

By: Representative Flaggs

To: Juvenile Justice

HOUSE BILL NO. 1091
(As Passed the House)

1 AN ACT TO AMEND SECTION 43-21-301, MISSISSIPPI CODE OF 1972,
2 TO EXEMPT CHILDREN IN NEED OF SUPERVISION FROM THE REASONABLE
3 EFFORTS REQUIREMENT; TO REQUIRE THAT CUSTODY ORDERS MUST RECITE
4 THAT IT IS IN THE BEST INTERESTS OF CERTAIN CHILDREN TO BE PLACED
5 IN FOSTER CARE; TO REQUIRE THAT IN CERTAIN SITUATIONS, REASONABLE
6 EFFORTS BE MADE TO REUNIFY A CHILD WITH HIS OR HER FAMILY; TO
7 AMEND SECTION 43-21-309, MISSISSIPPI CODE OF 1972, TO REQUIRE
8 SHELTER HEARING ORDERS TO RECITE THAT IT IS IN THE BEST INTERESTS
9 OF CERTAIN CHILDREN TO BE PLACED IN FOSTER CARE; TO AMEND SECTION
10 43-21-609, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT CUSTODY
11 ORDERS AND REASONABLE EFFORTS FINDINGS MUST RECITE THAT IT IS IN
12 THE BEST INTERESTS OF CERTAIN CHILDREN TO BE PLACED IN FOSTER
13 CARE; TO AMEND SECTION 43-21-613, MISSISSIPPI CODE OF 1972, TO
14 REVISE THE TIME FRAME FROM WHICH THE COURT MUST CONDUCT A
15 PERMANENCY HEARING; TO REQUIRE THAT ORDERS IN A PERMANENCY HEARING
16 MUST RECITE THAT REASONABLE EFFORTS WERE MADE TO FINALIZE A
17 CHILD'S PERMANENCY PLAN; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** Section 43-21-301, Mississippi Code of 1972, is
20 amended as follows:

21 43-21-301. (1) No court other than the youth court shall
22 issue an arrest warrant or custody order for a child in a matter
23 in which the youth court has exclusive original jurisdiction but
24 shall refer the matter to the youth court.

25 (2) Except as otherwise provided, no child in a matter in
26 which the youth court has exclusive original jurisdiction shall be
27 taken into custody by a law enforcement officer, the Department of
28 Human Services, or any other person unless the judge or his
29 designee has issued a custody order to take the child into
30 custody.

31 (3) The judge or his designee may issue an order to a law
32 enforcement officer, the Department of Human Services, or any
33 suitable person to take a child into custody for a period not
34 longer than forty-eight (48) hours, excluding Saturdays, Sundays,

35 and statutory state holidays if it appears that there is probable
36 cause to believe that:

37 (a) The child is within the jurisdiction of the court;
38 and

39 (b) Custody is necessary; custody shall be deemed
40 necessary:

41 (i) When a child is endangered or any person would
42 be endangered by the child; or

43 (ii) To insure the child's attendance in court at
44 such time as required; or

45 (iii) When a parent, guardian or custodian is not
46 available to provide for the care and supervision of the child;
47 and

48 (c) There is no reasonable alternative to custody.

49 (4) The judge or his designee may order, orally or in
50 writing, the immediate release of any child in the custody of any
51 person or agency. Custody orders as provided by this chapter and
52 authorizations of temporary custody may be written or oral, but,
53 if oral, reduced to writing as soon as practicable. The written
54 order shall:

55 (a) Specify the name and address of the child, or, if
56 unknown, designate him or her by any name or description by which
57 he or she can be identified with reasonable certainty;

58 (b) Specify the age of the child, or, if unknown, that
59 he or she is believed to be of an age subject to the jurisdiction
60 of the youth court;

