MANUAL FOR

MISSISSIPPI GUARDIANS AD LITEM IN CHILD PROTECTION AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS

2021

(Click here to go to the Contents page)

(Updated July 1, 2021)

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USER'S GUIDE

Your manual is easy to use.

- The Contents page lists the specific chapters.
- Each topic within a chapter has its own section number.
- Each section number is linked to the text.
- Some topics include subheadings.
- Diagrams and checklists complement various topics.

Section numbers identify both the chapter and the sequential order of the topic.

For example:

> ***105 GAL PROFESSIONAL STANDARDS***
>
> The "1" is Chapter 1, while the "05" is the sequential order of the topic "GAL Professional Standards."

Please email any suggestions for improving the style, format, or content of the manual to William Charlton (MJC Research Counsel II) at: charlton@olemiss.edu.

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CONTENTS

1. *APPOINTMENT AND PROFESSIONAL STANDARDS*
2. *DUTIES*
3. *RECORDS INVOLVING CHILDREN*
4. *BEST INTERESTS OF THE CHILD*
5. *INVESTIGATIONS*
6. *REPORTS AND RECOMMENDATIONS*
7. *REASONABLE EFFORTS*
8. *FEDERAL LAWS AND REGULATIONS*
9. *TAKING INTO CUSTODY*
10. *SHELTER HEARINGS*
11. *ADJUDICATION HEARINGS*
12. *DISPOSITION HEARINGS*
13. *FOSTER CARE REVIEW HEARINGS*
14. *PERMANENCY HEARINGS / PERMANENCY REVIEW HEARINGS*
15. *TERMINATION OF PARENTAL RIGHTS*
16. *PARENTAL REPRESENTATION*
17. *INDIAN CHILD WELFARE ACT*
18. *APPEALS*

APPENDICES

A. GLOSSARY

B. WEBSITES

C. RESOLUTION

D. FORMS

E. TASK FORCE STANDARDS FOR PARENTAL REPRESENTATION

F. A.A. AND N.A. RECOVERY PROGRAMS

CHAPTER 1

APPOINTMENT OF GUARDIAN AD LITEM AND PROFESSIONAL STANDARDS

100 SCOPE OF THE UNIFORM RULES OF YOUTH COURT PRACTICE

101 WHEN APPOINTMENT IS REQUIRED

- **In child protection proceedings**
- **In chancery court proceedings**

102 QUALIFICATIONS

- **In child protection proceedings**
- **In chancery court proceedings**

103 APPOINTMENT OF AN ATTORNEY IF CONFLICT EXISTS

104 REASONABLE FEES

- **In child protection proceedings**
- **In chancery court proceedings**

105 PROPOSED GAL PROFESSIONAL STANDARDS

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100 SCOPE OF THE UNIFORM RULES OF YOUTH COURT PRACTICE

U.R.Y.C.P. 2(a)

> (a) Proceedings subject to these rules. The following proceedings are subject to these rules:
> (1) any youth court proceeding;
> (2) any chancery court proceeding when hearing, pursuant to section 93-11-65 of the Mississippi Code, an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action;
> (3) any proceeding conducted by a referee appointed pursuant to section 43-21-111 of the Mississippi Code;
> (4) any proceeding conducted by a designee appointed pursuant to the Mississippi Youth Court Law when acting in a judicial capacity.

Advisory Note to Rule 2(a)(2)

> *Chancery court may hear an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action when there has been no prior proceeding in youth court concerning that same child or, if there has been a prior proceeding in youth court concerning that same child the youth court has terminated its jurisdiction of that case pursuant to the Mississippi Youth Court Law. See Miss. Code Ann. §§ 43-21-151(1)(c); 93-11-65(4) (2008): B.A.D. v. Finnegan, 82 So. 3d 608, 613 (Miss. 2012) ("Because the youth court had terminated its jurisdiction, there was no chance of conflicting orders and the like, as expressed in [K.M.K. v. S.L.M. ex rel. J.H., 775 So.2d 115 (Miss. 2000)].").* ***ALL PROCEEDINGS ON THE ABUSE AND NEGLECT CHARGE SHALL BE CONDUCTED IN ACCORDANCE WITH THESE RULES****.*

§ 93-11-65

> (4) When a charge of abuse or neglect of a child first arises in the course of a custody or maintenance action pending in the chancery court pursuant to this section, the chancery court may proceed with the investigation, hearing and determination of such abuse or neglect charge as a part of its hearing and determination of the custody or maintenance issue as between the parents, as provided in Section 43-21-151, notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse or neglect charge shall be confidential in the same manner as provided in youth court proceedings, and the chancery court shall appoint a guardian ad litem in such cases, as provided under Section 43-21-121 for youth court proceedings, who shall be an attorney.

See also Miss. Code Ann. § 93-5-23 ("The court may investigate, hear and make a determination in a custody action when a charge of abuse and/or neglect arises in the course of a custody action as provided in Section 43-21-151, and in such cases the court

shall appoint a guardian ad litem for the child as provided under Section 43-21-121, who shall be an attorney.").

101 WHEN APPOINTMENT IS REQUIRED

➤ **In child protection proceedings**

U.R.Y.C.P. 13(a)

> (a) Appointment of guardian ad litem. The court shall appoint a guardian ad litem for the child when custody is ordered or at the first judicial hearing regarding the case, whichever occurs first,
> (1) when a child has no parent, guardian or custodian;
> (2) when the court cannot acquire personal jurisdiction over a parent, a guardian or a custodian;
> (3) when the parent is a minor or a person of unsound mind;
> (4) when the parent is indifferent to the interest of the child or if the interests of the child and the parent, considered in the context of the cause, appear to conflict;
> (5) in every case involving an abused or neglected child which results in a judicial proceeding; or
> (6) in any other instance where the court finds appointment of a guardian ad litem to be in the best interest of the child.
> Upon appointment of a guardian ad litem, the court shall continue any pending proceedings for a reasonable time to allow the guardian ad litem to become familiar with the matter, consult with counsel and prepare for the cause.

§ 43-21-121

> (1) The youth court shall appoint a guardian ad litem for the child:
> (a) When a child has no parent, guardian or custodian;
> (b) When the youth court cannot acquire personal jurisdiction over a parent, a guardian or a custodian;
> (c) When the parent is a minor or a person of unsound mind;
> (d) When the parent is indifferent to the interest of the child or if the interests of the child and the parent, considered in the context of the cause, appear to conflict;
> (e) In every case involving an abused or neglected child which results in a judicial proceeding; or
> (f) In any other instance where the youth court finds appointment of a guardian ad litem to be in the best interest of the child.
> (2) The guardian ad litem shall be appointed by the court when custody is ordered or at the first judicial hearing regarding the case, whichever occurs first.
> (3) In addition to all other duties required by law, a guardian ad litem shall have the duty to protect the interest of a child for whom he has been appointed guardian

ad litem. The guardian ad litem shall investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest. The guardian ad litem is not an adversary party and the court shall ensure that guardians ad litem perform their duties properly and in the best interest of their wards. The guardian ad litem shall be a competent person who has no adverse interest to the minor. The court shall ensure that the guardian ad litem is adequately instructed on the proper performance of his duties.

(4) The court, including a county court serving as a youth court, may appoint either a suitable attorney or a suitable layman as guardian ad litem. In cases where the court appoints a layman as guardian ad litem, the court shall also appoint an attorney to represent the child. From and after January 1, 1999, in order to be eligible for an appointment as a guardian ad litem, such attorney or layperson must have received child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment. The Mississippi Judicial College shall determine the amount of child protection and juvenile justice training which shall be satisfactory to fulfill the requirements of this section. The Administrative Office of Courts shall maintain a roll of all attorneys and laymen eligible to be appointed as a guardian ad litem under this section and shall enforce the provisions of this subsection.

(5) Upon appointment of a guardian ad litem, the youth court shall continue any pending proceedings for a reasonable time to allow the guardian ad litem to familiarize himself with the matter, consult with counsel and prepare his participation in the cause. The youth court shall issue an order of assignment that grants the guardian ad litem authority to review all relevant documents concerning the minor child and to interview all parties and witnesses involved in proceedings concerning the minor child for whom the guardian ad litem is appointed.

. . .

See also:

In re R.D., 658 So. 2d 1378, 1385 (Miss. 1995) ("Whether requested or not, judges have the obligation to appoint a guardian ad litem to represent every minor alleged to be abused or neglected as the statute requires.").

Donald N Duquette, *Legal Representation for Children in Protection Proceedings: Two Distinct Lawyer Roles Are Required*, 34 Fam. L.Q. 441, 441-42 (2000) ("Federal law [42 U.S.C. § 5106a(b)(A)(ix)] requires the appointment of a guardian ad litem to represent the best interests of the child in child abuse and neglect court cases as a condition to a state's receiving federal child welfare funds.").

U.R.Y.C.P. 4

> All words and phrases shall have the meaning ascribed in the Mississippi Youth Court Law or, if the context clearly requires otherwise, the appropriate sections of the Mississippi Code applicable to the particular issue before the court, provided such are not inconsistent with these rules.

Advisory Note to Rule 4

> *"Court" means any youth court created under the Mississippi Youth Court Law or any chancery court when hearing, pursuant to section 93-11-65 of the Mississippi Code, a charge of abuse or neglect of a child that first arises in the course of a custody or maintenance action;*

➤ **In chancery court proceedings**

The Mississippi Supreme Court has held:

> "In child-custody cases where abuse and/or neglect are raised, the chancellor's decision to appoint a guardian ad litem may be mandatory or discretionary. The appointment is mandatory where the allegations of abuse and/or neglect rise to the level of a 'charge of abuse and/or neglect, and in those cases 'the court shall appoint a guardian ad litem for the child as provided under Section 43–21–121, who shall be an attorney.' Miss. Code Ann. § 93–5–23 (Rev. 2013); *see also Robison v. Lanford*, 841 So.2d 1119, 1126 (Miss. 2003)."
>
> Carter v. Carter, 204 So. 3d 747, 758-59 (Miss. 2016).

But in making that decision, the chancery court judge has some discretion in determining whether an allegation presents a legitimate issue of neglect or abuse requiring a full investigation:

> "[U]nder Mississippi Code Section 93–5–23, the chancellor is provided discretion to determine if issues of abuse or neglect have sufficient factual basis to support the appointment of a guardian ad litem. . . . The statute should not be read 'as requiring . . . the appointment of a guardian ad litem based merely on an unsubstantiated assertion found in the pleadings of one of the parties.' So some situations grant the chancellor the discretion to decide if a full investigation is necessary.
> . . . .
> In determining whether the child is neglected, a chancellor may, but is not required to, refer to the definition of 'neglected child' found in Section 43–21–105(1) of the Mississippi Code."

Carter v. Carter, 204 So. 3d 747, 759-61 (Miss. 2016).

