

By: Senator(s) Bryan

To: Judiciary, Division A

SENATE BILL NO. 2461

1 AN ACT TO AMEND SECTION 43-21-609, MISSISSIPPI CODE OF 1972,
2 TO DELETE PROVISIONS RELATED TO DURABLE LEGAL CUSTODY; TO AMEND
3 SECTION 43-21-613, MISSISSIPPI CODE OF 1972, TO AUTHORIZE DURABLE
4 LEGAL GUARDIANSHIP; TO DELETE PROVISIONS RELATED TO DURABLE LEGAL
5 CUSTODY; TO AMEND SECTIONS 43-21-651 AND 43-21-105, MISSISSIPPI
6 CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

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

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

13 (a) Release the child without further action;

14 (b) Place the child in the custody of his parents, a
15 relative or other person subject to any conditions and limitations
16 as the court may prescribe * * *;

17 (c) (i) Grant durable legal relative guardianship to a
18 relative or fictive kin licensed as a foster parent if the
19 licensed relative foster parent or licensed fictive kin foster
20 parent exercised physical custody of the child for at least six



(6) months before the grant of durable legal relative guardianship and the Department of Child Protection Services had legal custody or exercised supervision of the child for at least six (6) months. In order to establish durable legal relative guardianship, the youth court must find the following:

1. That reunification has been determined to be inappropriate;

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

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

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

(d) Order terms of treatment calculated to assist the child and the child's parent, guardian or custodian which are



within the ability of the parent, guardian or custodian to perform;

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

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

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

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

(g) If the court makes a finding that custody is necessary as defined in Section 43-21-301(3)(b), and that the child, in the action pending before the youth court had not previously been taken into custody, the disposition order shall recite that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the



best interests of the child, and unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), the order also must state:

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

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

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

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

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

43-21-613. (1) If the youth court finds, after a hearing which complies with the sections governing adjudicatory hearings,



that the terms of a delinquency or child in need of supervision disposition order, probation or parole have been violated, the youth court may, in its discretion, revoke the original disposition and make any disposition which it could have originally ordered. The hearing shall be initiated by the filing of a petition that complies with the sections governing petitions in this chapter and that includes a statement of the youth court's original disposition order, probation or parole, the alleged violation of that order, probation or parole, and the facts which show the violation of that order, probation or parole. Summons shall be served in the same manner as summons for an adjudicatory hearing.

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

(3) (a) All disposition orders for supervision, probation or placement of a child with an individual or an agency shall be reviewed by the youth court judge or referee at least annually to determine if continued placement, probation or supervision is in the best interest of the child or the public. For children who



121 have been adjudicated abused or neglected, except for those
122 children for which a different timeframe is provided under Section
123 43-21-603(7), the youth court shall conduct a permanency hearing
124 within one hundred twenty (120) days or every sixty (60) days for
125 children under three (3) years of age after the earlier of:

126 (i) An adjudication that the child has been abused
127 or neglected; or

128 (ii) The date of the child's removal from the
129 allegedly abusive or neglectful custodian/parent. Notice of such
130 hearing shall be given in accordance with the provisions of
131 Section 43-21-505(5). In conducting the hearing, the judge or
132 referee shall require a written report and may require information
133 or statements from the child's youth court counselor, parent,
134 guardian or custodian, which includes, but is not limited to, an
135 evaluation of the child's progress and recommendations for further
136 supervision or treatment. The judge or referee shall, at the
137 permanency hearing determine the future status of the child,
138 including, but not limited to, whether the child should be
139 returned to the parent(s) or placed with suitable relatives,
140 placed for adoption, placed for the purpose of establishing
141 durable legal custody or should, because of the child's special
142 needs or circumstances, be continued in foster care on a permanent
143 or long-term basis. If the child is in an out-of-state placement,
144 the hearing shall determine whether the out-of-state placement
145 continues to be appropriate and in the best interest of the child.



At the permanency hearing the judge or referee shall determine, and the youth court order shall recite that reasonable efforts were made by the Department of Child Protection Services to finalize the child's permanency plan that was in effect on the date of the permanency hearing. The judge or referee may find that reasonable efforts to maintain the child within his home shall not be required in accordance with Section 43-21-603(7)(c), and that the youth court shall continue to conduct permanency hearings for a child who has been adjudicated abused or neglected, at least annually thereafter, for as long as the child remains in the custody of the Mississippi Department of Child Protection Services.

