

Senate Amendments to House Bill No. 1115

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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.

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Eugene S. Clarke
Secretary of the Senate