

By: Representative Carlton

To: Juvenile Justice;
Appropriations

HOUSE BILL NO. 757

1 AN ACT TO AMEND SECTION 43-21-111, MISSISSIPPI CODE OF 1972,
2 TO REQUIRE ALL COUNTIES TO REPLACE REFEREES WITH ELECTED PART-TIME
3 YOUTH COURT JUDGES TO HANDLE YOUTH COURT CASES; TO REQUIRE SUCH
4 ELECTED PART-TIME JUDGES TO RECEIVE THE SAME COMPENSATION AS
5 JUSTICE COURT JUDGES OF SUCH COUNTIES; TO AMEND SECTIONS 19-9-96,
6 43-21-121, 43-21-125, 43-21-405, 43-21-609 AND 43-21-613,
7 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED
8 PURPOSES.

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

10 **SECTION 1.** Section 43-21-111, Mississippi Code of 1972, is
11 amended as follows:

12 43-21-111. (1) In any county not having a county court or
13 family court and have judge-appointed regular or special referees,
14 such county shall replace all referees with elected part-time
15 youth court judges who shall be attorneys at law and members of
16 the bar in good standing to act in cases concerning children
17 within the jurisdiction of the youth court. All initially elected
18 part-time youth court judges shall be in office by January 1,
19 2008, and after the initial term of office expires the election
20 for such office shall occur during the normal election cycle for
21 counties.

22 (2) Any part-time youth court judges elected pursuant to
23 subsection (1) of this section shall be required to receive
24 judicial training approved by the Mississippi Judicial College and
25 shall be required to receive regular annual continuing education
26 in the field of juvenile justice. The amount of judicial training
27 and annual continuing education which shall be satisfactory to
28 fulfill the requirements of this section shall conform with the
29 amount prescribed by the Rules and Regulations for Mandatory
30 Continuing Judicial Education promulgated by the Supreme Court.

31 The Administrative Office of Courts shall maintain a roll of
32 part-time youth court judges elected under this section, shall
33 enforce the provisions of this subsection and shall maintain
34 records on all such part-time youth court judges regarding such
35 training. Should a part-time youth court judge miss two (2)
36 consecutive training sessions sponsored or approved by the
37 Mississippi Judicial College as required by this subsection or
38 fail to attend one (1) such training session within six (6) months
39 of his or her being elected as a part-time youth court judge, the
40 part-time youth court judge shall be disqualified to hold office
41 and shall be immediately removed as a part-time youth court judge
42 and a special election shall be held to fill such office.

43 (3) The judge may direct that hearings in any case or class
44 of cases be conducted in the first instance by the part-time youth
45 court judge. The judge may also delegate his or her own
46 administrative responsibilities to the part-time youth court
47 judge.

48 (4) All hearings authorized to be heard by a part-time youth
49 court judge shall proceed in the same manner as hearings before
50 the youth court judge. A part-time youth court judge shall
51 possess all powers and perform all the duties of the youth court
52 judge in the hearings authorized to be heard by the part-time
53 youth court judge.

54 (5) An order entered by the part-time youth court judge
55 shall be mailed immediately to all parties and their counsel. A
56 rehearing by the judge shall be allowed if any party files a
57 written motion for a rehearing or on the court's own motion within
58 three (3) days after notice of the part-time youth court judge's
59 order. The youth court may enlarge the time for filing a motion
60 for a rehearing for good cause shown. Any rehearing shall be upon
61 the record of the hearing before the part-time youth court judge,
62 but additional evidence may be admitted in the discretion of the
63 judge. A motion for a rehearing shall not act as a supersedeas of

64 the part-time youth court judge's order, unless the judge shall so
65 order.

66 (6) The salary for elected part-time youth court judges
67 shall be the current salary in effect for justice court judges as
68 prescribed in Section 25-3-36 and shall be paid by the county out
69 of any available funds budgeted for the youth court by the board
70 of supervisors.

