

By: Representative Oliver

To: Judiciary A;
Appropriations A

HOUSE BILL NO. 1443

1 AN ACT TO AMEND SECTION 43-21-201, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE COURT TO RAISE A CONFLICT FOR PURPOSES OF
3 APPOINTING A GUARDIAN AD LITEM; TO AMEND SECTION 93-15-107,
4 MISSISSIPPI CODE OF 1972, TO AUTHORIZE PAYMENT TO GUARDIANS AD
5 LITEMS; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 43-21-201, Mississippi Code of 1972, is
8 amended as follows:

9 43-21-201. (1) (a) Each party shall have the right to be
10 represented by counsel at all stages of the proceedings including,
11 but not limited to, detention, shelter, adjudicatory and
12 disposition hearings and parole or probation revocation
13 proceedings.

14 (b) In delinquency matters the court shall appoint
15 legal defense counsel who is not also a guardian ad litem for the
16 same child. If the party is a child, the child shall be
17 represented by counsel at all critical stages: detention,
18 adjudicatory and disposition hearings; parole or probation
19 revocation proceedings; and post-disposition matters. If



indigent, the child shall have the right to have counsel appointed for him by the youth court.

(c) A child who is alleged to have been abused or neglected shall be deemed to be a party to the proceedings under this chapter. The child shall be represented by an attorney at all stages of any proceedings held pursuant to this chapter. The court shall appoint an attorney to any child who is unrepresented.

The guardian ad litem may serve a dual role as long as no conflict of interest is present. If * * * any party or the court raises a conflict of interest * * *, * * * the court shall make a finding as to the conflict. If * * * the youth court finds that a conflict arises, it shall retain the guardian ad litem to represent the best interest of the child and appoint an attorney to represent the child's preferences as required by Uniform Rule of Youth Court Practice 13(f).

(2) (a) When a party first appears before the youth court, the judge shall ascertain whether he is represented by counsel and, if not, inform him of his rights including his right to counsel. If the court determines that a custodial parent or guardian who is a party in an abuse, neglect or termination of parental rights proceeding is indigent, the youth court judge shall appoint counsel to represent the indigent parent or guardian in the proceeding. The court may appoint counsel to represent a noncustodial parent if the court determines that the noncustodial parent is indigent and has demonstrated a significant custodial



45 relationship with the child. All parents have the right to be
46 appointed counsel in termination of parental rights hearings, and
47 the court shall appoint counsel if the court makes a finding that
48 the parent is indigent and counsel is requested by the parent.
49 For purposes of this section, indigency shall be determined
50 pursuant to Section 25-32-9 and Rule 7.3 of the Mississippi Rules
51 of Criminal Procedure.

52 (b) (i) The court shall order a financially able
53 parent or custodian to pay all or part of reasonable attorney's
54 fees and expenses for court-appointed representation after review
55 by the court of an affidavit of financial means completed and
56 verified by a parent or custodian and a determination by the court
57 of an ability to pay.

58 (ii) All monies collected by the clerk under this
59 paragraph must be retained by the clerk and deposited into a
60 special fund to be known as the "Juvenile Court Representation
61 Fund."

62 (iii) The Administrative Office of Courts may
63 direct that money from the fund be used in providing counsel for
64 indigent parents or custodians at the trial level in
65 dependency-neglect proceedings.

66 (iv) Upon a determination of indigency and a
67 finding by the court that the fund does not have sufficient funds
68 to pay reasonable attorney's fees and expenses incurred at the
69 trial court level and that state funds have been exhausted, the



70 court may order the county to pay the reasonable fees and expenses
71 until the state provides funding for counsel.

72 (v) A special fund, to be designated as the
73 "Juvenile Court Representation Fund", is created within the State
74 Treasury. The fund shall be maintained by the State Treasurer as
75 a separate and special fund, separate and apart from the General
76 Fund of the state. Monies in the fund shall be disbursed by the
77 Administrative Office of Courts as provided in this section.
78 Unexpended amounts remaining in the fund at the end of a fiscal
79 year shall not lapse into the State General Fund, and any interest
80 earned or investment earnings on amounts in the fund shall be
81 deposited into such fund.

82 (3) An attorney appointed to represent a child shall be
83 required to complete annual juvenile justice training that is
84 approved by the Mississippi Office of State Public Defender and
85 the Mississippi Commission on Continuing Legal Education. An
86 attorney appointed to represent a parent or guardian in an abuse,
87 neglect or termination of parental rights proceeding shall be
88 required to complete annual training that is approved by the
89 Office of State Public Defender and the Mississippi Commission on
90 Continuing Legal Education. The Mississippi Office of State
91 Public Defender and the Mississippi Commission on Continuing Legal
92 Education shall determine the amount of juvenile justice training
93 and continuing education required to fulfill the requirements of
94 this subsection. The State Public Defender shall maintain a roll



95 of attorneys who have complied with the training requirements and
96 shall enforce the provisions of this subsection. Should an
97 attorney fail to complete the annual training requirement or fail
98 to attend the required training within six (6) months of being
99 appointed to a youth court case, the attorney shall be
100 disqualified to serve, and the youth court shall immediately
101 terminate the representation and appoint another attorney.
102 Attorneys appointed by a youth court to five (5) or fewer cases a
103 year are exempt from the requirements of this subsection.