61 (c) Except in cases where the child is alleged to be a
62 delinquent child or a child in need of supervision, state that the
63 effect of the continuation of the child's residing within his or
64 her own home would be contrary to the welfare of the child, that
65 the placement of the child in foster care is in the best interests
66 of the child, and unless the reasonable efforts requirement is
67 bypassed under Section 43-21-603(7)(c), also state that * * * (i)

68 reasonable efforts have been made to maintain the child within his
69 or her own home, but that the circumstances warrant his removal
70 and there is no reasonable alternative to custody; or (ii) the
71 circumstances are of such an emergency nature that no reasonable
72 efforts have been made to maintain the child within his own home,
73 and that there is no reasonable alternative to custody. If the
74 court makes a finding in accordance with (ii) of this paragraph,
75 the court shall order that reasonable efforts be made towards the
76 reunification of the child with his or her family.

77 (d) State that the child shall be brought immediately
78 before the youth court or be taken to a place designated by the
79 order to be held pending review of the order;

80 (e) State the date issued and the youth court by which
81 the order is issued; and

82 (f) Be signed by the judge or his designee with the
83 title of his office.

84 (5) The taking of a child into custody shall not be
85 considered an arrest except for evidentiary purposes.

86 (6) (a) No child who has been accused or adjudicated of any
87 offense that would not be a crime if committed by an adult shall
88 be placed in secure detention or in an adult jail or lockup.
89 Further, no child who has been accused or adjudicated of an
90 offense that would not be a crime if committed by an adult shall
91 be held in a secure juvenile detention facility for a period in
92 excess of twenty-four (24) hours, excluding Saturdays, Sundays and
93 statutory state holidays, except that out-of-state runaways may be
94 held pending return to their home state.

95 (b) No accused or adjudicated juvenile offender, except
96 for an accused or adjudicated juvenile offender in cases where
97 jurisdiction is waived to the adult criminal court, shall be
98 detained or placed into custody of any adult jail or lockup for a
99 period in excess of six (6) hours.

100 (c) If any county violates the provisions of paragraph
101 (a) or (b) of this subsection, the state agency authorized to
102 allocate federal funds received pursuant to the Juvenile Justice
103 and Delinquency Prevention Act of 1974, 88 Stat. 2750 (codified in
104 scattered sections of 5, 18, 42 USCS), shall withhold the county's
105 share of such funds.

106 (d) Any county that does not have a facility in which
107 to detain its juvenile offenders in compliance with the provisions
108 of paragraphs (a) and (b) of this subsection may enter into a
109 contractual agreement with any county or municipality that does
110 have such a facility, or with the State of Mississippi, or with
111 any private entity that maintains a juvenile correctional
112 facility, or with the State of Mississippi, to detain or place
113 into custody the juvenile offenders of the county not having such
114 a facility.

115 (e) Notwithstanding the provisions of paragraphs (a),
116 (b), (c) and (d) of this subsection, all counties shall be allowed
117 a one-year grace period from March 27, 1993, to comply with the
118 provisions of this subsection.

119 **SECTION 2.** Section 43-21-309, Mississippi Code of 1972, is
120 amended as follows:

121 43-21-309. (1) A child who has been ordered or taken into
122 custody may be held in custody for longer than temporary custody
123 if:

124 (a) A written complaint or petition has been filed; and

125 (b) A court order has been entered for continued
126 custody following a review of that custody at a detention hearing
127 in delinquency and child in need of supervision cases and at a
128 shelter hearing in abuse and neglect cases.

129 (2) Reasonable oral or written notice of the time, place and
130 purpose of the hearing shall be given to the child; to his or her
131 parent, guardian or custodian; to his or her guardian ad litem, if
132 any; and to his or her counsel. If the parent, guardian or

133 custodian cannot be found, the youth court may hold the hearing in
134 the absence of the child's parent, guardian or custodian.