71 (7) Upon request of the boards of supervisors of two (2) or
72 more counties, the judge of the chancery court may have an elected
73 part-time youth court judge for two (2) or more counties within
74 his or her district, and the payment of salary may be divided in
75 such ratio as may be agreed upon by the boards of supervisors.

76 **SECTION 2.** Section 19-9-96, Mississippi Code of 1972, is
77 amended as follows:

78 19-9-96. The board of supervisors of any county may, in its
79 discretion, set aside, appropriate and expend moneys from the
80 general fund to be used for funding of the operation of the youth
81 court division other than a municipal youth court division. Such
82 funds shall be expended for no other purpose than:

83 (a) Payment of the salaries of the elected part-time
84 youth court judges, court administrators, youth court prosecutor
85 when court appointed, youth court public defender, court reporters
86 other than regular chancery court or county court reporters,
87 clinical psychologists and other professional personnel,
88 secretaries and other clerical or other court-appointed personnel,
89 detention home employees, shelter home employees, halfway house
90 employees and youth counsellors;

91 (b) Travel and training expenses;

92 (c) The operation of a youth court and related
93 facilities, detention facilities, shelter home facilities, group
94 homes and halfway houses;

95 (d) Volunteer programs or other court-authorized
96 programs;

97 (e) Providing the elected part-time youth court judge
98 with a current set of the Mississippi Code of 1972 if a set has
99 not been provided.

100 **SECTION 3.** Section 43-21-121, Mississippi Code of 1972, is
101 amended as follows:

102 43-21-121. (1) The youth court shall appoint a guardian ad
103 litem for the child:

104 (a) When a child has no parent, guardian or custodian;

105 (b) When the youth court cannot acquire personal
106 jurisdiction over a parent, a guardian or a custodian;

107 (c) When the parent is a minor or a person of unsound
108 mind;

109 (d) When the parent is indifferent to the interest of
110 the child or if the interests of the child and the parent,
111 considered in the context of the cause, appear to conflict;

112 (e) In every case involving an abused or neglected
113 child which results in a judicial proceeding; or

114 (f) In any other instance where the youth court finds
115 appointment of a guardian ad litem to be in the best interest of
116 the child.

117 (2) The guardian ad litem shall be appointed by the court
118 when custody is ordered or at the first judicial hearing regarding
119 the case, whichever occurs first.

120 (3) In addition to all other duties required by law, a
121 guardian ad litem shall have the duty to protect the interest of a
122 child for whom he has been appointed guardian ad litem. The
123 guardian ad litem shall investigate, make recommendations to the
124 court or enter reports as necessary to hold paramount the child's
125 best interest. The guardian ad litem is not an adversary party
126 and the court shall insure that guardians ad litem perform their
127 duties properly and in the best interest of their wards. The
128 guardian ad litem shall be a competent person who has no adverse
129 interest to the minor. The court shall insure that the guardian

130 ad litem is adequately instructed on the proper performance of his
131 duties.

132 (4) The court may appoint either a suitable attorney or a
133 suitable layman as guardian ad litem. In cases where the court
134 appoints a layman as guardian ad litem, the court shall also
135 appoint an attorney to represent the child. From and after
136 January 1, 1999, in order to be eligible for an appointment as a
137 guardian ad litem, such attorney or lay person must have received
138 child protection and juvenile justice training provided by or
139 approved by the Mississippi Judicial College within the year
140 immediately preceding such appointment. The Mississippi Judicial
141 College shall determine the amount of child protection and
142 juvenile justice training which shall be satisfactory to fulfill
143 the requirements of this section. The Administrative Office of
144 Courts shall maintain a roll of all attorneys and laymen eligible
145 to be appointed as a guardian ad litem under this section and
146 shall enforce the provisions of this subsection.

147 (5) Upon appointment of a guardian ad litem, the youth court
148 shall continue any pending proceedings for a reasonable time to
149 allow the guardian ad litem to familiarize himself with the
150 matter, consult with counsel and prepare his participation in the
151 cause.

