

By: Burton (By Request)

To: Juvenile Justice

SENATE BILL NO. 2218

1 AN ACT TO AMEND SECTION 43-21-105, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A SECOND OFFENSE OF TRUANCY ON THE PART OF A CHILD
3 SHALL CONSTITUTE A DELINQUENT ACT; TO AMEND SECTION 37-13-91,
4 MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 43-21-105, Mississippi Code of 1972, is
7 amended as follows:

8 43-21-105. The following words and phrases, for purposes of
9 this chapter, shall have the meanings ascribed herein unless the
10 context clearly otherwise requires:

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

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

14 (c) "Designee" means any person that the judge appoints
15 to perform a duty which this chapter requires to be done by the
16 judge or his designee. The judge may not appoint a person who is
17 involved in law enforcement to be his designee.

18 (d) "Child" and "youth" are synonymous, and each means
19 a person who has not reached his eighteenth birthday. A child who
20 has not reached his eighteenth birthday and is on active duty for
21 a branch of the armed services or is married is not considered a
22 "child" or "youth" for the purposes of this chapter.

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

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

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

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

33 (i) "Delinquent child" means a child who has reached
34 his tenth birthday and who has committed a delinquent act or,
35 while being required to attend an alternative school program
36 provided under Section 37-13-92, willfully and habitually absents
37 himself therefrom.

38 (j) "Delinquent act" is any act, which if committed by
39 an adult, is designated as a crime under state or federal law, or
40 municipal or county ordinance other than offenses punishable by
41 life imprisonment or death. A delinquent act includes escape from
42 lawful detention, a second violation on the part of the child of
43 the Mississippi School Compulsory Attendance Law, violations of
44 the Uniform Controlled Substances Law and violent behavior.

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

48 (i) Is habitually disobedient of reasonable and
49 lawful commands of his parent, guardian or custodian and is
50 ungovernable; or

51 (ii) While being required to attend school,
52 willfully and habitually violates the rules thereof or willfully
53 and habitually absents himself therefrom; or

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

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

56 (l) "Neglected child" means a child:

57 (i) Whose parent, guardian or custodian or any
58 person responsible for his care or support, neglects or refuses,
59 when able so to do, to provide for him proper and necessary care
60 or support, or education as required by law, or medical, surgical,
61 or other care necessary for his well-being; provided, however, a
62 parent who withholds medical treatment from any child who in good
63 faith is under treatment by spiritual means alone through prayer
64 in accordance with the tenets and practices of a recognized church
65 or religious denomination by a duly accredited practitioner
66 thereof shall not, for that reason alone, be considered to be
67 neglectful under any provision of this chapter; or

68 (ii) Who is otherwise without proper care,
69 custody, supervision or support; or

70 (iii) Who, for any reason, lacks the special care
71 made necessary for him by reason of his mental condition, whether
72 said mental condition be mentally retarded or mentally ill; or

73 (iv) Who, for any reason, lacks the care necessary
74 for his health, morals or well-being.

75 (m) "Abused child" means a child whose parent,
76 guardian or custodian or any person responsible for his care or
77 support, whether legally obligated to do so or not, has caused or
78 allowed to be caused upon said child sexual abuse, sexual
79 exploitation, emotional abuse, mental injury, nonaccidental
80 physical injury or other maltreatment. Provided, however, that
81 physical discipline, including spanking, performed on a child by a

82 parent, guardian or custodian in a reasonable manner shall not be
83 deemed abuse under this section.

84 (n) "Sexual abuse" means obscene or pornographic
85 photographing, filming or depiction of children for commercial
86 purposes, or the rape, molestation, incest, prostitution or other
87 such forms of sexual exploitation of children under circumstances
88 which indicate that the child's health or welfare is harmed or
89 threatened.

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

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

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

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

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

109 (t) "Shelter" means care of children in physically

110 nonrestrictive facilities.