Presumably, the Court's reasoning in *Carter* would likewise apply to any chancery court proceeding when hearing, pursuant to section 93-11-65 of the Mississippi Code, an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action. *See* U.R.Y.C.P. 2(a).

See also Appendix C "Mississippi Council of Youth Court Judges Resolution Regarding Guardians Ad Litem for TPR/Adoption Cases in Chancery Court."

102 QUALIFICATIONS

➤ **In child protection proceedings**

U.R.Y.C.P. 13(b)

(b) Qualifications of guardian ad litem. The court shall only appoint as guardian ad litem a competent person who has no adverse interest to the minor and who has received, in accordance with section 43-21-121(4) of the Mississippi Code, the requisite child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment.

Accord Miss. Code Ann. § 43-21-121.

Comment to U.R.Y.C.P. 13(b)

The Mississippi Judicial College presently requires six (6) hours of child protection and guardian ad litem training through an educational program approved by the Director of the Mississippi Judicial College for any appointment within 365 days thereof.

§ 43-21-121

(4) The court, including a county court serving as a youth court, may appoint either a suitable attorney or a suitable layman as guardian ad litem. In cases where the court appoints a layman as guardian ad litem, the court shall also appoint an attorney to represent the child. From and after January 1, 1999, in order to be eligible for an appointment as a guardian ad litem, such attorney or layperson must have received child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment. The Mississippi Judicial College shall determine the amount of child protection and juvenile justice training which shall be satisfactory

to fulfill the requirements of this section. The Administrative Office of Courts shall maintain a roll of all attorneys and laymen eligible to be appointed as a guardian ad litem under this section and shall enforce the provisions of this subsection.

Note: The AOC maintains a roll of all attorneys and lay persons eligible for appointment as a guardian ad litem. That information is accessible on the State of Mississippi Judiciary website (https://courts.ms.gov/) under "Courts" by scrolling to "Trial Courts" and then clicking "Youth Court."

➤ **In chancery court proceedings**

If the chancery court judge chooses to hear an abuse or neglect allegation that arises in the course of a custody or maintenance action, then the appointed guardian ad litem must be an attorney:

> "(4) When a charge of abuse or neglect of a child first arises in the course of a custody or maintenance action pending in the chancery court pursuant to this section, the chancery court may proceed with the investigation, hearing and determination of such abuse or neglect charge as a part of its hearing and determination of the custody or maintenance issue as between the parents, as provided in Section 43-21-151, notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse or neglect charge shall be confidential in the same manner as provided in youth court proceedings, and the chancery court shall appoint a guardian ad litem in such cases, as provided under Section 43-21-121 for youth court proceedings, who shall be an attorney."
>
> Miss. Code Ann. § 93-11-65.

Regarding other qualifications, the Mississippi Supreme Court has held that the guardian ad litem be:

- a competent person,
- with no adverse interest to the child, and
- adequately instructed on the proper performance of his duties.

> In Interest of R.D., 658 So. 2d 1378, 1383 (Miss. 1995).

Such is consistent with the Mississippi Uniform Rules of Youth Court Practice:

> "The court shall only appoint as guardian ad litem a competent person who has no adverse interest to the minor and who has received, in accordance with section 43-21-121(4) of the Mississippi Code, the requisite child protection and juvenile justice training provided by or approved by the

> Mississippi Judicial College within the year immediately preceding such appointment."
>
> U.R.Y.C.P. 13(b).

Additionally, the chancery court judge must include a summary review of those qualifications for the record:

> When appointment of a GAL is mandated by statute—as it is in this case—the chancellor "shall include at least a summary review of the qualifications and recommendations of the guardian ad litem in the court's findings of fact and conclusions of law."
>
> Smith v. Smith, 206 So. 3d 502, 510 (Miss. 2016).

But the assignment of duties may depend upon the needs of a particular case:

> "In Mississippi jurisprudence, the role of a guardian ad litem historically has not been limited to a particular set of responsibilities. In some cases, a guardian ad litem is appointed as counsel for minor children or incompetents, in which case an attorney-client relationship exists and all the rights and responsibilities of such relationship arise. In others, a guardian ad litem may serve as an arm of the court—to investigate, find facts, and make an independent report to the court. The guardian ad litem may serve in a very limited purpose if the court finds such service necessary in the interest of justice. Furthermore, the guardian ad litem's role at trial may vary depending on the needs of the particular case. The guardian ad litem may, in some cases, participate in the trial by examining witnesses. In some cases, the guardian ad litem may be called to testify, and in others, the role may be more limited.
>
> We find no fault with any of these diverse duties and responsibilities a chancellor might assign to a guardian ad litem in a particular case."
>
> S.G. v. D.C., 13 So. 3d 269, 280-81 (Miss. 2009).

Any duties that are assigned should be clearly specified in the written order of appointment:

> "[W]e encourage chancellors to set forth clearly the reasons an appointment has been made and the role the guardian ad litem is expected to play in the proceedings. To avoid potential problems regarding confidential communications and other expectations, chancellors should make clear: (1) the relationship between the guardian ad litem and the children, incompetent, or other ward of the court; (2) the role the guardian ad litem will play in the trial; and (3) the expectations the trial judge has

> for the guardian ad litem. ***THE ROLE A CHANCELLOR EXPECTS A GUARDIAN AD LITEM TO PLAY SHOULD BE SET FORTH CLEARLY IN THE WRITTEN ORDER OF APPOINTMENT.*** Doing so will make the guardian ad litem's relationships and general responsibilities clear to each of the parties (including those wards old enough to comprehend), the attorneys, the court, and to the guardian ad litem."
>
> S.G. v. D.C., 13 So. 3d 269, 281 (Miss. 2009).

And, while a written order is not mandatory:

> "Here there was no written order, and Rachel claims the absence of one was error. We disagree. While this court has encouraged a written order appointing a GAL—and a written order is obviously the best practice—we have never mandated one."
>
> Smith v. Smith, 206 So. 3d 502, 511 (Miss. 2016).

Oversight by the chancery court judge is:

> "The court shall insure that guardians ad litem perform their duties properly and in the best interest of their wards."
>
> U.R.Y.C.P. 13(c); *see also* In re R.D., 658 So. 2d 1378, 1383 (Miss. 1995).

Additionally, the appointment should be consistent with Rule 13(c) of the Mississippi Uniform Rules of Youth Court Practice:

> (c) Duties of guardian ad litem. The guardian ad litem, in addition to all other duties required by law, shall:
> (1) protect the interest of a child for whom he/she has been appointed guardian ad litem; and
> (2) investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest.
>
> U.R.Y.C.P. 13(c).

But chancery courts also have inherent and traditional constitutional powers in protecting the best interests of children:

> Infants and persons of unsound mind are disabled under the law to act for themselves. Long ago it became the established rule for the court of chancery to act as the superior guardian for all persons under such disability. This inherent and traditional power and protective duty is made

> complete and irrefragable by the provisions of our present state constitution. It is not competent for the Legislature to abate the said powers and duties or for the said court to omit or neglect them.
>
> Union Chevrolet Co. v. Arrington, 162 Miss. 816, 138 So. 593, 595 (1932); *see also* Miss. Const. Art. 6, § 159 (Jurisdiction of chancery court).

Thus, it would appear that chancery courts may assign duties that extend beyond those set forth in the Mississippi Youth Court Law. Even so, it should only be done after carefully considering potential conflicts of interests:

> "The court's multiple references to the guardian ad litem as the children's attorney are at odds with the reference to the guardian ad litem's duty to make a report to the court, other than as any other lawyer representing a client might be required to do. If the guardian ad litem was appointed in this matter as an attorney representing the children, he owed the children all of the loyalty, duties, and confidentiality mandated by the attorney-client relationship. In describing those duties, the Mississippi Rules of Professional Conduct include no exception for a guardian ad litem. No rule of ethics allows a guardian ad litem to ignore or violate the attorney-client privilege, or any other aspect of the attorney-client relationship.
> . . .
> We reiterate for emphasis: When making an appointment, we encourage chancellors to define clearly the role and responsibility of the guardian ad litem. Chancellors should not (as happened in this case) appoint a guardian ad litem to serve in the dual role of advisor to the court and lawyer for the child."
>
> S.G. v. D.C., 13 So. 3d 269, 282 (Miss. 2009).

103 APPOINTMENT OF AN ATTORNEY IF CONFLICT EXISTS

U.R.Y.C.P. 13(f)

(f) Appointment of an attorney if conflict exists. If there is a conflict between the child's preferences and the guardian ad litem's recommendation, the court shall retain the guardian ad litem to represent the best interest of the child and appoint an attorney to represent the child's preferences. The court shall then continue the proceedings for a reasonable time to allow the newly appointed attorney to prepare for the cause.

Advisory Note to Rule 13(f)

This provision addresses the situation where the child opposes the recommendation of the guardian ad litem who is also an attorney. Since a guardian ad litem may not simultaneously represent the best interest of the child and advocate the child's preferences, the court must appoint an attorney to represent the child's preferences while retaining the appointed guardian ad litem to represent the best interest of the child.

104 REASONABLE FEES

➤ **In child protection proceedings**

U.R.Y.C.P. 13(d)

(d) Reasonable fees. The guardian ad litem shall be paid a fee in the performance of duties pursuant to section 43-21-121(6) of the Mississippi Code. The court may order financially able parents to pay for the reasonable fees of the guardian ad litem, or a portion thereof, pursuant to section 43-21-619 of the Mississippi Code.

Advisory Note to Rule 13(d)

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-121(6) (2008). It also allows the court, pursuant to section 43-21-619 of the Mississippi Code, to order financially able parents to pay for the reasonable fees awarded the guardian ad litem or a portion thereof. Such is consistent with the philosophy expressed in section 43-21-103 of the Mississippi Code. Parental accountability is a key element in achieving a child's productive citizenry.

Factors to be weighed when considering the proper amount of guardian ad litem fees to be awarded include:
(1) the relative ability of the parties;
(2) the skill and standing of the attorney employed;
(3) the nature of the case and novelty and difficulty of the questions at issue;
(4) the degree of responsibility involved in the management of the case;
(5) the time and labor required;
(6) the usual and customary charge in the community; and
(7) preclusion of other employment by the attorney due to the acceptance of the case.

See In re L.D.M., 872 So. 2d 655, 657 (Miss. 2004).

§ 43-21-105

(aa) "Financially able" means a parent or child who is ineligible for a court-appointed attorney.

§ 43-21-119

The judge or his designee shall appoint as provided in Section 43-21-123 sufficient personnel, responsible to and under the control of the youth court, to carry on the professional, clerical and other work of the youth court. The cost of these persons appointed by the youth court shall be paid as provided in Section 43-21-123 out of any available funds budgeted for the youth court by the board of supervisors.

