

By: Senator(s) Wiggins

To: Judiciary, Division A

## 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



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

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

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

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

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



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

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

(3) An attorney appointed to represent a child shall be required to complete annual juvenile justice training that is approved by the Mississippi Office of State Public Defender and the Mississippi Commission on Continuing Legal Education. An attorney appointed to represent a parent or guardian in an abuse, neglect or termination of parental rights proceeding shall be required to complete annual training that is approved by the Office of State Public Defender and the Mississippi Commission on Continuing Legal Education. The Mississippi Office of State Public Defender and the Mississippi Commission on Continuing Legal Education shall determine the amount of juvenile justice training 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



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 an appropriation by the Legislature 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





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:



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