152 (6) Upon order of the youth court, the guardian ad litem
153 shall be paid a reasonable fee as determined by the youth court
154 judge or elected part-time youth court judge out of the county
155 general fund as provided under Section 43-21-123. To be eligible
156 for such fee, the guardian ad litem shall submit an accounting of
157 the time spent in performance of his duties to the court.

158 (7) The court, in its sound discretion, may appoint a
159 volunteer trained layperson to assist children subject to the
160 provisions of this section in addition to the appointment of a
161 guardian ad litem.

162 **SECTION 4.** Section 43-21-125, Mississippi Code of 1972, is
163 amended as follows:

164 43-21-125. (1) There shall be a Mississippi Council of
165 Youth Court Judges which shall be the official organization of the
166 judges having youth court jurisdiction in this state. The
167 membership of the council shall consist of all the judges and
168 elected part-time youth court judges of youth courts in the State
169 of Mississippi.

170 (2) The Mississippi Council of Youth Court Judges is
171 authorized to adopt and, from time to time, amend such rules,
172 regulations or bylaws as it considers necessary to the conduct of
173 its affairs.

174 (3) The council may elect officers and provide for such
175 meetings of the council as it deems necessary. The council shall
176 meet at least annually for the consideration of:

177 (a) Any and all matters pertaining to the discharge of
178 the official duties and obligations of its members; and

179 (b) Problems that have arisen in connection with the
180 operation of the youth courts in any county or in all counties in
181 order to improve the administration of juvenile justice in the
182 state.

183 (4) The council shall publish and submit to the Governor,
184 the Chief Justice of the Supreme Court, and the Mississippi
185 Judicial Council an annual report of the operations which shall
186 include financial and statistical data and may include suggestions
187 and recommendations for legislation.

188 (5) The council is authorized to receive and expend any
189 funds which may become available from the federal government to
190 carry out any of the purposes of this chapter, and to this end the
191 council may meet any federal requirements not contrary to state
192 law which may be conditions precedent to receiving such federal
193 funds.

194 (6) The council may cooperate with the federal government in
195 a program for training personnel employed or preparing for
196 employment by the youth court and may receive and expend funds
197 from federal or state sources or from private donations for such
198 purposes. The council may contract with public or nonprofit
199 institutions of higher learning for the training of such
200 personnel, may conduct short-term training courses of its own, may
201 hire experts on a temporary basis for such purpose and may
202 cooperate with the department of youth services or other state
203 departments or agencies in personnel training programs.

204 **SECTION 5.** Section 43-21-405, Mississippi Code of 1972, is
205 amended as follows:

206 43-21-405. (1) The informal adjustment process shall be
207 initiated with an informal adjustment conference conducted by an
208 informal adjustment counselor appointed by the judge or his
209 designee.

210 (2) If the child and his parent, guardian or custodian
211 appear at the informal adjustment conference without counsel, the
212 informal adjustment counselor shall, at the commencement of the
213 conference, inform them of their right to counsel, the child's
214 right to appointment of counsel and the right of the child to
215 remain silent. If either the child or his parent, guardian or
216 custodian indicates a desire to be represented by counsel, the
217 informal adjustment counselor shall adjourn the conference to
218 afford an opportunity to secure counsel.

219 (3) At the beginning of the informal adjustment conference,
220 the informal adjustment counselor shall inform the child and his
221 parent, guardian or custodian:

222 (a) That information has been received concerning the
223 child which appears to establish jurisdiction of the youth court;

224 (b) The purpose of the informal adjustment conference;

225 (c) That during the informal adjustment process no
226 petition will be filed;

227 (d) That the informal adjustment process is voluntary
228 with the child and his parent, guardian or custodian and that they
229 may withdraw from the informal adjustment at any time; and

230 (e) The circumstances under which the informal
231 adjustment process can be terminated under Section 43-21-407.