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

113 (i) All youth court records as defined in Section
114 43-21-251;

115 (ii) All social records as defined in Section
116 43-21-253;

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

119 (iv) All agency records as defined in Section
120 43-21-257; and

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

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

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

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

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

142 (y) "Durable legal custody" means the legal status
143 created by a court order which gives the durable legal custodian
144 the responsibilities of physical possession of the child and the
145 duty to provide him with care, nurture, welfare, food, shelter,
146 education and reasonable medical care. All these duties as
147 enumerated are subject to the residual rights and responsibilities
148 of the natural parent(s) or guardian(s) of the child or children.

149 SECTION 2. Section 37-13-91, Mississippi Code of 1972, is
150 amended as follows:[CRG1]

151 37-13-91. (1) This section shall be referred to as the
152 "Mississippi Compulsory School Attendance Law."

153 (2) The following terms as used in this section are defined
154 as follows:

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

158 (b) "Guardian" means a guardian of the person of a
159 child, other than a parent, who is legally appointed by a court of
160 competent jurisdiction.

161 (c) "Custodian" means any person having the present
162 care or custody of a child, other than a parent or guardian of the
163 child.

164 (d) "School day" means not less than five (5) and not
165 more than eight (8) hours of actual teaching in which both

166 teachers and pupils are in regular attendance for scheduled
167 schoolwork.

168 (e) "School" means any public school in this state or
169 any nonpublic school in this state which is in session each school
170 year for at least one hundred eighty (180) school days, except
171 that the "nonpublic" school term shall be the number of days that
172 each school shall require for promotion from grade to grade.

173 (f) "Compulsory-school-age child" means a child who has
174 attained or will attain the age of six (6) years on or before
175 September 1 of the calendar year and who has not attained the age
176 of seventeen (17) years on or before September 1 of the calendar
177 year.

178 (g) "School attendance officer" means a person employed
179 by the State Department of Education pursuant to Section 37-13-89.

180 (h) "Appropriate school official" means the
181 superintendent of the school district or his designee or, in the
182 case of a nonpublic school, the principal or the headmaster.

183 (i) "Nonpublic school" means an institution for the
184 teaching of children, consisting of a physical plant, whether
185 owned or leased, including a home, instructional staff members and
186 students, and which is in session each school year. This
187 definition shall include, but not be limited to, private, church,
188 parochial and home instruction programs.

189 (3) A parent, guardian or custodian of a
190 compulsory-school-age child in this state shall cause the child to
191 enroll in and attend a public school or legitimate nonpublic
192 school for the period of time that the child is of compulsory
193 school age, except under the following circumstances:

194 (a) When a compulsory-school-age child is physically,
195 mentally or emotionally incapable of attending school as
196 determined by the appropriate school official based upon
197 sufficient medical documentation.

198 (b) When a compulsory-school-age child is enrolled in
199 and pursuing a course of special education, remedial education or
200 education for handicapped or physically or mentally disadvantaged
201 children.

202 (c) When a compulsory-school-age child is being
203 educated in a legitimate home instruction program.

204 The parent, guardian or custodian of a compulsory-school-age
205 child described in this subsection, or the parent, guardian or
206 custodian of a compulsory-school-age child attending any nonpublic
207 school, or the appropriate school official for any or all children
208 attending a nonpublic school shall complete a "certificate of
209 enrollment" in order to facilitate the administration of this
210 section.

211 The form of the certificate of enrollment shall be prepared
212 by the Office of Compulsory School Attendance Enforcement of the
213 State Department of Education and shall be designed to obtain the
214 following information only:

215 (i) The name, address, telephone number and date
216 of birth of the compulsory-school-age child;

217 (ii) The name, address and telephone number of the
218 parent, guardian or custodian of the compulsory-school-age child;

219 (iii) A simple description of the type of
220 education the compulsory-school-age child is receiving and, if the
221 child is enrolled in a nonpublic school, the name and address of

222 the school; and

223 (iv) The signature of the parent, guardian or
224 custodian of the compulsory-school-age child or, for any or all
225 compulsory-school-age child or children attending a nonpublic
226 school, the signature of the appropriate school official and the
227 date signed.