§ 43-21-121

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

§ 43-21-123

Except for expenses provided by state funds and/or other monies, the board of supervisors, or the municipal governing board where there is a municipal youth court, shall adequately provide funds for the operation of the youth court division of the chancery court in conjunction with the regular chancery court budget, or the county or family courts where said courts are constituted. In preparation for said funding, on an annual basis at the time requested, the youth court judge or administrator shall prepare and submit to the board of supervisors, or the municipal governing board of the youth court wherever the youth court is a

municipal court, an annual budget which will identify the number, staff position, title and amount of annual or monthly compensation of each position as well as provide for other expenditures necessary to the functioning and operation of the youth court. When the budget of the youth court or youth court judge is approved by the board of supervisors or the governing authority of the municipality, then the youth court or youth court judge may employ such persons as provided in the budget from time to time.

See also:

In re S.L.B., 122 So. 3d 1239, 1241 (Miss. Ct. App. 2013) ("Although the record does not indicate why the youth court did not assess the GAL's fees to the county fund, the court nevertheless erred in ordering the Smiths to pay a portion of the GAL's fees. The Smiths do not meet the definition of "parent" under Mississippi Code Annotated section 43–21–105(e) (Supp.2012), and there is no authority that would allow the youth court to assess GAL's fees to foster parents.").

Op. Atty. Gen. Hathorn, Oct. 3, 2008 ("The Youth Court Judge or Referee, upon approval of a budget therefor by the Board of Supervisor, may appoint a part-time guardian ad litem in a salaried staff position [pursuant to Section 43-21-119]."

➤ **In chancery court proceedings**

M.R.C.P. Rule 17(d)

(d) Guardian Ad Litem; How Chosen. Whenever a guardian ad litem shall be necessary, the court in which the action is pending shall appoint an attorney to serve in that capacity. In all cases in which a guardian ad litem is required, the court must ascertain a reasonable fee or compensation to be allowed and paid to such guardian ad litem for his service rendered in such cause, to be taxed as a part of the cost in such action.

§ 93-11-65

(4) When a charge of abuse or neglect of a child first arises in the course of a custody or maintenance action pending in the chancery court pursuant to this section, the chancery court may proceed with the investigation, hearing and determination of such abuse or neglect charge as a part of its hearing and determination of the custody or maintenance issue as between the parents, as provided in Section 43-21-151, notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse or neglect charge shall be confidential in the same manner as provided in youth court proceedings, and the chancery court shall appoint a guardian ad litem in such cases, as provided under Section 43-21-121 for youth court proceedings, who shall be an attorney. In determining whether any portion of a guardian ad litem's fee shall be assessed

against any party or parties as a cost of court for reimbursement to the county, the court shall consider each party's individual ability to pay. Unless the chancery court's jurisdiction has been terminated, all disposition orders in such cases for placement with the Department of Human Services shall be reviewed by the court or designated authority at least annually to determine if continued placement with the department is in the best interest of the child or the public.

See also:

Mississippi Dep't of Human Servs. v. Murr, 797 So. 2d 818, 821 (Miss. 2000) ("There is no doubt that our civil rules [under M.R.C.P. 17(d)] prescribe that a guardian ad litem be compensated for his or her efforts, and that the monies so ordered be taxed as court costs. . . . Miss. Code Ann. § 93–5–23 also treats guardian ad litem fees as court costs.").

Op. Atty. Gen. Hill, July 22, 2016 ("Generally, the issue of attorney fees in guardian ad litem cases, whether in youth court or chancery court, is within the discretion of the court as long as the amount is not unreasonable or is not determined to be an abuse of discretion.").

BEST PRACTICES FOR APPOINTING A GUARDIAN AD LITEM

Rule 13(b) of the Uniform Rules of Youth Court Practice and Section 43-21-121 set forth the minimum qualifications of a guardian ad litem. When appointing a guardian ad litem, the youth court judge should also consider other qualifications that may be helpful in achieving a desirable permanency outcome in the case before the court.

For example:

- Special expertise on issues relevant to the proceedings
- Proficiency in recognizing due process concerns peculiar to the case
- Proficiency on cultural and ethnic diversity issues
- Proficiency on gender-specific issues
- Proficiency on domestic violence and abuse issues
- Proficiency on sexual or chronic abuse issues
- Proficiency on drug and alcohol dependency issues
- Proficiency on mental health issues
- Proficiency on human trafficking issues
- Proficiency on zero to three babies issues
- Proficiency on immigration issues
- Proficiency on the Indian Child Welfare Act
- Competence, diligence, and promptness in prior appointments

"At the very least, a GAL should be knowledgeable about developmentally appropriate communication with the client, taking into consideration age, level of education, cultural background, and degree of language acquisition. In the case of a child with special needs, the representative has a duty of vigorous, specific, knowledgeable advocacy to ensure that a child with such needs receives appropriate services to address the physical, mental, or developmental disabilities. The guardian ad litem should additionally be familiar with available services and how to secure them or, at the very least, be able to recommend them to the parents or request that the court order such services to be sought."

John Crouch, *The Child's Attorney: New ABA Rules Clarify the Roles of Lawyers Who Represent Children*, 26-WTR Fam. Advoc. 31, 32 (2004).

MISSISSIPPI STANDARDS FOR GUARDIANS AD LITEM IN CHILD PROTECTION AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS

SCOPE: These standards apply to guardians ad litem appointed by a youth court or chancery court to protect the child's best interests in child protection proceedings under the Mississippi Youth Court Law and for proceedings under the Mississippi Termination of Parental Rights Law. Competent, diligent, confidential, and professionally ethical conduct is essential for protecting the health, safety, and welfare of the child and for achieving a successful permanency outcome.

ARM OF THE COURT: As an arm of the court, the appointed guardian ad litem may not serve in the dual role of advisor to the court and lawyer for the child. Instead, the appointed guardian ad litem shall zealously, competently, and without bias, investigate, make recommendations, and enter reports as instructed by the court in holding paramount the child's best interest. In performing these duties, the appointed guardian ad litem shall comply with all federal and state laws, whether substantive or procedural, applicable to the appointment. A guardian ad litem must inform the court of any adverse interest to the child that might reasonably be perceived as prejudicial to the appointment. In zealously protecting the child's best interest, "the guardian ad litem should make recommendations only after providing the court with all material information which weighs on the issue to be decided by the court including information which does not support the recommendation." Ballard v. Ballard, 255 So. 3d 126, 133 (Miss. 2017); McDonald v. McDonald, 39 So. 3d 868, 883 (Miss. 2010) (citing S.G. v. D.C., 13 So. 3d 269, 282 (Miss. 2009).

DISCLOSURE OF ROLE TO PARENTS, GUARDIANS, AND CUSTODIANS: When conducting an investigation, the guardian ad litem shall inform the child, if of a suitable age, and the parent(s), guardian(s), or custodian(s) that the role of the guardian ad litem is to act as an arm of the court in protecting the interest of the child, and not as the parties' attorney, and that any statements made to the guardian ad litem affecting the health, safety, or welfare of the child will be reported to the court.

CONFIDENTIALITY: An appointed guardian ad litem may only disclose confidential records or information acquired in the course of official duties as allowed by the Mississippi Rules of Court, the Mississippi Code, or a court order.

PERFORMANCE OF DUTIES: In protecting the best interests of the child, an appointed guardian ad litem shall faithfully, impartially, and diligently serve the court in the performance of duties, which includes:

- Complying with all applicable provisions of the Mississippi Rules of Court, the Mississippi Code, and other laws governing mandatory training and education and the performance of duties.

- Upholding the integrity and independence of the judiciary by observing professional, courteous, and impartial standards of conduct in the performance of duties.
- Avoiding impropriety or the appearance of impropriety in all activities.
- Not being swayed by partisan interests, public clamor, or the fear of criticism in the performance of duties.
- Not providing legal advice to the parents, the child, or other interested persons in the case.
- Not engaging in unlawful ex parte communications.
- Not making comments that could adversely affect the right to a fair trial or hearing.
- Conducting investigations, making recommendations, and entering reports for the protection of the child's best interests in a complete, diligent, prompt, fair, and efficient manner at every stage of the proceedings.
- Maintaining a manageable workload.
- Being fully prepared to testify at hearings on matters pertaining to the child's health, safety, and welfare.
- Keeping confidential all information acquired in the performance of duties except as otherwise provided by law or a court order in protecting the child's best interests.
- Disclosing to the court any actual or apparent conflict of interest arising from any relationship, activity, or circumstance that might reasonably be perceived as requiring disqualification.
- Advising the court if there is disagreement between the child preferences and the guardian ad litem's recommendation so that the court may promptly resolve the concern.
- Keeping an accurate and itemized account of time spent, services rendered, and expenses incurred in the performance of duties.
- Utilizing governmental resources, property, and funds in the performance of duties in accordance with statutory and regulatory procedures.
- Adhering to the mandatory reporting requirements set forth in section 43-21-353 of the Mississippi Code, and as otherwise required by law, if there is reasonable cause to suspect that a child is a neglected child or an abused child.

ENFORCEMENT PROCEDURES AND SANCTIONS: The court having jurisdiction of the proceedings for which the guardian ad litem has been appointed may enforce these standards whenever reasonably necessary in carrying out the purpose of the Mississippi Youth Court Law or the Mississippi Termination of Parental Rights Law by contempt of court pursuant to Section 43-21-153 of the Mississippi Code, sanctions, or other appropriate disciplinary actions.

CHAPTER 2

DUTIES

200 DUTIES

- **In child protection proceedings**
- **In chancery court proceedings**

201 ARM OF THE COURT

202 MANDATORY REPORTER

203 GAL DUTIES CHECKLIST

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➤ **In child protection proceedings**

U.R.Y.C.P. 13(c)

(c) Duties of guardian ad litem. The guardian ad litem, in addition to all other duties required by law, shall:
(1) protect the interest of a child for whom he/she has been appointed guardian ad litem; and
(2) investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest.
The court shall insure that guardians ad litem perform their duties properly and in the best interest of their wards.
When conducting an investigation under this rule, the guardian ad litem shall inform the child and the parent(s), guardian(s), or custodian(s) that the role of the guardian ad litem is to act as an arm of the court in protecting the interest of the child, and not as the parties' attorney, and that any statements made to the guardian ad litem affecting the health, safety, or welfare of the child will be reported to the court.

Advisory Note to Rule 13(c)

The guardian ad litem has the responsibility to fully protect the interests of the child. See In re D.K.L., 652 So. 2d 184, 191 (Miss. 1995). Such requires being prepared to testify as to the present health, education, estate and general welfare of the child, which, of necessity, requires interviewing the minor children, their current custodians, and prospective parents, if any. See M.J.S.H.S. v. Yalobusha County Dep't of Human Servs., 782 So. 2d 737, 741 (Miss. 2001). Additionally, the guardian ad litem must submit a written report to the court during the hearing, or testify and thereby become available for cross-examination by the natural parent. See D.J.L. v. Bolivar County Dep't of Human Servs., 824 So. 2d 617, 623 (Miss. 2002). The court should include in its findings of facts and conclusions of law a summary of the guardian ad litem's recommendations, whether it agrees or disagrees with the guardian ad litem, and why. In re L.D.M., 848 So. 2d 181, 183 (Miss. 2003); S.N.C. v. J.R.D., 755 So. 2d 1077, 1082 (Miss. 2000).

