

By: Senator(s) Nunnelee

To: Judiciary, Division B

SENATE BILL NO. 2366
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 43-21-603, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE TRANSFER OF COPIES OF A CHILD'S ORIGINAL
3 CUMULATIVE SCHOOL RECORD AS A PREREQUIREMENT TO COMMITMENT TO A
4 STATE TRAINING SCHOOL, AND TO DELETE THE AUTOMATIC REVERTER ON THE
5 CODE SECTION PROVIDING YOUTH COURT DISPOSITION HEARING PROCEDURES
6 AND ALTERNATIVES IN DELINQUENCY, CHILD ABUSE AND CHILD NEGLECT
7 MATTERS; TO AMEND SECTION 43-21-605, MISSISSIPPI CODE OF 1972, AS
8 AMENDED BY SENATE BILL NO. 2894, 2005 REGULAR SESSION, TO RESTRICT
9 THE CONDUCT FOR WHICH A CHILD MAY BE COMMITTED TO A TRAINING
10 SCHOOL AND TO SET STANDARDS FOR THE PROGRAMS MAINTAINED AT THE
11 STATE TRAINING SCHOOLS; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 43-21-603, Mississippi Code of 1972, is
14 amended as follows:

15 * * *

16 43-21-603. (1) At the beginning of each disposition
17 hearing, the judge shall inform the parties of the purpose of the
18 hearing.

19 (2) All testimony shall be under oath unless waived by all
20 parties and may be in narrative form. The court may consider any
21 evidence that is material and relevant to the disposition of the
22 cause, including hearsay and opinion evidence. At the conclusion
23 of the evidence, the youth court shall give the parties an
24 opportunity to present oral argument.

25 (3) If the child has been adjudicated a delinquent child,
26 before entering a disposition order, the youth court should
27 consider, among others, the following relevant factors:

- 28 (a) The nature of the offense;
- 29 (b) The manner in which the offense was committed;
- 30 (c) The nature and number of a child's prior
- 31 adjudicated offenses;

- 32 (d) The child's need for care and assistance;
- 33 (e) The child's current medical history, including
34 medication and diagnosis;
- 35 (f) The child's mental health history, which may
36 include, but not be limited to, the Massachusetts Youth Screening
37 Instrument version 2 (MAYSI-2);
- 38 (g) Copies of the child's cumulative record from the
39 last school of record, including special education records, if
40 applicable;
- 41 (h) Recommendation from the school of record based on
42 areas of remediation needed;
- 43 (i) Disciplinary records from the school of record; and
- 44 (j) Records of disciplinary actions outside of the
45 school setting.

46 (4) If the child has been adjudicated a child in need of
47 supervision, before entering a disposition order, the youth court
48 should consider, among others, the following relevant factors:

- 49 (a) The nature and history of the child's conduct;
- 50 (b) The family and home situation; and
- 51 (c) The child's need of care and assistance.

52 (5) If the child has been adjudicated a neglected child or
53 an abused child, before entering a disposition order, the youth
54 court shall consider, among others, the following relevant
55 factors:

- 56 (a) The child's physical and mental conditions;
- 57 (b) The child's need of assistance;
- 58 (c) The manner in which the parent, guardian or
59 custodian participated in, tolerated or condoned the abuse,
60 neglect or abandonment of the child;
- 61 (d) The ability of a child's parent, guardian or
62 custodian to provide proper supervision and care of a child; and
- 63 (e) Relevant testimony and recommendations, where
64 available, from the foster parent of the child, the grandparents

65 of the child, the guardian ad litem of the child, representatives
66 of any private care agency that has cared for the child, the
67 social worker or child protection specialist assigned to the case,
68 and any other relevant testimony pertaining to the case.

69 (6) After consideration of all the evidence and the relevant
70 factors, the youth court shall enter a disposition order that
71 shall not recite any of the facts or circumstances upon which the
72 disposition is based, nor shall it recite that a child has been
73 found guilty; but it shall recite that a child is found to be a
74 delinquent child, a child in need of supervision, a neglected
75 child or an abused child.