228 The certificate of enrollment shall be returned to the school
229 attendance officer where the child resides on or before September
230 15 of each year. Any parent, guardian or custodian found by the
231 school attendance officer to be in noncompliance with this section
232 shall comply, after written notice of the noncompliance by the
233 school attendance officer, with this subsection within ten (10)
234 days after the notice or be in violation of this section.

235 However, in the event the child has been enrolled in a public
236 school within fifteen (15) calendar days after the first day of
237 the school year as required in subsection (6), the parent or
238 custodian may at a later date enroll the child in a legitimate
239 nonpublic school or legitimate home instruction program and send
240 the certificate of enrollment to the school attendance officer and
241 be in compliance with this subsection.

242 For the purposes of this subsection, a legitimate nonpublic
243 school or legitimate home instruction program shall be those not
244 operated or instituted for the purpose of avoiding or
245 circumventing the compulsory attendance law.

246 (4) An "unlawful absence" is an absence during a school day
247 by a compulsory-school-age child, which absence is not due to a
248 valid excuse for temporary nonattendance. Days missed from school
249 due to disciplinary suspension shall not be considered an

250 "excused" absence under this section. This subsection shall not
251 apply to children enrolled in a nonpublic school.

252 Each of the following shall constitute a valid excuse for
253 temporary nonattendance of a compulsory-school-age child enrolled
254 in a public school, provided satisfactory evidence of the excuse
255 is provided to the superintendent of the school district or his
256 designee:

257 (a) An absence is excused when the absence results from
258 the compulsory-school-age child's attendance at an authorized
259 school activity with the prior approval of the superintendent of
260 the school district or his designee. These activities may include
261 field trips, athletic contests, student conventions, musical
262 festivals and any similar activity.

263 (b) An absence is excused when the absence results from
264 illness or injury which prevents the compulsory-school-age child
265 from being physically able to attend school.

266 (c) An absence is excused when isolation of a
267 compulsory-school-age child is ordered by the county health
268 officer, by the State Board of Health or appropriate school
269 official.

270 (d) An absence is excused when it results from the
271 death or serious illness of a member of the immediate family of a
272 compulsory-school-age child. The immediate family members of a
273 compulsory-school-age child shall include children, spouse,
274 grandparents, parents, brothers and sisters, including
275 stepbrothers and stepsisters.

276 (e) An absence is excused when it results from a
277 medical or dental appointment of a compulsory-school-age child

278 where an approval of the superintendent of the school district or
279 his designee is gained before the absence, except in the case of
280 emergency.

281 (f) An absence is excused when it results from the
282 attendance of a compulsory-school-age child at the proceedings of
283 a court or an administrative tribunal if the child is a party to
284 the action or under subpoena as a witness.

285 (g) An absence may be excused if the religion to which
286 the compulsory-school-age child or the child's parents adheres,
287 requires or suggests the observance of a religious event. The
288 approval of the absence is within the discretion of the
289 superintendent of the school district or his designee, but
290 approval should be granted unless the religion's observance is of
291 such duration as to interfere with the education of the child.

292 (h) An absence may be excused when it is demonstrated
293 to the satisfaction of the superintendent of the school district
294 or his designee that the purpose of the absence is to take
295 advantage of a valid educational opportunity such as travel
296 including vacations or other family travel. Approval of the
297 absence must be gained from the superintendent of the school
298 district or his designee before the absence, but the approval
299 shall not be unreasonably withheld.

300 (i) An absence may be excused when it is demonstrated
301 to the satisfaction of the superintendent of the school district
302 or his designee that conditions are sufficient to warrant the
303 compulsory-school-age child's nonattendance. However, no absences
304 shall be excused by the school district superintendent or his
305 designee when any student suspensions or expulsions circumvent the

306 intent and spirit of the compulsory attendance law.