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

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

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

(c) The provisions of this subsection shall also apply to review of cases involving a dependent child; however, such reviews shall take place not less frequently than once each one hundred eighty (180) days, or upon the request of the child's



attorney, a parent's attorney, or a parent as deemed appropriate by the youth court in protecting the best interests of the child. A dependent child shall be ordered by the youth court judge or referee to be returned to the custody and home of the child's parent, guardian or custodian unless the judge or referee, upon such review, makes a written finding that the return of the child to the home would be contrary to the child's best interests.

* * *

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

SECTION 3. Section 43-21-651, Mississippi Code of 1972, is amended as follows:

43-21-651. (1) (a) The court to which appeals may be taken from final orders or decrees of the youth court shall be the Supreme Court of Mississippi pursuant to the Rules of Appellate Procedure. Final orders in youth court include orders that grant * * * durable legal relative guardianship, transfer jurisdiction over the minor child to another court, such as for an adoption, or otherwise terminate the jurisdiction of the youth court over the minor child. All factual findings, legal determinations, and adjudication of issues by the youth court prior to the time the final order is entered are preserved for appellate review and any common law to the contrary is expressly abrogated. Any matters adjudicated by the youth court through interim orders such as adjudication/disposition orders, or



196 permanency review orders, may be only appealed through the
197 interlocutory appeal process provided by the Rules of Appellate
198 Procedure.

199 (b) The rule of construction that statutes in
200 derogation of the common law are to be strictly construed shall
201 have no application to this subsection.

202 (2) In any case wherein an appeal is desired, written notice
203 of intention to appeal shall be filed with the youth court clerk
204 within the time, and costs in the youth court and the filing fee
205 in the Supreme Court shall be paid, as is otherwise required for
206 appeals to the Supreme Court. If the appellant shall make
207 affidavit that he is unable to pay such costs and filing fee, he
208 shall have an appeal without prepayment of court costs and filing
209 fee. Only the initials of the child shall appear on the record on
210 appeal.

211 (3) The pendency of an appeal shall not suspend the order or
212 decree of the youth court regarding a child, nor shall it
213 discharge the child from the custody of that court or of the
214 person, institution or agency to whose care such child shall have
215 been committed, unless the youth court or Supreme Court shall so
216 order. If appellant desires to appeal with supersedeas, the
217 matter first shall be presented to the youth court. If refused,
218 the youth court shall forthwith issue a written order stating the
219 reasons for the denial, which order shall be subject to review by
220 the Supreme Court. If the Supreme Court does not dismiss the



proceedings and discharge the child, it shall affirm or modify or reverse the order of the youth court and remand the child to the jurisdiction of the youth court for placement and supervision in accordance with its order, and thereafter the child shall be and remain under the jurisdiction of the youth court in the same manner as if the youth court had made the order without an appeal having been taken.

(4) Appeals from the youth court shall be preference cases in the Supreme Court.

SECTION 4. Section 43-21-105, Mississippi Code of 1972, is amended as follows:

43-21-105. The following words and phrases, for purposes of this chapter, shall have the meanings ascribed herein unless the context clearly otherwise requires:

(a) "Youth court" means the Youth Court Division.

(b) "Judge" means the judge of the Youth Court Division.

(c) "Designee" means any person that the judge appoints to perform a duty which this chapter requires to be done by the judge or his designee. The judge may not appoint a person who is involved in law enforcement or who is an employee of the Mississippi Department of Human Services or the Mississippi Department of Child Protection Services to be his designee.

(d) "Child" and "youth" are synonymous, and each means a person who has not reached his eighteenth birthday. A child who



has not reached his eighteenth birthday and is on active duty for a branch of the armed services or is married is not considered a "child" or "youth" for the purposes of this chapter.