§ 43-21-121

(3) In addition to all other duties required by law, a guardian ad litem shall have the duty to protect the interest of a child for whom he has been appointed guardian ad litem. The guardian ad litem shall investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest. The guardian ad litem is not an adversary party and the court shall insure that

> guardians ad litem perform their duties properly and in the best interest of their wards. The guardian ad litem shall be a competent person who has no adverse interest to the minor. The court shall insure that the guardian ad litem is adequately instructed on the proper performance of his duties.

See also:

> McDonald v. McDonald, 39 So. 3d 868, 883 (Miss. 2010) ("The statute's provision that a GAL 'shall have the duty to protect the interest of a child for whom he [or she] has been appointed guardian ad litem. The guardian ad litem shall investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest,' is consistent with the traditional roles required of a GAL, which predate the enactment of the statutes.").

In instructing the guardian ad litem on the proper performance of duties, the court should also make clear when those duties officially end.

See, e.g.:

> National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 49 (2016) ("THE COURT'S ROLE IN ASSURING THE QUALITY OF REPRESENTATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS . . . Ensure appointments of all attorneys and GALs are made in a timely manner – immediately upon removal or filing of petition (i.e., as soon as possible in a case) and before the first hearing – and last until the case has been dismissed from the court's jurisdiction.").

> Lanette P. Dalley, *Imprisoned Mothers and Their Children: Their Often Conflicting Legal Rights*, 22 Hamline J. Pub. L. & Pol'y 1, 9 (2000) ("[In Montana there] are . . . no formal statutes or guidelines stipulating when the guardian's role officially ends. . . . [O]ne guardian stated, 'I'm not sure anybody has ever told me. I assume it officially ends once the child is placed adoptively.' Another guardian stated that her role ended 'when the Family Services jumped out of it and they were no longer involved, or parental rights were terminated and they were placed for adoption.'").

Additionally, a guardian ad litem might consider filing a request for termination of services at the conclusion of the case:

> "The service of a guardian ad litem should last only as long as the issues that led to the appointment remain, or until relieved by the court. Accordingly, either at the conclusion of the case or upon removal, it is a good idea for the GAL to file an order terminating services and to conduct a developmentally appropriate exit interview with the child, explaining

that the representation is ending and that the involvement of the guardian ad litem is over."

John Crouch, *The Child's Attorney New ABA Rules Clarify the Roles of Lawyers Who Represent Children,* Fam. Advoc., Winter 2004, at 31, 34.

➤ **In chancery court proceedings**

The Mississippi Uniform Rules of Youth Court Practice apply to "any chancery court proceeding when hearing, pursuant to section 93-11-65 of the Mississippi Code, an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action." U.R.Y.C.P. 2(a)(2).

See also:

Newell v. State, 308 So. 2d 71, 76 (Miss. 1975) ("The inherent power of this Court to promulgate procedural rules emanates from the fundamental constitutional concept of the separation of powers and the vesting of judicial powers in the courts.").

S. Pac. Lumber Co. v. Reynolds, 206 So. 2d 334, 335 (Miss. 1968) ("The phrase 'judicial power' in section 144 of the Constitution includes the power to make rules of practice and procedure, not inconsistent with the Constitution, for the efficient disposition of judicial business.").

Thus, Rule 13 of those rules apply to chancery proceedings in this situation. But the appointed guardian ad litem must be an attorney:

"(4) When a charge of abuse or neglect of a child first arises in the course of a custody or maintenance action pending in the chancery court pursuant to this section, the chancery court may proceed with the investigation, hearing and determination of such abuse or neglect charge as a part of its hearing and determination of the custody or maintenance issue as between the parents, as provided in Section 43-21-151, notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse or neglect charge shall be confidential in the same manner as provided in youth court proceedings, and the chancery court shall appoint a guardian ad litem in such cases, as provided under Section 43-21-121 for youth court proceedings, who shall be an attorney. . . ."

Miss. Code. Ann. § 93-11-65; *see also* Miss. Code. Ann. § 93-5-23.

May a chancery court judge assign to the appointed guardian ad litem duties that extend beyond those set forth in the Mississippi Youth Court Law? It appears so:

> "In Mississippi jurisprudence, the role of a guardian ad litem historically has not been limited to a particular set of responsibilities. In some cases, a guardian ad litem is appointed as counsel for minor children or incompetents, in which case an attorney-client relationship exists and all the rights and responsibilities of such relationship arise. In others, a guardian ad litem may serve as an arm of the court—to investigate, find facts, and make an independent report to the court. The guardian ad litem may serve in a very limited purpose if the court finds such service necessary in the interest of justice. Furthermore, the guardian ad litem's role at trial may vary depending on the needs of the particular case. The guardian ad litem may, in some cases, participate in the trial by examining witnesses. In some cases, the guardian ad litem may be called to testify, and in others, the role may be more limited.
> We find no fault with any of these diverse duties and responsibilities a chancellor might assign to a guardian ad litem in a particular case."
>
> S.G. v. D.C., 13 So. 3d 269, 280-81 (Miss. 2009).

Why is that? It is because the Mississippi Constitution gives the chancery court broad powers in protecting the best interests of children.

Miss. Const. art. VI, § 159

> The chancery court shall have full jurisdiction in the following matters and cases, viz.:
> (a) All matters in equity;
> (b) Divorce and alimony;
> (c) Matters testamentary and of administration;
> (d) Minor's business;
> (e) Cases of idiocy, lunacy, and persons of unsound mind;
> (f) All cases of which the said court had jurisdiction under the laws in force when this Constitution is put in operation.

See, e.g.:

> In re Bell, 962 So. 2d 537, 540 (Miss. 2007) ("[T]he equitable jurisdiction and power of the chancery court is limited to the system of justice administered by England's high court of chancery.").
>
> Duvall v. Duvall, 80 So. 2d 752, 755 (Miss. 1955) ("The source of the equity jurisdiction of the chancery court is the Constitution. Section 159. Among other matters, this section vests in the chancery court full jurisdiction of all matters in equity. There is no limitation on the power of the chancery court in equity matters except that the rights enforced or to be protected must come within the province and policy of remedial justice, and be a matter involving civil rights or property.

Griffith, Miss. Chancery Practice, Sec. 25.").

Union Chevrolet Co. v. Arrington, 162 Miss. 816, 138 So. 593, 595 (1932) ("Infants and persons of unsound mind are disabled under the law to act for themselves. Long ago it became the established rule for the court of chancery to act as the superior guardian for all persons under such disability. This inherent and traditional power and protective duty is made complete and irrefragable by the provisions of our present state constitution. It is not competent for the Legislature to abate the said powers and duties or for the said court to omit or neglect them.").

Bryant v. Brown, 118 So. 184, 189 (Miss. 1928) ("By section 159 of the state Constitution, the chancery court is given full jurisdiction of minors' business, cases of idiocy, lunacy, and persons of unsound mind, and all matters of equity, and the court of chancery has generally been openly recognized as the forum administering the power of the state known as parens patriæ power.").

Thus, the chancery court–by virtue of its traditional equity and parens patriæ powers–may assign additional duties if they neither conflict with the Mississippi Rules of Court nor tend to subvert the integrity and impartiality of the guardian ad litem's role as an arm of the court.

See also:

Canons 2A, 3B(4), and 3C(2) of the Mississippi Code of Judicial Conduct.

S.G. v. D.C., 13 So. 3d 269, 282 (Miss. 2009) ("[T]he Mississippi Rules of Professional Conduct include no exception for a guardian ad litem. No rule of ethics allows a guardian ad litem to ignore or violate the attorney-client privilege, or any other aspect of the attorney-client relationship. . . . We reiterate for emphasis: When making an appointment, we encourage chancellors to define clearly the role and responsibility of the guardian ad litem. Chancellors should not (as happened in this case) appoint a guardian ad litem to serve in the dual role of advisor to the court and lawyer for the child.").

However, any additional duties should comport with the purpose of the Mississippi Youth Court Law:

"This chapter shall be liberally construed to the end that each child coming within the jurisdiction of the youth court shall become a responsible, accountable and productive citizen, and that each such child shall receive such care, guidance and control, preferably in such child's own home as is conducive toward that end and is in the state's and the child's best interest. It is the public policy of this state that the parents of each child shall be primarily responsible for the care, support, education and welfare of such children; however, when it is necessary that a child be removed from the

control of such child's parents, the youth court shall secure proper care for such child."

Miss. Code Ann. § 43-21-103; *see also* U.R.Y.C.P. 3(c) ("These rules shall be interpreted and applied in keeping with the philosophy expressed in section 43-21-103 of the Mississippi Code.").

201 ARM OF THE COURT

In child protection proceedings, a guardian ad litem is an arm of the court. That means the guardian ad litem is not acting as the child's legal advocate, but instead is zealously assisting the court in protecting the child's best interests. *See* Miss. Code Ann. § 43-21-121.

See also:

R.L. v. G.F., 973 So. 2d 322, 325 (Miss. Ct. App. 2008) ("The role of the guardian ad litem is to act as a representative of the court and to assist the court in protecting the interests of an incompetent person by investigating and making recommendations to the court.").

Marcia M. Boumil, Cristina F. Freitas, Debbie F. Freitas, *Legal and Ethical Issues Confronting Guardian Ad Litem Practice*, 13 J. L. & Fam. Stud. 43, 45 (2011) ("Unlike the child's attorney whose role is generally to represent the stated wishes of the child, the GAL is generally expected to advocate for the best interests of the child, whether or not the child is in agreement.").

H. Lila Hubert, *In the Child's Best Interests: The Role of the Guardian Ad Litem in Termination of Parental Rights Proceedings*, 49 U. Miami L. Rev. 531, 553 (1994) ("This relationship [as an arm of the court] confers significant credibility and validity to the guardian's recommendations in the courtroom.").

Additionally, the Mississippi Uniform Rules of Youth Court requires that the guardian ad litem inform both the child and the parents of that role:

"When conducting an investigation under this rule, the guardian ad litem shall inform the child and the parent(s), guardian(s), or custodian(s) that the role of the guardian ad litem is to act as an arm of the court in protecting the interest of the child, and not as the parties' attorney, and that any statements made to the guardian ad litem affecting the health, safety, or welfare of the child will be reported to the court."

U.R.Y.C.P. 13(c).