307 (5) Any compulsory-school-age child subject to the
308 provisions of this section who is adjudicated to be a truant for a
309 second or subsequent offense of truancy may be committed to the
310 appropriate state training school. Any parent, guardian or
311 custodian of a compulsory-school-age child subject to this section
312 who refuses or willfully fails to perform any of the duties
313 imposed upon him or her under this section or who intentionally
314 falsifies any information required to be contained in a
315 certificate of enrollment, shall be guilty of contributing to the
316 neglect of a child and, upon conviction, shall be punished in
317 accordance with Section 97-5-39.

318 Upon prosecution of a parent, guardian or custodian of a
319 compulsory-school-age child for violation of this section, the
320 presentation of evidence by the prosecutor that shows that the
321 child has not been enrolled in school within eighteen (18)
322 calendar days after the first day of the school year of the public
323 school which the child is eligible to attend, or that the child
324 has accumulated twelve (12) unlawful absences during the school
325 year at the public school in which the child has been enrolled,
326 shall establish a prima facie case that the child's parent,
327 guardian or custodian is responsible for the absences and has
328 refused or willfully failed to perform the duties imposed upon him
329 or her under this section. However, no proceedings under this
330 section shall be brought against a parent, guardian or custodian
331 of a compulsory-school-age child unless the school attendance
332 officer has contacted promptly the home of the child and has
333 provided written notice to the parent, guardian or custodian of

334 the requirement for the child's enrollment or attendance.

335 (6) If a compulsory-school-age child has not been enrolled
336 in a school within fifteen (15) calendar days after the first day
337 of the school year of the school which the child is eligible to
338 attend or the child has accumulated five (5) unlawful absences
339 during the school year of the public school in which the child is
340 enrolled, the school district superintendent shall report, within
341 two (2) school days or within five (5) calendar days, whichever is
342 less, the absences to the school attendance officer. The State
343 Department of Education shall prescribe a uniform method for
344 schools to utilize in reporting the unlawful absences to the
345 school attendance officer. The superintendent, or his designee,
346 also shall report any student suspensions or student expulsions to
347 the school attendance officer when they occur.

348 (7) When a school attendance officer has made all attempts
349 to secure enrollment and/or attendance of a compulsory-school-age
350 child and is unable to effect the enrollment and/or attendance,
351 the attendance officer shall file a petition with the youth court
352 under Section 43-21-451 or shall file a petition in a court of
353 competent jurisdiction as it pertains to parent or child. The
354 youth court shall expedite a hearing to make an appropriate
355 adjudication and a disposition to ensure compliance with the
356 Compulsory School Attendance Law, and may order the child to
357 enroll or reenroll in school. The superintendent of the school
358 district to which the child is ordered may assign, in his
359 discretion, the child to the alternative school program of the
360 school established pursuant to Section 37-13-92.

361 (8) The State Board of Education shall adopt rules and

362 regulations for the purpose of reprimanding any school
363 superintendents who fail to timely report unexcused absences under
364 the provisions of this section.

365 (9) Notwithstanding any provision or implication herein to
366 the contrary, it is not the intention of this section to impair
367 the primary right and the obligation of the parent or parents, or
368 person or persons in loco parentis to a child, to choose the
369 proper education and training for such child, and nothing in this
370 section shall ever be construed to grant, by implication or
371 otherwise, to the State of Mississippi, any of its officers,
372 agencies or subdivisions any right or authority to control,
373 manage, supervise or make any suggestion as to the control,
374 management or supervision of any private or parochial school or
375 institution for the education or training of children, of any kind
376 whatsoever that is not a public school according to the laws of
377 this state; and this section shall never be construed so as to
378 grant, by implication or otherwise, any right or authority to any
379 state agency or other entity to control, manage, supervise,
380 provide for or affect the operation, management, program,
381 curriculum, admissions policy or discipline of any such school or
382 home instruction program.

383 SECTION 3. This act shall take effect and be in force from
384 and after July 1, 2000.