76 (7) If the youth court orders that the custody or
77 supervision of a child who has been adjudicated abused or
78 neglected be placed with the Department of Human Services or any
79 other person or public or private agency, other than the child's
80 parent, guardian or custodian, the youth court shall find and the
81 disposition order shall recite that:

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

85 (ii) The circumstances are of such an emergency
86 nature that no reasonable efforts have been made to maintain the
87 child within his own home, and that there is no reasonable
88 alternative to custody; and

89 (b) That the effect of the continuation of the child's
90 residence within his own home would be contrary to the welfare of
91 the child and that the placement of the child in foster care is in
92 the best interests of the child; or

93 (c) Reasonable efforts to maintain the child within his
94 home shall not be required if the court determines that:

95 (i) The parent has subjected the child to
96 aggravated circumstances, including, but not limited to,
97 abandonment, torture, chronic abuse and sexual abuse; or

98 (ii) The parent has been convicted of murder of
99 another child of that parent, voluntary manslaughter of another
100 child of that parent, aided or abetted, attempted, conspired or
101 solicited to commit that murder or voluntary manslaughter, or a
102 felony assault that results in the serious bodily injury to the
103 surviving child or another child of that parent; or

104 (iii) The parental rights of the parent to a
105 sibling have been terminated involuntarily; and

106 (iv) That the effect of the continuation of the
107 child's residence within his own home would be contrary to the
108 welfare of the child and that placement of the child in foster
109 care is in the best interests of the child.

110 Once the reasonable efforts requirement is bypassed, the
111 court shall have a permanency hearing under Section 43-21-613
112 within thirty (30) days of the finding.

113 (8) Upon a written motion by a party, the youth court shall
114 make written findings of fact and conclusions of law upon which it
115 relies for the disposition order. If the disposition ordered by
116 the youth court includes placing the child in the custody of a
117 training school, an admission packet shall be prepared for the
118 child that contains the following information:

119 (a) The child's current medical history, including
120 medications and diagnosis;

121 (b) The child's mental health history;

122 (c) Copies of the child's cumulative record from the
123 last school of record, including special education records, if
124 reasonably available;

125 (d) Recommendation from the school of record based on
126 areas of remediation needed;

127 (e) Disciplinary records from the school of record; and

128 (f) Records of disciplinary actions outside of the
129 school setting, if reasonably available.

130 Only individuals who are permitted under the Health Insurance
131 Portability and Accountability Act of 1996 (HIPAA) shall have
132 access to a child's medical records which are contained in an
133 admission packet. The youth court shall provide the admission
134 packet to the training school at or before the child's arrival at
135 the training school. The admittance of any child to a training
136 school shall take place between the hours of 8:00 a.m. and 3:00
137 p.m. on designated admission days.

138 (9) When a child in the jurisdiction of the Youth Court is
139 committed to the custody of the Mississippi Department of Human
140 Services and is believed to be in need of treatment for a mental
141 or emotional disability or infirmity, the Department of Human
142 Services shall file an affidavit alleging that the child is in
143 need of mental health services with the Youth Court. The Youth
144 Court shall refer the child to the appropriate community mental
145 health center for evaluation pursuant to Section 41-21-67. If
146 said pre-screening evaluation recommends residential care, the
147 Youth Court shall proceed with civil commitment pursuant to
148 Sections 41-21-61 et seq., 43-21-315 and 43-21-611, and the
149 Department of Mental Health, once commitment is ordered, shall
150 provide appropriate care, treatment and services for at least as
151 many adolescents as were provided services in fiscal year 2004 in
152 its facilities.

153 * * *

154 **SECTION 2.** Section 43-21-605, Mississippi Code of 1972, as
155 amended by Senate Bill No. 2894, 2005 Regular Session, is amended
156 as follows:

157 43-21-605. (1) In delinquency cases, the disposition order
158 may include any of the following alternatives:

159 (a) Release the child without further action;

160 (b) Place the child in the custody of the parents, a
161 relative or other persons subject to any conditions and

162 limitations, including restitution, as the youth court may
163 prescribe;

164 (c) Place the child on probation subject to any
165 reasonable and appropriate conditions and limitations, including
166 restitution, as the youth court may prescribe;

167 (d) Order terms of treatment calculated to assist the
168 child and the child's parents or guardian which are within the
169 ability of the parent or guardian to perform;