104 (4) Attorneys for all parties, including the child's
105 attorney, shall owe the duties of undivided loyalty,
106 confidentiality and competent representation to the party client
107 pursuant to the Mississippi Rules of Professional Conduct.

108 (5) An attorney shall enter his appearance on behalf of a
109 party in the proceeding by filing a written notice of appearance
110 with the youth court, by filing a pleading, notice or motion
111 signed by counsel or by appearing in open court and advising the
112 youth court that he is representing a party. After counsel has
113 entered his appearance, he shall be served with copies of all
114 subsequent pleadings, motions and notices required to be served on
115 the party he represents. An attorney who has entered his
116 appearance shall not be permitted to withdraw from the case until
117 a timely appeal, if any, has been decided, except by leave of the
118 court then exercising jurisdiction of the cause after notice of



his intended withdrawal is served by him on the party he represents.

(6) Each designee appointed by a youth court judge shall be subject to the Code of Judicial Conduct and shall govern himself or herself accordingly.

(7) The Department of Child Protection Services shall be a necessary party at all stages of the proceedings involving a child for whom the department has custody, including, but not limited to, * * * shelter, adjudicatory, disposition, permanency, termination of parental rights and adoption hearings.

(8) The Department of Child Protection Services shall have the right to hire agency counsel to represent the department, or to * * * be represented by counsel from the Attorney General's Office, at all stages of the proceedings involving a child for whom the department has custody of or may be awarded custody of, including, but not limited to, * * * shelter, adjudicatory disposition, permanency, termination of parental rights and adoption hearings.

SECTION 2. Section 93-15-107, Mississippi Code of 1972, is amended as follows:

93-15-107. (1) (a) Involuntary termination of parental rights proceedings are commenced upon the filing of a petition under this chapter. The petition may be filed by any interested person, or any agency, institution or person holding custody of



the child. The simultaneous filing of a petition for adoption is not a prerequisite for filing a petition under this chapter.

(b) The proceeding shall be triable, either in term time or vacation, thirty (30) days after personal service of process to any necessary party or, for a necessary party whose address is unknown after diligent search, thirty (30) days after the date of the first publication of service of process by publication that complies with the Mississippi Rules of Civil Procedure.

(c) Necessary parties to a termination of parental rights action shall include the mother of the child, the legal father of the child, the putative father of the child when known, and any agency, institution or person holding custody of the child. If the child is twelve (12) years or older at the time of the hearing, a summons must be issued and served upon the minor child, together with a copy of the petition, not less than seven (7) days before the hearing. The minor child shall be represented by counsel throughout the proceedings. The court shall appoint an attorney for any minor child who is unrepresented, so the court has the benefit of knowing the child's stated interest. If the child is fourteen (14) years or older at the time of the hearing, the child's preferences, if any, regarding the termination of parental rights shall be considered by the court. The absence of a necessary party who has been properly served does not preclude



the court from conducting the hearing or rendering a final judgment.

(d) A guardian ad litem shall be appointed to protect the best interest of the child, except that the court, in its discretion, may waive this requirement when a parent executes a written voluntary release to terminate parental rights.

(i) The guardian ad litem * * * shall be paid a reasonable fee as determined and assessed in the discretion of the court.

(ii) A guardian ad litem appointed for a child who is in the custody of, or under the supervision of, the Department of Child Protection Services pursuant to youth court proceedings shall be paid a reasonable fee not to exceed One Thousand Two Hundred Dollars (\$1,200.00) per matter to be paid in compliance with federal funding guidelines or a specific state appropriation for such services as determined by the Department of Child Protection Services. Within a reasonable time after the conclusion of the matter, but no more than twenty-five (25) days after the termination of parental rights hearing, the guardian ad litem shall submit:

1. A detailed bill for services rendered; and

2. A certification on the record from the court that the guardian ad litem provided representation to protect the best interests of the child, that the matter has been



192 concluded that to the best of his or her knowledge the requested
193 fee is reasonable based on the services provided.

194 (e) The style of the case shall not include the child's
195 name when the child is not the party plaintiff or petitioner.

196 (2) Voluntary termination of parental rights by written
197 voluntary release is governed by Section 93-15-111.

198 (3) In all cases involving termination of parental rights, a
199 minor parent shall be served with process as an adult.

200 (4) The court may waive service of process if an adoptive
201 child was born in a foreign country, put up for adoption in the
202 birth country, and has been legally admitted into this country.

203 (5) The clerk shall docket cases seeking relief under this
204 chapter as priority cases. The assigned judge shall be
205 immediately notified when a case is filed in order to provide for
206 expedited proceedings.

207 (6) (a) Once the petition for termination of parental
208 rights is filed with the court of competent jurisdiction, the
209 court shall hold a hearing on the petition within ninety (90)
210 calendar days of the date the petition is filed, absent
211 extraordinary circumstances.

212 (b) For purposes of this subsection, the
213 ninety-calendar-day time period will commence when perfected
214 service is made on the parents.

215 (c) For purposes of this subsection, extraordinary
216 circumstances include:



217 (i) The Mississippi Supreme Court orders the
218 suspension of in-person court proceedings; or
219 (ii) One (1) of the following has occurred:
220 1. The President of the United States has
221 declared a national emergency; or
222 2. The Governor has declared a state of
223 emergency or a statewide public health emergency; or
224 (iii) If the best interest of the child is served
225 and the chancellor makes specific findings of such.
226 **SECTION 3.** This act shall take effect and be in force from
227 and after July 1, 2025.