232 (4) The informal adjustment counselor shall then discuss
233 with the child and his parent, guardian or custodian:

234 (a) Recommendations for actions or conduct in the
235 interest of the child to correct the conditions of behavior or
236 environment which may exist;

237 (b) Continuing conferences and contacts with the child
238 and his parent, guardian or custodian by the informal adjustment
239 counselor or other authorized persons; and

240 (c) The child's general behavior, his home and school
241 environment and other factors bearing upon the proposed informal
242 adjustment.

243 (5) After the parties have agreed upon the appropriate terms
244 and conditions of informal adjustment, the informal adjustment
245 counselor and the child and his parent, guardian or custodian
246 shall sign a written informal adjustment agreement setting forth
247 the terms and conditions of the informal adjustment. The informal
248 adjustment agreement may be modified at any time upon the consent
249 of all parties to the informal adjustment conference.

250 (6) The informal adjustment process shall not continue
251 beyond a period of six (6) months from its commencement unless
252 extended by the youth court for an additional period not to exceed
253 six (6) months by court authorization prior to the expiration of
254 the original six-month period. In no event shall the custody or
255 supervision of a child which has been placed with the Department
256 of Public Welfare be continued or extended except upon a written
257 finding by the youth court judge or elected part-time youth court
258 judge that reasonable efforts have been made to maintain the child
259 within his own home, but that the circumstances warrant his

260 removal and there is no reasonable alternative to custody, and
261 that reasonable efforts will continue to be made towards
262 reunification of the family.

263 **SECTION 6.** Section 43-21-609, Mississippi Code of 1972, is
264 amended as follows:

265 43-21-609. In neglect and abuse cases, the disposition order
266 may include any of the following alternatives, giving precedence
267 in the following sequence:

268 (a) Release the child without further action;

269 (b) Place the child in the custody of his parents, a
270 relative or other person subject to any conditions and limitations
271 as the court may prescribe. If the court finds that temporary
272 relative placement, adoption or foster care placement is
273 inappropriate, unavailable or otherwise not in the best interest
274 of the child, durable legal custody may be granted by the court to
275 any person subject to any limitations and conditions the court may
276 prescribe; such durable legal custody will not take effect unless
277 the child or children have been in the physical custody of the
278 proposed durable custodians for at least one (1) year under the
279 supervision of the Department of Human Services. The requirements
280 of Section 43-21-613 as to disposition review hearings does not
281 apply to those matters in which the court has granted durable
282 legal custody. In such cases, the Department of Human Services
283 shall be released from any oversight or monitoring
284 responsibilities;

285 (c) Order terms of treatment calculated to assist the
286 child and the child's parent, guardian or custodian which are
287 within the ability of the parent, guardian or custodian to
288 perform;

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

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

295 (i) The Department of Human Services for
296 appropriate placement; or

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

304 (f) If the court makes a finding that custody is
305 necessary as defined in Section 43-21-301(3)(b), and that the
306 child, in the action pending before the youth court had not
307 previously been taken into custody, the disposition order shall
308 recite that the effect of the continuation of the child's residing
309 within his or her own home would be contrary to the welfare of the
310 child, that the placement of the child in foster care is in the
311 best interests of the child, and unless the reasonable efforts
312 requirement is bypassed under Section 43-21-603(7)(c), the order
313 also must state:

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

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

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

326 (g) If the court had, before the disposition hearing in
327 the action pending before the court, taken the child into custody,
328 the judge or elected part-time youth court judge shall determine,
329 and the youth court order shall recite that reasonable efforts
330 were made by the Department of Human Services to finalize the
331 child's permanency plan that was in effect on the date of the
332 disposition hearing.