This notification is consistent with Mississippi case law:

> "[I]f the guardian ad litem is to act as one who investigates and makes recommendations to the court, that role must be made clear to the parties, and particularly, to the children of suitable age and experience for whom the guardian ad litem is appointed. Such children have a right to be informed whether or not the guardian ad litem is their attorney, and whether a confidential relationship exists. Therefore, prudence requires the guardian ad litem's role be made clear."
>
> S.G. v. D.C., 13 So. 3d 269, 282 (Miss. 2009).

202 MANDATORY REPORTER

A guardian ad litem must adhere to the mandatory reporting requirements set forth in section 43-21-353 of the Mississippi Code, and as otherwise required by law, if there is reasonable cause to suspect that a child is a neglected child or an abused child. This reporting requirement applies to a guardian ad litem when acquiring information for reasonable cause to suspect:

- the abuse or neglect of a child that is more severe, or of a different nature, than what is alleged in the petition;
- the abuse or neglect of a child not named in the petition; and
- any new instances of abuse or neglect of a child after the filing of the petition.

IF THERE IS AN IMMINENT RISK OF HARM TO THE CHILD, THEN CALL 911!

§ 43-21-353

> (1) Any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, public or private school employee or any other person having reasonable cause to suspect that a child is a neglected child, an abused child, or a victim of commercial sexual exploitation or human trafficking, shall cause an oral report to be made immediately by telephone or otherwise and followed as soon thereafter as possible by a report in writing to the Department of Child Protection Services, and immediately a referral shall be made by the Department of Child Protection Services to the youth court intake unit, which unit shall promptly comply with Section 43-21-357. In the course of an investigation, at the initial time of contact with the individual(s) about whom a report has been made under this Youth Court Act or with the individual(s) responsible for the

health or welfare of a child about whom a report has been made under this chapter, the Department of Child Protection Services shall inform the individual of the specific complaints or allegations made against the individual. Consistent with subsection (4), the identity of the person who reported his or her suspicion shall not be disclosed at that point. Where appropriate, the Department of Child Protection Services shall additionally make a referral to the youth court prosecutor.

Upon receiving a report that a child has been sexually abused, is a victim of commercial sexual exploitation or human trafficking, or has been burned, tortured, mutilated or otherwise physically abused in such a manner as to cause serious bodily harm, or upon receiving any report of abuse that would be a felony under state or federal law, the Department of Child Protection Services shall immediately notify the law enforcement agency in whose jurisdiction the abuse occurred. Within forty-eight (48) hours, the department must notify the appropriate prosecutor and the Statewide Human Trafficking Coordinator. The department shall have the duty to provide the law enforcement agency all the names and facts known at the time of the report; this duty shall be of a continuing nature. The law enforcement agency and the department shall investigate the reported abuse immediately and shall file a preliminary report with the appropriate prosecutor's office within twenty-four (24) hours and shall make additional reports as new or additional information or evidence becomes available. The department shall advise the clerk of the youth court and the youth court prosecutor of all cases of abuse reported to the department within seventy-two (72) hours and shall update such report as information becomes available. In addition, if the Department of Child Protection Services determines that a parent or other person responsible for the care or welfare of an abused or neglected child maintains active duty status within the military, the department shall notify the applicable military installation family advocacy program that there is an allegation of abuse or neglect that relates to that child.

(2) Any report shall contain the names and addresses of the child and his parents or other persons responsible for his care, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, any other information that might be helpful in establishing the cause of the injury, and the identity of the perpetrator.

(3) The Department of Child Protection Services shall maintain a statewide incoming wide-area telephone service or similar service for the purpose of receiving reports of suspected cases of child abuse, commercial sexual exploitation or human trafficking; provided that any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer or public or private school employee who is required to report under subsection (1) of this section shall report in the manner required in subsection (1).

(4) Reports of abuse, neglect and commercial sexual exploitation or human trafficking made under this chapter and the identity of the reporter are confidential except when the court in which the investigation report is filed, in its discretion,

determines the testimony of the person reporting to be material to a judicial proceeding or when the identity of the reporter is released to law enforcement agencies and the appropriate prosecutor pursuant to subsection (1). Reports made under this section to any law enforcement agency or prosecutorial officer are for the purpose of criminal investigation and prosecution only and no information from these reports may be released to the public except as provided by Section 43-21-261. Disclosure of any information by the prosecutor shall be according to the Mississippi Uniform Rules of Circuit and County Court Procedure. The identity of the reporting party shall not be disclosed to anyone other than law enforcement officers or prosecutors without an order from the appropriate youth court. Any person disclosing any reports made under this section in a manner not expressly provided for in this section or Section 43-21-261 shall be guilty of a misdemeanor and subject to the penalties prescribed by Section 43-21-267. Notwithstanding the confidentiality of the reporter's identity under this section, the Department of Child Protection Services may disclose a reporter's identity to the appropriate law enforcement agency or prosecutor if the department has reason to suspect the reporter has made a fraudulent report, and the Department of Child Protection Services must provide to the subject of the alleged fraudulent report written notification of the disclosure.

. . .

See also:

§ 93-21-125

(1) Definitions. The following definitions apply in this section:
(a) "Advocate" means an employee, contractor, agent or volunteer of a victim service provider whose primary purpose is to render services to victims of domestic violence, sexual assault, stalking, or human trafficking and who has completed a minimum of twenty (20) hours of training in the areas of dynamics of victimization, substantive laws relating to domestic violence, sexual assault, stalking and human trafficking, crisis intervention techniques, communications skills, working with diverse populations, an overview of the state's criminal and civil justice systems, information regarding pertinent hospital procedures, victim compensation, and information regarding state and community resources for victims of domestic violence, sexual assault, stalking, human trafficking, or mandatory training required by the Office Against Interpersonal Violence, whichever is greater. "Advocate" also means a person employed by a victim service provider who supervises any employee, contractor, agent or volunteer rendering services. The term advocate also means a third party (i) present to further the interest of the victim in receiving services; (ii) necessary for the transmission of the communication; or (iii) to whom disclosure is reasonably necessary to accomplish the purposes for the victim seeking services.
(b) "Confidential victim communications" means all information, whether written or oral, collected, transmitted or shared between a victim and an advocate in the

course of that relationship and maintained by the victim service program in connection with services requested, utilized or denied. “Confidential victim communications” includes, but is not limited to, information received or given by the advocate in the course of the working relationship, advice, records, reports, notes, memoranda, working papers, electronic communications, case files, history, and statistical data that contain personally identifying information.

. . .

(2) Confidential victim communications protected from disclosure. (a) No advocate [as defined in this section] shall disclose any confidential victim communication or personally identifying information of a victim or be compelled to testify to or surrender any confidential victim communications or personally identifying information in any civil or criminal proceeding or in any legislative or administrative proceeding, without the prior informed, written and time-limited consent of the victim, ***EXCEPT IN THE FOLLOWING CIRCUMSTANCES: (i) WHERE DISCLOSURE IS MANDATED UNDER SECTION 43-21-353, SECTION 43-47-7, SECTION 43-47-37, SECTION 97-3-54.1(4), SECTION 97-5-51, SECTION 97-29-49, OR ANY OTHER APPLICABLE PROVISION OF STATE OR FEDERAL LAW;*** (ii) where failure to disclose is likely to result in imminent risk of serious bodily harm or death of the victim or another person, or when the victim dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceedings regarding the cause of the victim's death or incapacitation; or (iii) where disclosure is required pursuant to a valid court order.

. . .

(7) Nothing in this section shall affect any confidentiality or privilege provisions established by law or court rule.

§ 97-3-54.1

(4) In addition to the mandatory reporting provisions contained in Sections 43–21–353 and 97–5–51, any person who has reasonable cause to suspect that a minor under the age of eighteen (18) is a trafficked person shall immediately make a report of the suspected child abuse or neglect to the Department of Child Protection Services and to the Statewide Human Trafficking Coordinator. The Department of Child Protection Services or the Statewide Human Trafficking Coordinator, whichever is applicable, shall then immediately notify the law enforcement agency in the jurisdiction where the suspected child abuse neglect or trafficking occurred as required in Section 43–21–353, and the department that received the report shall also commence an initial investigation into the suspected abuse or neglect as required in Section 43–21–353.

ENHANCED RESOURCE GUIDELINES

After GALs/CASAs have been appointed on an abuse and/or neglect case, they should do the following:

- Conduct an independent investigation by reviewing all pertinent documents and records and interviewing the child, parents, social workers, foster parents, teachers, therapists, daycare providers, and other relevant persons to determine the facts and circumstances of the child's situation.

- Determine the thoughts and feelings of the child about the situation, taking into account the child's age, maturity, culture and ethnicity, and degree of attachment to family members, including siblings. Also to be considered are continuity, consistency, and a sense of belonging.

- Seek cooperative solutions by acting as a facilitator among conflicting parties to achieve a resolution of problems and foster positive steps toward achieving permanency for the child.

- Provide written reports at each hearing which include findings and recommendations.

- Appear at all hearings to advocate for the child's best interests and present testimony when necessary.

- Explain the court proceedings and the role of the GAL/CASA to the child in terms the child can understand.

- Make recommendations for specific, appropriate services for the child and the child's family and advocate for necessary services which may not be immediately available.

- Monitor implementation of case plans and court orders, checking to see that court-ordered services are implemented in a timely manner and that review hearings are held in accordance with the law.

- Inform the court promptly of important developments in the case including any agency's failure to provide services or the family's failure to participate. The GAL/CASA should ensure that appropriate motions are filed on behalf of the child so that the court can be made aware of changes in the child's circumstances and take appropriate actions.

- Advocate for the child's interests in the community by bringing concerns regarding the child's health, education, and mental health, etc., to the appropriate professionals to assure that the child's needs in these areas are met.

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 48-49 (2016).

203 GAL DUTIES CHECKLIST

✓ Protect the best interests of the child by investigating and making recommendations and/or entering reports to the court as needed. *See* U.R.Y.C.P. 13(c).

✓ Explain to the parent(s) and child your role as an arm of the court. A guardian ad litem is not acting as the child's legal advocate, but instead is zealously assisting the court in protecting the child's best interests. *See* Miss. Code Ann. § 43-21-121.

✓ In discerning the best interests of the child*,* the guardian ad litem must have*:*

- a complete understanding of the child's home situation and needs, and
- a comprehensive knowledge of available programs and resources for achieving a successful permanency outcome.

✓ Conduct a thorough and independent investigation on all relevant matters, including:

- Why is the home unsafe?
- What protective measures would allow the child to return home?
- Are there aggravated circumstances, such as chronic abuse or sexual abuse?
- Are there physical and/or mental health issues that need professional attention?
- Does the parent have an alcohol problem or drug dependency?
- Is there domestic violence or abuse?
- What relationships are relevant to achieving a successful permanency outcome?
- What are the living arrangements?
- Are the child's educational needs being met?
- Are there social development concerns?
- Are there ethnic, cultural, or religious considerations?
- Is the parent in need of financial assistance?
- Are there special needs or concerns?

