

SENATE BILL NO. 2770

1 AN ACT TO AMEND SECTION 43-21-201, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE ANY PARTY TO RAISE A CONFLICT OF INTEREST; TO REVISE
3 THE PROVISION AUTHORIZING THE DEPARTMENT OF CHILD PROTECTION
4 SERVICES TO BE REPRESENTED BY COUNSEL; TO AMEND SECTION 93-15-107,
5 MISSISSIPPI CODE OF 1972, TO PROVIDE A STATUTORY FEE STRUCTURE FOR
6 GUARDIAN AD LITEMS TO BE ADMINISTERED BY THE DEPARTMENT OF CHILD
7 PROTECTION SERVICES; AND FOR RELATED PURPOSES.

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

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

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

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

21 revocation proceedings; and post-disposition matters. If
22 indigent, the child shall have the right to have counsel appointed
23 for him by the youth court.

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

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

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



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

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

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

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

68 (iv) Upon a determination of indigency and a
69 finding by the court that the fund does not have sufficient funds
70 to pay reasonable attorney's fees and expenses incurred at the



71 trial court level and that state funds have been exhausted, the
72 court may order the county to pay the reasonable fees and expenses
73 until the state provides funding for counsel.

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

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



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

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

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



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

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

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

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

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

141 93-15-107. (1) (a) Involuntary termination of parental
142 rights proceedings are commenced upon the filing of a petition
143 under this chapter. The petition may be filed by any interested
144 person, or any agency, institution or person holding custody of

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

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

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

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

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

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

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

189 1. A detailed bill for services rendered; and
190 2. A certification on the record from the
191 court that the guardian ad litem provided representation to
192 protect the best interests of the child, that the matter has been



193 concluded, and that to the best of his or her knowledge the bill
194 is reasonable based on the services provided.

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

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

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

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

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

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

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

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