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

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

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

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

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

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

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



270 (i) Is habitually disobedient of reasonable and
271 lawful commands of his parent, guardian or custodian and is
272 ungovernable; or

273 (ii) While being required to attend school,
274 willfully and habitually violates the rules thereof or willfully
275 and habitually absents himself therefrom; or

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

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

278 (1) "Neglected child" means a child:

279 (i) Whose parent, guardian or custodian or any
280 person responsible for his care or support, neglects or refuses,
281 when able so to do, to provide for him proper and necessary care
282 or support, or education as required by law, or medical, surgical,
283 or other care necessary for his well-being; however, a parent who
284 withholds medical treatment from any child who in good faith is
285 under treatment by spiritual means alone through prayer in
286 accordance with the tenets and practices of a recognized church or
287 religious denomination by a duly accredited practitioner thereof
288 shall not, for that reason alone, be considered to be neglectful
289 under any provision of this chapter; or

290 (ii) Who is otherwise without proper care,
291 custody, supervision or support; or

292 (iii) Who, for any reason, lacks the special care
293 made necessary for him by reason of his mental condition, whether



the mental condition is having mental illness or having an intellectual disability; or

(iv) Who is not provided by the child's parent, guardian or custodian, with food, clothing, or shelter necessary to sustain the life or health of the child, excluding such failure caused primarily by financial inability unless relief services have been offered and refused and the child is in imminent risk of harm.

(m) "Abused child" means a child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused, upon the child, sexual abuse, sexual exploitation, commercial sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment. However, physical discipline, including spanking, performed on a child by a parent, guardian or custodian in a reasonable manner shall not be deemed abuse under this section. "Abused child" also means a child who is or has been trafficked within the meaning of the Mississippi Human Trafficking Act by any person, without regard to the relationship of the person to the child.

(n) "Sexual abuse" means obscene or pornographic photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances



which indicate that the child's health or welfare is harmed or threatened.

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

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

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

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

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

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

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



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

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

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

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

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

(v) "Any person responsible for care or support" means the person who is providing for the child at a given time. This term shall include, but is not limited to, stepparents, foster parents, relatives, nonlicensed babysitters or other similar persons responsible for a child and staff of residential care facilities and group homes that are licensed by the Department of Human Services or the Department of Child Protection Services.

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

(x) "Out-of-home" setting means the temporary supervision or care of children by the staff of licensed day care



centers, the staff of public, private and state schools, the staff of juvenile detention facilities, the staff of unlicensed residential care facilities and group homes and the staff of, or individuals representing, churches, civic or social organizations.

* * *

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

(* * *z) "Financially able" means a parent or child who is ineligible for a court-appointed attorney.

(* * *aa) "Assessment" means an individualized examination of a child to determine the child's psychosocial needs and problems, including the type and extent of any mental health, substance abuse or co-occurring mental health and substance abuse disorders and recommendations for treatment. The term includes, but is not limited to, a drug and alcohol, psychological or psychiatric evaluation, records review, clinical interview or the administration of a formal test and instrument.

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



392 (* * *cc) "Durable legal relative guardianship" means
393 the legal status created by a youth court order that conveys the
394 physical and legal custody of a child or children by durable legal
395 guardianship to a relative or fictive kin who is licensed as a
396 foster or resource parent.

397 (* * *dd) "Relative" means a person related to the
398 child by affinity or consanguinity within the third degree.

399 (* * *ee) "Fictive kin" means a person not related to
400 the child legally or biologically but who is considered a relative
401 due to a significant, familial-like and ongoing relationship with
402 the child and family.

403 (* * *ff) "Reasonable efforts" means the exercise of
404 reasonable care and due diligence by the Department of Human
405 Services, the Department of Child Protection Services, or any
406 other appropriate entity or person to use services appropriate to
407 the child's background, accessible, and available to meet the
408 individualized needs of the child and child's family to prevent
409 removal and reunify the family as soon as safely possible
410 consistent with the best interests of the child. Reasonable
411 efforts must be made in collaboration with the family and must
412 address the individualized needs of the family that brought the
413 child to the attention of the Department of Child Protection
414 Services and must not consist of required services that are not
415 related to the family's needs.



416 (* * *gg) "Commercial sexual exploitation" means any
417 sexual act or crime of a sexual nature, which is committed against
418 a child for financial or economic gain, to obtain a thing of value
419 for quid pro quo exchange of property or for any other purpose.

420 **SECTION 5.** This act shall take effect and be in force from
421 and after July 1, 2025.