✓ Review all records relevant to the proceedings, including:

Abuse and/or neglect records; child in need of supervision records; delinquency records; federal or state criminal records; records of civil actions; physical and mental health records; counseling records; school records; CPS investigations and service agreements; and CAC forensic interviews.

✓ When interviewing the child:

- Choose a comfortable setting.
- Consider time limitations.
- Explain to the child in simple terms your role in the proceedings.
- Use age-appropriate vocabulary and short sentences.
- Avoid asking "why" questions or making inquiries on specific abuses.
- Establish trust by listening to the child's responses.
- Conduct follow-up interviews as needed.

✓ Fully address the home situation, including:

- The family's daily and weekend routine.
- Any intellectual, communicative, educational, social, emotional, behavioral, or physical concerns needing immediate attention.
- A parent's parenting skills, knowledge, and practices.
- Alcohol or drug dependency issues.
- Past or current domestic violence or abuse.
- Relatives willing to provide temporary or long-term care for the child.
- Reliable friends willing to provide support–such as transportation to court hearings, work, medical appointments, or visitations.
- Dating relationships. How does the child feel towards that person? Does that person have a criminal history or mental health issues?
- Living arrangements–including all person who live in the home or are frequent visitors.
- Educational concerns. Where does the child go to school? How are the child's grades? Any disciplinary problems?
- Ethnic, cultural, or religious concerns.
- The parent's financial situation. Does the parent need financial assistance for housing, transportation, or other essential needs?
- Does the parent or child have any special needs? Or, special concerns–such as a pending divorce or probation conditions?

✓ Discuss the CPS service plan:

- Establish trust by listening to the parent's concerns.
- Conduct follow-up interviews as needed.

✓ Others to consider interviewing:

Foster parents; relatives; fictive kin, neighbors, and community support persons; social workers; school officials and teachers; medical health professionals; and prospective adoptive parent(s).

✓ Report to the court any information relevant to the proceedings:

- Names, dates, times, and locations of all interviews and/or other significant communications, including an explanation of the relationship to the child.
- Whether both the parent and child were informed of the guardian ad litem's role as required by U.R.Y.C.P. 13(c).
- Whether information was acquired in the course of the investigation that may have raised disqualification concerns in serving as a guardian ad litem in the case.
- The nature and circumstances of the alleged abuse and/or neglect.
- The risks in returning the child to the custody of the parent, including the threats of danger, the child's vulnerability, and the family's protective capacity.
- Whether "reasonable efforts" are not required because the child was subjected to aggravated circumstances, such as abandonment, torture, chronic abuse or sexual abuse.
- Physical and/or mental health issues needing professional or emergency attention.
- Alcohol or drug dependency concerns.
- Domestic violence or abuse, including any past or current protection orders.
- Relationships important toward achieving a successful permanency outcome.
- Living arrangements, with a listing all persons residing in the home.
- Child's educational needs. Parent's educational history.
- Social development concerns.
- Ethnic, cultural, or religious considerations as these pertain to providing reasonable efforts over a reasonable period in diligently assisting the parent in complying with the service plan.
- Parent's financial situation, including the need for housing assistance, transportation, and financial aid.
- Whether the parent has legal counsel or desires legal counsel.
- Special needs or concerns of the parent and/or child.
- Any court or state agency records relevant to the proceedings.
- Parent's parenting skills, knowledge, and practices.
- Child's daily routine. Parent's daily routine.
- Any terms or conditions of the CPS service agreement that the parent finds unreasonable.

CHAPTER 3

CONFIDENTIALITY OF RECORDS INVOLVING CHILDREN

300 REPORTS OF ABUSE OR NEGLECT

301 RECORDS INVOLVING CHILDREN

- **Confidential records**
- **Disclosure by court order**
- **Disclosure not requiring a court order**
- **Procedures for a subpoena duces tecum**
- **Sealing of records involving children**
- **Sanctions for unlawful disclosure**

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§ 43-21-351

(1) Any person or agency having knowledge that a child residing or being within the county is within the jurisdiction of the youth court may make a written report to the intake unit alleging facts sufficient to establish the jurisdiction of the youth court. The report shall bear a permanent number that will be assigned by the court in accordance with the standards established by the Administrative Office of Courts pursuant to Section 9-21-9(d), and shall be preserved until destroyed on order of the court.
(2) There shall be in each youth court of the state an intake officer who shall be responsible for the accurate and timely entering of all intake and case information into the Mississippi Youth Court Information Delivery System (MYCIDS) for the Division of Youth Services, truancy matters and the Division of Family and Children's Services. It shall be the responsibility of the youth court judge or referee of each county to ensure that the intake officer is carrying out the responsibility of this section.

§ 43-21-353

(4) Reports of abuse, neglect and commercial sexual exploitation or human trafficking made under this chapter and the identity of the reporter are confidential except when the court in which the investigation report is filed, in its discretion, determines the testimony of the person reporting to be material to a judicial proceeding or when the identity of the reporter is released to law enforcement agencies and the appropriate prosecutor pursuant to subsection (1). Reports made under this section to any law enforcement agency or prosecutorial officer are for the purpose of criminal investigation and prosecution only and no information from these reports may be released to the public except as provided by Section 43-21-261. Disclosure of any information by the prosecutor shall be according to the Mississippi Uniform Rules of Circuit and County Court Procedure. The identity of the reporting party shall not be disclosed to anyone other than law enforcement officers or prosecutors without an order from the appropriate youth court. Any person disclosing any reports made under this section in a manner not expressly provided for in this section or Section 43-21-261 shall be guilty of a misdemeanor and subject to the penalties prescribed by Section 43-21-267. Notwithstanding the confidentiality of the reporter's identity under this section, the Department of Child Protection Services may disclose a reporter's identity to the appropriate law enforcement agency or prosecutor if the department has reason to suspect the reporter has made a fraudulent report, and the Department of Child Protection Services must provide to the subject of the alleged fraudulent report written notification of the disclosure.

➤ **Confidential records**

U.R.Y.C.P. 5

(b) Child protection proceedings.
(1) Confidential records. Records involving children, as defined under section 43-21-105 of the Mississippi Code, shall not be disclosed except as authorized by Mississippi's Youth Court Law and these rules.

Advisory Note to Rule 5(b)(1)

Records involving children shall be kept confidential except as authorized by Mississippi's Youth Court Law or as otherwise provided by law. See Miss. Code Ann. § 43-21-259 (2008). This confidentiality requirement is conducive to the protective and rehabilitative purposes of the court. See, e.g., Smith v. Daily Mail Pub. Co., 443 U.S. 97, 107 (1979) (Rehnquist, J., concurring) ("The prohibition of publication of a juvenile's name is designed to protect the young person from the stigma of his misconduct and is rooted in the principle that a court concerned with juvenile affairs serves as a rehabilitative and protective agency of the State."). It is not, however, absolute. See Windham v. State, 800 So. 2d 1257, 1260 (Miss. Ct. App. 2001) ("[Section 43-21-261] itself provides that the confidentiality requirement may be overridden by a determination that disclosure would advance the child's best interests or the public safety.").

§ 43-21-105

(u) "Records involving children" means any of the following from which the child can be identified:
(i) All youth court records as defined in Section 43-21-251;
(ii) All forensic interviews conducted by a child advocacy center in abuse and neglect investigations;
(iii) All law enforcement records as defined in Section 43-21-255;
(iv) All agency records as defined in Section 43-21-257; and
(v) All other documents maintained by any representative of the state, county, municipality or other public agency insofar as they relate to the apprehension, custody, adjudication or disposition of a child who is the subject of a youth court cause.

§ 43-21-251

(1) The court records of the youth court shall include:
(a) A general docket in which the clerk of the youth court shall enter the names of the parties in each cause, the date of filing the petition, any other pleadings, all

other papers in the cause, issuance and return of process, and a reference by the minute book and page to all orders made therein. The general docket shall be duly indexed in the alphabetical order of the names of the parties.
(b) All the papers and pleadings filed in a cause. The papers in every cause shall be marked with the style and number of the cause and the date when filed. All the papers filed in a cause shall be kept in the same file, and all the files shall be kept in numerical order.
(c) All social records of a youth court, which shall include all intake records, social summaries, medical examinations, mental health examinations, transfer studies and all other information obtained and prepared in the discharge of official duty for the youth court.
(i) A "social summary" is an investigation of the personal and family history and the environment of a child who is the subject of a youth court cause. The social summary should describe all reasonable appropriate alternative dispositions. The social summary should contain a specific plan for the care and assistance to the child with a detailed explanation showing the necessity for the proposed plan of disposition.
(ii) A "medical examination" is an examination by a physician of a child who is the subject of a youth court cause or of his parent. The youth court may order a medical examination at any time after the intake unit has received a written complaint. Whenever possible, a medical examination shall be conducted on an outpatient basis. A medical examination of a parent of the child who is the subject of the cause shall not be ordered unless the physical or mental ability of the parent to care for the child is a relevant issue in the particular cause and the parent to be examined consents to the examination.
(iii) A "mental health examination" is an examination by a psychiatrist or psychologist of a child who is the subject of a youth court cause or of his parent. The youth court may order a mental health examination at any time after the intake unit has received a written complaint. Whenever possible, a mental health examination shall be conducted on an outpatient basis. A mental health examination of a parent of the child who is the subject of a cause shall not be ordered unless the physical or mental ability of the parent to care for the child is a relevant issue in the particular cause and the parent to be examined consents to the examination.
(iv) A "transfer study" is a social summary which addresses the factors set forth in Section 43-21-157(5). A transfer study shall not be admissible evidence nor shall it be considered by the court at any adjudicatory hearing. It shall be admissible evidence at a transfer or disposition hearing.
(d) A minute book in which the clerk shall record all the orders of the youth court.
(e) Proceedings of the youth court and evidence.
(f) All information obtained by the youth court from the Administrative Office of Courts pursuant to a request under Section 43-21-261(15).
(2) The records of the youth court and the contents thereof shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

(3) The court records of the youth court may be kept on computer in the manner provided for storing circuit court records and dockets as provided in Section 9-7-171.

§ 43-21-255

(1) Except as otherwise provided by this section, all records involving children made and retained by law enforcement officers and agencies or by the youth court prosecutor and the contents thereof shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

(2) A child in the jurisdiction of the youth court and who has been taken into custody for an act, which if committed by an adult would be considered a felony or offenses involving possession or use of a dangerous weapon or any firearm, may be photographed or fingerprinted or both. Any law enforcement agency taking such photographs or fingerprints shall immediately report the existence and location of the photographs and fingerprints to the youth court. Copies of fingerprints known to be those of a child shall be maintained on a local basis only. Such copies of fingerprints may be forwarded to another local, state or federal bureau of criminal identification or regional depository for identification purposes only. Such copies of fingerprints shall be returned promptly and shall not be maintained by such agencies.