170 (e) Order terms of supervision which may include
171 participation in a constructive program of service or education or
172 civil fines not in excess of Five Hundred Dollars (\$500.00), or
173 restitution not in excess of actual damages caused by the child to
174 be paid out of his own assets or by performance of services
175 acceptable to the victims and approved by the youth court and
176 reasonably capable of performance within one (1) year;

177 (f) Suspend the child's driver's license by taking and
178 keeping it in custody of the court for not more than one (1) year;

179 (g) Give legal custody of the child to any of the
180 following:

181 (i) The Department of Human Services for
182 appropriate placement; or

183 (ii) Any public or private organization,
184 preferably community-based, able to assume the education, care and
185 maintenance of the child, which has been found suitable by the
186 court; or

187 (iii) The Department of Human Services for
188 placement in a wilderness training program or the Division of
189 Youth Services for placement in a state-supported training school,
190 except that no child under the age of ten (10) years shall be
191 committed to a state training school, and no first-time nonviolent
192 youth offenders shall be committed to a state training school
193 until all other options provided for in this section have been
194 considered and the court makes a specific finding of fact that

195 commitment is appropriate. The training school may retain custody
196 of the child until the child's twentieth birthday but for no
197 longer. When the child is committed to a training school, the
198 child shall remain in the legal custody of the training school
199 until the child has made sufficient progress in treatment and
200 rehabilitation and it is in the best interest of the child to
201 release the child. However, the superintendent of a state
202 training school, in consultation with the treatment team, may
203 parole a child at any time he may deem it in the best interest and
204 welfare of such child. Twenty (20) days prior to such parole, the
205 training school shall notify the committing court of the pending
206 release. The youth court may then arrange subsequent placement
207 after a reconvened disposition hearing, except that the youth
208 court may not recommit the child to the training school or any
209 other secure facility without an adjudication of a new offense or
210 probation or parole violation. Prior to assigning the custody of
211 any child to any private institution or agency, the youth court
212 through its designee shall first inspect the physical facilities
213 to determine that they provide a reasonable standard of health and
214 safety for the child. No child shall be placed in the custody of
215 a state training school for a status offense or for contempt of or
216 revocation of a status offense adjudication unless the child is
217 contemporaneously adjudicated for having committed an act of
218 delinquency that is not a status offense. A disposition order
219 rendered under this subparagraph shall meet the following
220 requirements:

221 1. The disposition is the least restrictive
222 alternative appropriate to the best interest of the child and the
223 community;

224 2. The disposition allows the child to be in
225 reasonable proximity to the family home community of each child
226 given the dispositional alternatives available and the best
227 interest of the child and the state; and

228 3. The disposition order provides that the
229 court has considered the medical, educational, vocational, social
230 and psychological guidance, training, social education,
231 counseling, substance abuse treatment and other rehabilitative
232 services required by that child as determined by the court;

233 (h) Recommend to the child and the child's parents or
234 guardian that the child attend and participate in the Youth
235 Challenge Program under the Mississippi National Guard, as created
236 in Section 43-27-203, subject to the selection of the child for
237 the program by the National Guard; however, the child must
238 volunteer to participate in the program. The youth court shall
239 not order any child to apply or attend the program;

240 (i) (i) Adjudicate the juvenile to the Statewide
241 Juvenile Work Program if the program is established in the court's
242 jurisdiction. The juvenile and his parents or guardians must sign
243 a waiver of liability in order to participate in the work program.
244 The judge will coordinate with the youth services counselors as to
245 placing participants in the work program;

246 (ii) The severity of the crime, whether or not the
247 juvenile is a repeat offender or is a felony offender will be
248 taken into consideration by the judge when adjudicating a juvenile
249 to the work program. The juveniles adjudicated to the work
250 program will be supervised by police officers or reserve officers.
251 The term of service will be from twenty-four (24) to one hundred
252 twenty (120) hours of community service. A juvenile will work the
253 hours to which he was adjudicated on the weekends during school
254 and weekdays during the summer. Parents are responsible for a
255 juvenile reporting for work. Noncompliance with an order to
256 perform community service will result in a heavier adjudication.
257 A juvenile may be adjudicated to the community service program
258 only two (2) times;

259 (iii) The judge shall assess an additional fine on
260 the juvenile which will be used to pay the costs of implementation