135 (3) At the detention or shelter hearing, all parties present
136 shall have the right to present evidence and cross-examine
137 witnesses produced by others. The youth court may, in its
138 discretion, limit the extent but not the right or presentation of
139 evidence and cross-examination of witnesses. The youth court may
140 receive any testimony and other evidence relevant to the necessity
141 for the continued custody of the child without regard to the
142 formal rules of evidence, including hearsay and opinion evidence.
143 All testimony shall be made under oath and may be in narrative
144 form.

145 (4) (a) At the conclusion of the detention or shelter
146 hearing, the youth court shall order that the child be released to
147 the custody of the child's parent, guardian or custodian unless
148 the youth court finds and the detention or shelter hearing order
149 recites that:

150 (i) There is probable cause that the youth court
151 has jurisdiction; and

152 (ii) Custody is necessary as defined in Section
153 43-21-301(3)(b).

154 (b) In the case of a shelter hearing, the shelter
155 hearing order shall further recite that the effect of the
156 continuation of the child's residing within his or her own home
157 would be contrary to the welfare of the child, that the placement
158 of the child in foster care is in the best interest of the child,
159 and, unless the reasonable efforts requirement is bypassed under
160 Section 43-21-603(7)(c), the order also must state:

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

164 (ii) The circumstances are of such an emergency
165 nature that no reasonable efforts have been made to maintain the

166 child within his own home, and there is no reasonable alternative
167 to custody.

168 (c) In the event that the court makes a finding in
169 accordance with subparagraph (ii), the court shall order that
170 reasonable efforts be made towards the reunification of the child
171 with his or her family * * *.

172 (5) The child with advice of counsel may waive in writing
173 the time of the detention hearing or the detention hearing itself.
174 The child's guardian ad litem, and parent, guardian or custodian,
175 and child may waive in writing the time of the shelter hearing or
176 the shelter hearing itself. If the child has not reached his
177 tenth birthday, the child's consent shall not be required.

178 (6) Any order placing a child into custody shall comply with
179 the requirements provided in Section 43-21-301.

180 **SECTION 3.** Section 43-21-609, Mississippi Code of 1972, is
181 amended as follows:

182 43-21-609. In neglect and abuse cases, the disposition order
183 may include any of the following alternatives, giving precedence
184 in the following sequence:

185 (a) Release the child without further action;

186 (b) Place the child in the custody of his parents, a
187 relative or other person subject to any conditions and limitations
188 as the court may prescribe. If the court finds that temporary
189 relative placement, adoption or foster care placement is
190 inappropriate, unavailable or otherwise not in the best interest
191 of the child, durable legal custody may be granted by the court to
192 any person subject to any limitations and conditions the court may
193 prescribe; such durable legal custody will not take effect unless
194 the child or children have been in the physical custody of the
195 proposed durable custodians for at least one (1) year under the
196 supervision of the Department of Human Services. The requirements
197 of Section 43-21-613 as to disposition review hearings does not
198 apply to those matters in which the court has granted durable

199 legal custody. In such cases, the Department of Human Services
200 shall be released from any oversight or monitoring
201 responsibilities;

202 (c) Order terms of treatment calculated to assist the
203 child and the child's parent, guardian or custodian which are
204 within the ability of the parent, guardian or custodian to
205 perform;

206 (d) Order youth court personnel, the Department of
207 Human Services or child care agencies to assist the child and the
208 child's parent, guardian or custodian to secure social or medical
209 services to provide proper supervision and care of the child;

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

212 (i) The Department of Human Services for
213 appropriate placement; or

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

221 (f) If the court makes a finding that custody is
222 necessary as defined in Section 43-21-301(3)(b), and that the
223 child, in the action pending before the youth court had not
224 previously been taken into custody, the disposition order shall
225 recite that the effect of the continuation of the child's residing
226 within his or her own home would be contrary to the welfare of the
227 child, that the placement of the child in foster care is in the
228 best interests of the child, and unless the reasonable efforts
229 requirement is bypassed under Section 43-21-603(7)(c), the order
230 also must state:

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

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

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

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

249 **SECTION 4.** Section 43-21-613, Mississippi Code of 1972, is
250 amended as follows:

251 43-21-613. (1) If the youth court finds, after a hearing
252 which complies with the sections governing adjudicatory hearings,
253 that the terms of a delinquency or child in need of supervision
254 disposition order, probation or parole have been violated, the
255 youth court may, in its discretion, revoke the original
256 disposition and make any disposition which it could have
257 originally ordered. The hearing shall be initiated by the filing
258 of a petition that complies with the sections governing petitions
259 in this chapter and that includes a statement of the youth court's
260 original disposition order, probation or parole, the alleged
261 violation of that order, probation or parole, and the facts which
262 show the violation of that order, probation or parole. Summons

263 shall be served in the same manner as summons for an adjudicatory
264 hearing.

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

273 (3) (a) Unless the youth court's jurisdiction has been
274 terminated, all disposition orders for supervision, probation or
275 placement of a child with an individual or an agency shall be
276 reviewed by the youth court judge or referee at least annually to
277 determine if continued placement, probation or supervision is in
278 the best interest of the child or the public. For children who
279 have been adjudicated abused or neglected, the youth court shall
280 conduct a permanency hearing within twelve (12) months after the
281 earlier of:

282 (i) An adjudication that the child has been abused
283 or neglected; or

284 (ii) The date of the child's removal from the
285 allegedly abusive or neglectful custodian/parent. Notice of such
286 hearing shall be given in accordance with the provisions of
287 Section 43-21-505(5). In conducting the hearing, the judge or
288 referee shall require a written report and may require information
289 or statements from the child's youth court counselor, parent,
290 guardian or custodian, which includes, but is not limited to, an
291 evaluation of the child's progress and recommendations for further
292 supervision or treatment. The judge or referee shall, at the
293 permanency hearing determine the future status of the child,
294 including, but not limited to, whether the child should be
295 returned to the parent(s) or placed with suitable relatives,

296 placed for adoption, placed for the purpose of establishing
297 durable legal custody or should, because of the child's special
298 needs or circumstances, be continued in foster care on a permanent
299 or long-term basis. If the child is in an out-of-state placement,
300 the hearing shall determine whether the out-of-state placement
301 continues to be appropriate and in the best interest of the child.
302 At the permanency hearing the judge or referee shall determine,
303 and the youth court order shall recite that reasonable efforts
304 were made by the Department of Human Services to finalize the
305 child's permanency plan that was in effect on the date of the
306 permanency hearing. The judge or referee may find that reasonable
307 efforts to maintain the child within his home shall not be
308 required in accordance with Section 43-21-603(7)(c), and that the
309 youth court shall continue to conduct permanency hearings for a
310 child who has been adjudicated abused or neglected, at least
311 annually thereafter, for as long as the child remains in the
312 custody of the Mississippi Department of Human Services.

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

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

318 (ii) The * * * Department of Human Services has
319 documented compelling and extraordinary reasons why termination of
320 parental rights would not be in the best interests of the child.

321 * * *

322 (c) The provisions of this subsection shall also apply
323 to review of cases involving a dependent child; however, such
324 reviews shall take place not less frequently than once each one
325 hundred eighty (180) days. A dependent child shall be ordered by
326 the youth court judge or referee to be returned to the custody and
327 home of the child's parent, guardian or custodian unless the judge
328 or referee, upon such review, makes a written finding that the

329 return of the child to the home would be contrary to the child's
330 best interests.

331 (d) Reviews are not to be conducted unless explicitly
332 ordered by the youth court concerning those cases in which the
333 court has granted durable legal custody. In such cases, the
334 Department of Human Services shall be released from any oversight
335 or monitoring responsibilities, and relieved of physical and legal
336 custody and supervision of the child.

337 **SECTION 5.** This act shall take effect and be in force from
338 and after July 1, 2004.