333 **SECTION 7.** Section 43-21-613, Mississippi Code of 1972, is
334 amended as follows:

335 43-21-613. (1) If the youth court finds, after a hearing
336 which complies with the sections governing adjudicatory hearings,
337 that the terms of a delinquency or child in need of supervision
338 disposition order, probation or parole have been violated, the
339 youth court may, in its discretion, revoke the original
340 disposition and make any disposition which it could have
341 originally ordered. The hearing shall be initiated by the filing
342 of a petition that complies with the sections governing petitions
343 in this chapter and that includes a statement of the youth court's
344 original disposition order, probation or parole, the alleged
345 violation of that order, probation or parole, and the facts which
346 show the violation of that order, probation or parole. Summons
347 shall be served in the same manner as summons for an adjudicatory
348 hearing.

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

357 (3) (a) Unless the youth court's jurisdiction has been
358 terminated, all disposition orders for supervision, probation or

359 placement of a child with an individual or an agency shall be
360 reviewed by the youth court judge or elected part-time youth court
361 judge at least annually to determine if continued placement,
362 probation or supervision is in the best interest of the child or
363 the public. For children who have been adjudicated abused or
364 neglected, the youth court shall conduct a permanency hearing
365 within twelve (12) months after the earlier of:

366 (i) An adjudication that the child has been abused
367 or neglected; or

368 (ii) The date of the child's removal from the
369 allegedly abusive or neglectful custodian/parent. Notice of such
370 hearing shall be given in accordance with the provisions of
371 Section 43-21-505(5). In conducting the hearing, the judge or
372 elected part-time youth court judge shall require a written report
373 and may require information or statements from the child's youth
374 court counselor, parent, guardian or custodian, which includes,
375 but is not limited to, an evaluation of the child's progress and
376 recommendations for further supervision or treatment. The judge
377 or elected part-time youth court judge shall, at the permanency
378 hearing determine the future status of the child, including, but
379 not limited to, whether the child should be returned to the
380 parent(s) or placed with suitable relatives, placed for adoption,
381 placed for the purpose of establishing durable legal custody or
382 should, because of the child's special needs or circumstances, be
383 continued in foster care on a permanent or long-term basis. If
384 the child is in an out-of-state placement, the hearing shall
385 determine whether the out-of-state placement continues to be
386 appropriate and in the best interest of the child. At the
387 permanency hearing the judge or elected part-time youth court
388 judge shall determine, and the youth court order shall recite that
389 reasonable efforts were made by the Department of Human Services
390 to finalize the child's permanency plan that was in effect on the
391 date of the permanency hearing. The judge or elected part-time

392 youth court judge may find that reasonable efforts to maintain the
393 child within his home shall not be required in accordance with
394 Section 43-21-603(7)(c), and that the youth court shall continue
395 to conduct permanency hearings for a child who has been
396 adjudicated abused or neglected, at least annually thereafter, for
397 as long as the child remains in the custody of the Mississippi
398 Department of Human Services.

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

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

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

407 (c) The provisions of this subsection shall also apply
408 to review of cases involving a dependent child; however, such
409 reviews shall take place not less frequently than once each one
410 hundred eighty (180) days. A dependent child shall be ordered by
411 the youth court judge or elected part-time youth court judge to be
412 returned to the custody and home of the child's parent, guardian
413 or custodian unless the judge or elected part-time youth court
414 judge, upon such review, makes a written finding that the return
415 of the child to the home would be contrary to the child's best
416 interests.

417 (d) Reviews are not to be conducted unless explicitly
418 ordered by the youth court concerning those cases in which the
419 court has granted durable legal custody. In such cases, the
420 Department of Human Services shall be released from any oversight
421 or monitoring responsibilities, and relieved of physical and legal
422 custody and supervision of the child.

423 **SECTION 8.** The Attorney General of the State of Mississippi
424 shall submit this act, immediately upon approval by the Governor,

425 or upon approval by the Legislature subsequent to a veto, to the
426 Attorney General of the United States or to the United States
427 District Court for the District of Columbia in accordance with the
428 provisions of the Voting Rights Act of 1965, as amended and
429 extended.

430 **SECTION 9.** This act shall take effect and be in force from
431 and after the date it is effectuated under Section 5 of the Voting
432 Rights Act of 1965, as amended and extended.