261 of the program and to pay for supervision by police officers and
262 reserve officers. The amount of the fine will be based on the
263 number of hours to which the juvenile has been adjudicated;

264 (j) Order the child to participate in a youth court
265 work program as provided in Section 43-21-627; or

266 (k) Order the child into a juvenile detention center
267 operated by the county or into a juvenile detention center
268 operated by any county with which the county in which the court is
269 located has entered into a contract for the purpose of housing
270 delinquents. The time period for such detention cannot exceed
271 ninety (90) days, and any detention exceeding forty-five (45) days
272 shall be administratively reviewed by the youth court no later
273 than forty-five (45) days after the entry of the order. The youth
274 court judge may order that the number of days specified in the
275 detention order be served either throughout the week or on
276 weekends only. No first-time nonviolent youth offender shall be
277 committed to a detention center for a period of ninety (90) days
278 until all other options provided for in this section have been
279 considered and the court makes a specific finding of fact that
280 commitment to a detention center is appropriate. However, if a
281 child is committed to a detention center ninety (90) consecutive
282 days, the disposition order shall meet the following requirements:

283 1. The disposition order is the least
284 restrictive alternative appropriate to the best interest of the
285 child and the community;

286 2. The disposition order allows the child to
287 be in reasonable proximity to the family home community of each
288 child given the dispositional alternatives available and the best
289 interest of the child and the state; and

290 3. The disposition order provides that the
291 court has considered the medical, educational, vocational, social
292 and psychological guidance, training, social education,

293 counseling, substance abuse treatment and other rehabilitative
294 services required by that child as determined by the court.

295 (1) Referral to A-team provided system of care
296 services.

297 (2) In addition to any of the disposition alternatives
298 authorized under subsection (1) of this section, the disposition
299 order in any case in which the child is adjudicated delinquent for
300 an offense under Section 63-11-30 shall include an order denying
301 the driver's license and driving privileges of the child as
302 required under * * * Section 63-11-30(9).

303 (3) If the youth court places a child in a state-supported
304 training school, the court may order the parents or guardians of
305 the child and other persons living in the child's household to
306 receive counseling and parenting classes for rehabilitative
307 purposes while the child is in the legal custody of the training
308 school. A youth court entering an order under this subsection (3)
309 shall utilize appropriate services offered either at no cost or
310 for a fee calculated on a sliding scale according to income unless
311 the person ordered to participate elects to receive other
312 counseling and classes acceptable to the court at the person's
313 sole expense.

314 (4) Fines levied under this chapter shall be paid into the
315 general fund of the county but, in those counties wherein the
316 youth court is a branch of the municipal government, it shall be
317 paid into the municipal treasury.

318 (5) Any institution or agency to which a child has been
319 committed shall give to the youth court any information concerning
320 the child as the youth court may at any time require.

321 (6) The youth court shall not place a child in another
322 school district who has been expelled from a school district for
323 the commission of a violent act. For the purpose of this
324 subsection, "violent act" means any action which results in death

325 or physical harm to another or an attempt to cause death or
326 physical harm to another.

327 (7) The youth court may require drug testing as part of a
328 disposition order. If a child tests positive, the court may
329 require treatment, counseling and random testing, as it deems
330 appropriate. The costs of such tests shall be paid by the parent,
331 guardian or custodian of the child unless the court specifically
332 finds that the parent, guardian or custodian is unable to pay.

333 (8) The Mississippi Department of Human Services, Division
334 of Youth Services, shall operate and maintain services for youth
335 adjudicated delinquent at Columbia and Oakley Training Schools.
336 The program shall be designed for children committed to the
337 training schools by the youth courts. The purpose of the program
338 is to promote good citizenship, self-reliance, leadership and
339 respect for constituted authority, teamwork, cognitive abilities
340 and appreciation of our national heritage. The Division of Youth
341 Services shall issue credit towards academic promotions and high
342 school completion. The Division of Youth Services may award
343 credits to each student who meets the requirements for a general
344 education development certification. The Division of Youth
345 Services must also provide to each special education eligible
346 youth the services required by that youth's individualized
347 education plan.

348 **SECTION 3.** This act shall take effect and be in force from
349 and after July 1, 2005.