(3) Any law enforcement record involving children who have been taken into custody for an act, which if committed by an adult would be considered a felony and/or offenses involving possession or use of a dangerous weapon including photographs and fingerprints, may be released to a law enforcement agency supported by public funds, youth court officials and appropriate school officials without a court order under Section 43-21-261. Law enforcement records shall be released to youth court officials and to appropriate school officials upon written request. Except as provided in subsection (4) of this section, any law enforcement agency releasing such records of children in the jurisdiction of the youth court shall immediately report the release and location of the records to the youth court. The law enforcement agencies, youth court officials and school officials receiving such records are prohibited from using the photographs and fingerprints for any purpose other than for criminal law enforcement and juvenile law enforcement. Each law enforcement officer or employee, each youth court official or employee and each school official or employee receiving the records shall submit to the sender a signed statement acknowledging his or her duty to maintain the confidentiality of the records. In no instance shall the fact that such records of children in the jurisdiction of the youth court exist be conveyed to any private individual, firm, association or corporation or to any public or quasi-public agency the duties of which do not include criminal law enforcement or juvenile law enforcement.

(4) When a child’s driver’s license is suspended for refusal to take a test provided under the Mississippi Implied Consent Law, the law enforcement agency shall report such refusal, without a court order under Section 43-21-261, to the

Commissioner of Public Safety in the same manner as such suspensions are reported in cases involving adults.
(5) All records involving a child convicted as an adult or who has been twice adjudicated delinquent for a sex offense as defined by Section 45-33-23, Mississippi Code of 1972, shall be public and shall not be kept confidential.

§ 43-21-257

(1) Unless otherwise provided in this section, any record involving children, including valid and invalid complaints, and the contents thereof maintained by the Department of Human Services or Department of Child Protection Services, or any other state agency, shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.
(2) The Office of Youth Services shall maintain a state central registry containing the number and disposition of all cases together with such other useful information regarding those cases as may be requested and is obtainable from the records of the youth court. The Office of Youth Services shall annually publish a statistical record of the number and disposition of all cases, but the names or identity of any children shall not be disclosed in the reports or records. The Office of Youth Services shall adopt such rules as may be necessary to carry out this subsection. The central registry files and the contents thereof shall be confidential and shall not be open to public inspection. Any person who discloses or encourages the disclosure of any record involving children from the central registry shall be subject to the penalty in Section 43-21-267. The youth court shall furnish, upon forms provided by the Office of Youth Services, the necessary information, and these completed forms shall be forwarded to the Office of Youth Services. The Department of Human Services and its employees are exempt from any civil liability as a result of any action taken pursuant to the compilation or release of information on the central registry under this section and any other applicable section of this code, unless determined that an employee has willfully and maliciously violated the rules and administrative procedures of the department pertaining to the central registry or any section of this code. If an employee is determined to have willfully and maliciously performed such a violation, said employee shall not be exempt from civil liability in this regard.
(3) The Department of Child Protection Services shall maintain a state central registry on neglect and abuse cases containing (a) the name, address and age of each child, (b) the nature of the harm reported, (c) the name and address of the person responsible for the care of the child, and (d) the name and address of the substantiated perpetrator of the harm reported. “Substantiated perpetrator” shall be defined as an individual who has committed an act(s) of sexual abuse or physical abuse that would otherwise be deemed as a felony or any child neglect that would be deemed as a threat to life. A name is to be added to the registry only based upon a criminal conviction or an adjudication by a youth court judge or court of competent jurisdiction, ordering that the name of the perpetrator be listed on the central registry. The central registry shall be confidential and shall not be open to

public inspection. Any person who discloses or encourages the disclosure of any record involving children from the central registry without following the rules and administrative procedures of the department shall be subject to the penalty in Section 43-21-267. The Department of Child Protection Services and its employees are exempt from any civil liability as a result of any action taken pursuant to the compilation or release of information on the central registry under this section and any other applicable section of this code, unless determined that an employee has willfully and maliciously violated the rules and administrative procedures of the department pertaining to the central registry or any section of this code. If an employee is determined to have willfully and maliciously performed such a violation, said employee shall not be exempt from civil liability in this regard.

(4) The Mississippi State Department of Health may release the findings of investigations into allegations of abuse within licensed day care centers made under the provisions of Section 43-21-353(8) to any parent of a child who is enrolled in the day care center at the time of the alleged abuse or at the time the request for information is made. The findings of any such investigation may also be released to parents who are considering placing children in the day care center. No information concerning those investigations may contain the names or identifying information of individual children.

The Department of Health shall not be held civilly liable for the release of information on any findings, recommendations or actions taken pursuant to investigations of abuse that have been conducted under Section 43-21-353(8).

§ 43-21-259

All other records involving children and the contents thereof shall be kept confidential and shall not be disclosed except as provided in section 43-21-261.

➤ **Disclosure by court order**

U.R.Y.C.P. 5

(b)(2) Disclosure of records involving children by court order. The court may order the disclosure of records involving children pursuant to section 43-21-261(1) of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of section 43-21-261(2) of the Mississippi Code. The procedures set forth in Rule 6 of these rules must be followed whenever any court other than youth court issues a subpoena duces tecum for records involving children.

Advisory Note to Rule 5(b)(2)

A court order for the disclosure of records involving children must specify the person or persons to whom the records may be disclosed, the extent of the records

which may be disclosed and the purpose of the disclosure. Additionally, the order must be limited to those persons listed in section 43-21-261(1)(a) through (g) of the Mississippi Code and must contain a finding that the particular disclosure is in the best interests of the child, the public safety or the functioning of the youth court. See Miss. Code Ann. § 43-21-261 (2008).

§ 43-21-261

(1) Except as otherwise provided in this section, records involving children shall not be disclosed, other than to necessary staff or officials of the youth court, a guardian ad litem appointed to a child by the court, or a Court-Appointed Special Advocate (CASA) volunteer who may be assigned in an abuse and neglect case, except pursuant to an order of the youth court specifying the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Such court orders for disclosure shall be limited to those instances in which the youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety, the functioning of the youth court, or to identify a person who knowingly made a false allegation of abuse or neglect, and then only to the following persons:
(a) The judge of another youth court or member of another youth court staff;
(b) The court of the parties in a child custody or adoption cause in another court;
(c) A judge of any other court or members of another court staff, including the chancery court that ordered a forensic interview;
(d) Representatives of a public or private agency providing supervision or having custody of the child under order of the youth court;
(e) Any person engaged in a bona fide research purpose, provided that no information identifying the subject of the records shall be made available to the researcher unless it is absolutely essential to the research purpose and the judge gives prior written approval, and the child, through his or her representative, gives permission to release the information;
(f) The Mississippi Department of Employment Security, or its duly authorized representatives, for the purpose of a child's enrollment into the Job Corps Training Program as authorized by Title IV of the Comprehensive Employment Training Act of 1973 (29 USCS Section 923 et seq.). However, no records, reports, investigations or information derived therefrom pertaining to child abuse or neglect shall be disclosed;
(g) Any person pursuant to a finding by a judge of the youth court of compelling circumstances affecting the health, safety or well-being of a child and that such disclosure is in the best interests of the child or an adult who was formerly the subject of a youth court delinquency proceeding;
(h) A person who was the subject of a knowingly made false allegation of child abuse or neglect which has resulted in a conviction of a perpetrator in accordance with Section 97-35-47 or which allegation was referred by the Department of Child Protection Services to a prosecutor or law enforcement official in accordance with the provisions of Section 43-21-353(4).

Law enforcement agencies may disclose information to the public concerning the taking of a child into custody for the commission of a delinquent act without the necessity of an order from the youth court. The information released shall not identify the child or his address unless the information involves a child convicted as an adult.

(2) Any records involving children which are disclosed under an order of the youth court or pursuant to the terms of this section and the contents thereof shall be kept confidential by the person or agency to whom the record is disclosed unless otherwise provided in the order. Any further disclosure of any records involving children shall be made only under an order of the youth court as provided in this section.

(3) Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to inspect any record, report or investigation relevant to a matter to be heard by a youth court, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person. The attorney for the parent, guardian or custodian of the child, upon request, shall be provided a copy of any record, report or investigation relevant to a matter to be heard by a youth court, but the identity of the reporter must be redacted and the name of any other person must also be redacted if the person or agency making the information available finds that disclosure of the information would be likely to endanger the life, safety or well-being of the person. A record provided to the attorney under this section must remain in the attorney's control and the attorney may not provide copies or access to another person or entity without prior consent of a court with appropriate jurisdiction.

(4) Upon request, the child who is the subject of a youth court cause shall have the right to have his counsel inspect and copy any record, report or investigation which is filed with the youth court or which is to be considered by the youth court at a hearing.

(5)(a) The youth court prosecutor or prosecutors, the county attorney, the district attorney, the youth court defender or defenders, or any attorney representing a child shall have the right to inspect and copy any law enforcement record involving children.

(b) The Department of Child Protection Services shall disclose to a county prosecuting attorney or district attorney any and all records resulting from an investigation into suspected child abuse or neglect when the case has been referred by the Department of Child Protection Services to the county prosecuting attorney or district attorney for criminal prosecution.

(c) Agency records made confidential under the provisions of this section may be disclosed to a court of competent jurisdiction.

(d) Records involving children shall be disclosed to the Division of Victim Compensation of the Office of the Attorney General upon the division's request

without order of the youth court for purposes of determination of eligibility for victim compensation benefits.
(6) Information concerning an investigation into a report of child abuse or child neglect may be disclosed by the Department of Child Protection Services without order of the youth court to any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, or a public or private school employee making that report pursuant to Section 43-21-353(1) if the reporter has a continuing professional relationship with the child and a need for such information in order to protect or treat the child.
(7) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court to any interagency child abuse task force established in any county or municipality by order of the youth court of that county or municipality.
(8) Names and addresses of juveniles twice adjudicated as delinquent for an act which would be a felony if committed by an adult or for the unlawful possession of a firearm shall not be held confidential and shall be made available to the public.
(9) Names and addresses of juveniles adjudicated as delinquent for murder, manslaughter, burglary, arson, armed robbery, aggravated assault, any sex offense as defined in Section 45-33-23, for any violation of Section 41-29-139(a)(1) or for any violation of Section 63-11-30, shall not be held confidential and shall be made available to the public.
(10) The judges of the circuit and county courts, and presentence investigators for the circuit courts, as provided in Section 47-7-9, shall have the right to inspect any youth court records of a person convicted of a crime for sentencing purposes only.
(11) The victim of an offense committed by a child who is the subject of a youth court cause shall have the right to be informed of the child's disposition by the youth court.
(12) A classification hearing officer of the State Department of Corrections, as provided in Section 47-5-103, shall have the right to inspect any youth court records, excluding abuse and neglect records, of any offender in the custody of the department who as a child or minor was a juvenile offender or was the subject of a youth court cause of action, and the State Parole Board, as provided in Section 47-7-17, shall have the right to inspect such records when the offender becomes eligible for parole.
(13) The youth court shall notify the Department of Public Safety of the name, and any other identifying information such department may require, of any child who is adjudicated delinquent as a result of a violation of the Uniform Controlled Substances Law.
(14) The Administrative Office of Courts shall have the right to inspect any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose.

