusive or neglectful custodian/parent. Notice of such



143 hearing shall be given in accordance with the provisions of  
144 Section 43-21-505(5). In conducting the hearing, the judge or  
145 referee shall require a written report and may require information  
146 or statements from the child's youth court counselor, parent,  
147 guardian or custodian, which includes, but is not limited to, an  
148 evaluation of the child's progress and recommendations for further  
149 supervision or treatment. The judge or referee shall, at the  
150 permanency hearing determine the future status of the child,  
151 including, but not limited to, whether the child should be  
152 returned to the parent(s) or placed with suitable relatives,  
153 placed for adoption, placed for the purpose of establishing  
154 durable legal custody or should, because of the child's special  
155 needs or circumstances, be continued in foster care on a permanent  
156 or long-term basis. If the child is in an out-of-state placement,  
157 the hearing shall determine whether the out-of-state placement  
158 continues to be appropriate and in the best interest of the child.  
159 At the permanency hearing the judge or referee shall determine,  
160 and the youth court order shall recite that reasonable efforts  
161 were made by the Department of Child Protection Services to  
162 finalize the child's permanency plan that was in effect on the  
163 date of the permanency hearing. The judge or referee may find  
164 that reasonable efforts to maintain the child within his home  
165 shall not be required in accordance with Section 43-21-603(7)(c),  
166 and that the youth court shall continue to conduct permanency  
167 hearings for a child who has been adjudicated abused or neglected,



168 at least annually thereafter, for as long as the child remains in  
169 the custody of the Mississippi Department of Child Protection  
170 Services.

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

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

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

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

191 (d) Reviews are not to be conducted unless explicitly  
192 ordered by the youth court concerning those cases in which the





193 court has granted durable legal custody. In such cases, the  
194 Department of Child Protection Services shall be released from any  
195 oversight or monitoring responsibilities, and relieved of physical  
196 and legal custody and supervision of the child.

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

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