(15) Upon a request by a youth court, the Administrative Office of Courts shall disclose all information at its disposal concerning any previous youth court intakes alleging that a child was a delinquent child, child in need of supervision, child in need of special care, truant child, abused child or neglected child, as well as any previous youth court adjudications for the same and all dispositional information concerning a child who at the time of such request comes under the jurisdiction of the youth court making such request.
(16) The Administrative Office of Courts may, in its discretion, disclose to the Department of Public Safety any or all of the information involving children contained in the office's youth court data management system known as Mississippi Youth Court Information Delivery System or "MYCIDS."
(17) The youth courts of the state shall disclose to the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose. The disclosure prescribed in this subsection shall not require a court order and shall be made in sortable, electronic format where possible. The PEER Committee may seek the assistance of the Administrative Office of Courts in seeking this information. The PEER Committee shall not disclose the identities of any youth who have been adjudicated in the youth courts of the state and shall only use the disclosed information for the purpose of monitoring the effectiveness and efficiency of programs established to assist adjudicated youth, and to ascertain the incidence of adjudicated youth who become adult offenders.
(18) In every case where an abuse or neglect allegation has been made, the confidentiality provisions of this section shall not apply to prohibit access to a child's records by any state regulatory agency, any state or local prosecutorial agency or law enforcement agency; however, no identifying information concerning the child in question may be released to the public by such agency except as otherwise provided herein.
(19) In every case of child abuse or neglect, if a child's physical condition is medically labeled as medically "serious" or "critical" or a child dies, the confidentiality provisions of this section shall not apply. In such cases, the following information may be released by the Mississippi Department of Child Protection Services: the cause of the circumstances regarding the fatality or medically serious or critical physical condition; the age and gender of the child; information describing any previous reports of child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or medically serious or critical physical condition; the result of any such investigations; and the services provided by and actions of the state on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or medically serious or critical physical condition.
(20) Any member of a foster care review board designated by the Department of Child Protection Services shall have the right to inspect youth court records

relating to the abuse, neglect or child in need of supervision cases assigned to such member for review.
(21) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court in any administrative or due process hearing held, pursuant to Section 43-21-257, by the Department of Child Protection Services for individuals whose names will be placed on the central registry as substantiated perpetrators.
(22) The Department of Child Protection Services may disclose records involving children to the following:
(a) A foster home, residential child-caring agency or child-placing agency to the extent necessary to provide such care and services to a child;
(b) An individual, agency or organization that provides services to a child or the child's family in furtherance of the child's permanency plan to the extent necessary in providing those services;
(c) Health and mental health care providers of a child to the extent necessary for the provider to properly treat and care for the child;
(d) An educational institution or educational services provider where the child is enrolled or where enrollment is anticipated to the extent necessary for the school to provide appropriate services to the child; and
(e) Any other state agency if the disclosure is necessary to the department in fulfilling its statutory responsibilities in protecting the best interests of the child.

§ 43-21-605(6)

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

See also:

In re M.D.G., 275 So. 3d 1096, 1100 (Miss. 2019) ("This court recognizes the statutory authority granted to the youth court to use its discretion in deciding matters of disclosure.").

In re R.J.M.B., 2013 WL 2249407 (Miss.) ("Orders for disclosure . . . must be 'limited to those instances in which the youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety or the functioning of the youth court.'").

➤ **Disclosure not requiring a court order**

U.R.Y.C.P. 5

(b)(3) Disclosure of records involving children not requiring a court order. Certain records involving children may be disclosed without an order of the court

pursuant to section 43-21-261(1) through (18) of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of section 43-21-261(2) of the Mississippi Code.

Advisory Note to Rule 5(b)(3)

Statutory provisions allowing for limited disclosure of records involving children restrict the persons to whom the records may be disclosed, the extent of the records which may be disclosed, and the purpose of the disclosure. See Miss. Code Ann. § 43-21-261(2) (2008); see also Miss. Code Ann. § 43-21-267 (2008) (providing sanctions for disclosing or encouraging the disclosure of any records involving children without proper authorization).

See also:

Heffner v. Rensink, 938 So. 2d 917, 920 (Miss. Ct. App. 2006) ("But, Section 43–21–261(3) states that 'Upon request, the parent, guardian or custodian of the child who is the subject of a youth court case or any attorney for such parent . . . shall have the right to inspect any record, report or investigation which is to be considered by the youth court at a hearing. . . .' This inspection of the records is limited, however, and does not permit copying.").

➤ **Procedures for a subpoena duces tecum**

U.R.Y.C.P. 6

(a) Procedures for issuing a subpoena duces tecum. No subpoena duces tecum for records involving children, as such records are defined under section 43-21-105 of the Mississippi Code, shall issue from any court other than youth court except upon compliance with the following procedures:
(1) the party shall make an application to the court specifying which records are sought;
(2) the court shall issue a subpoena duces tecum to the youth court for these records;
(3) the youth court, unless a hearing is conducted pursuant to Rule 6(b) of these rules, shall transfer copies of the records to the court;
(4) the court shall conduct an in camera inspection of the records, in accordance with the procedures set forth in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), to determine which records should be disclosed to the party;
(5) the court shall, at all times, protect the confidentiality of the records to the extent required of the youth court under Mississippi's Youth Court Law.
(b) Hearing on access to confidential files. The youth court may require a hearing to determine whether the court or parties have a legitimate interest to be allowed access to the confidential files. In determining whether a person has a legitimate interest, the youth court shall consider the nature of the proceedings, the welfare and safety of the public, and the interest of the child.

Advisory Note to Rule 6

The child's right of confidentiality of youth records is a qualified privilege, not an absolute one. See Daniels v. Wal-Mart Stores, Inc., 634 So.2d 88, 93 (Miss. 1993). Mississippi has adopted the procedures advanced in Ritchie when there is a request originating in trial court proceedings for disclosure of confidential youth court records. See In re J.E., 726 So. 2d 547, 553 (Miss. 1998). These procedures require the trial judge to: (1) conduct an in camera review of the requested records and (2) release any information contained therein material to the fairness of the trial. Such is an ongoing duty. See Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987).

➤ **Sealing of records involving children**

§ 43-21-263

(1) The youth court may order the sealing of records involving children:
(a) if the child who was the subject of the cause has attained twenty (20) years of age;
(b) if the youth court dismisses the cause; or
(c) if the youth court sets aside an adjudication in the cause.
(2) The youth court may, at any time, upon its own motion or upon application of a party to a youth court cause, order the sealing or unsealing of the records involving children.

➤ **Sanctions for unlawful disclosure**

U.R.Y.C.P. 38

The court may enforce compliance with these rules, whenever reasonably necessary in carrying out the purpose of the Mississippi Youth Court Law and these rules, by contempt of court, sanctions, or other appropriate disciplinary actions.

§ 43-21-267

(1) Any person who shall disclose or encourage the disclosure of any records involving children or the contents thereof without the proper authorization under this chapter shall be guilty of a misdemeanor and punished, upon conviction, by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment in the county jail of not more than one (1) year or by both such fine and imprisonment.
(2) Nothing herein shall prevent the youth court from finding in civil contempt, as provided in section 43-21-153, any person who shall disclose any records involving children or the contents thereof without the proper authorization under this chapter.

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CHAPTER 4

BEST INTERESTS OF THE CHILD

400 PARENS PATRIAE

401 DISCERNING THE BEST INTERESTS OF THE CHILD

402 CONSTITUTIONAL CONSIDERATIONS

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"Parens patriae" means literally "parent of his or her country." It refers to "the state [or sovereignty] in its capacity as provider of protection to those unable to care for themselves." Black's Law Dictionary (8th ed. 2004). The concept dates back to the King of England:

> "The judicial tradition of appointing GALs stems from the English doctrine of parens patriae, which established the king as the protector and general guardian of all 'infants, idiots, and lunatics.'"
>
> Cynthia Hastings, *Letting Down Their Guard: What Guardians Ad Litem Should Know about Domestic Violence in Child Custody Disputes*, 24 B.C. Third World L.J. 283, 288 (2004).

Eventually, this doctrine took hold in chancery proceedings:

> "The first case to mention parens patriae in conjunction with infants [albeit in dictum] was Falkland [23 Eng. Rep. 814 (Ch. 1669)]. ... Not only did Falkland rename 'parens patriae' as 'pater patriae,' but it also advanced the novel idea that this doctrine extended to infants, that the portion parens patriae relating to infants had formerly been exercised by the Court of Wards, and that upon the abolition of the Court of Wards in 1660, the jurisdiction over infants reverted to the Court of Chancery."
>
> Sarah Abramowicz, *English Child Custody Law, 1660-1839: The Origins of Judicial Intervention in Paternal Custody*, 99 Colum. L. Rev. 1344, 1351-52 (1999).

In *Bryant v. Brown*, the Mississippi Supreme recognized the doctrine of parens patriae when it considered the constitutionality of the Mississippi's Juvenile Court Act of 1916:

> "As long as parents properly exercise their duty, under their natural rights, to rear, educate, and control their children, their right to do so may not be interfered with solely because some other person or some other institution might be deemed better suited for that purpose. The children of the poor cannot be taken from them, and awarded to the rich or to some rich and powerful institution, merely because such person or such institution might, in the judgment of the court, do a better part by the child than the natural parents. But where the parents fail to perform their natural duty to so rear and educate the child as to make it a useful, intelligent, and moral being, but permit it to go unrestrained and to become vicious in its habits and practices, and a menace to the rest of society, the state, as parens patriae of all children, may assert its power and apply the curative, so as to prevent injury to the child and to society by the negligent and wrongful conduct of

> the parents in failing to exercise the proper control and restraint over the child in its tendencies.
> . . .
> By section 159 of the state Constitution, the chancery court is given full jurisdiction of minors' business, cases of idiocy, lunacy, and persons of unsound mind, and all matters of equity, and the court of chancery has generally been openly recognized as the forum administering the power of the state known as *parens patriae* power.
>
> Bryant v. Brown, 118 So. 184, 186-89 (Miss. 1928).

Phrases within the Juvenile Court Act of 1916 that carry through to this day include:

- "the judge may at any time make such changes in the care, custody, or supervision of such child as the welfare of the child may demand"
- "the court to do or omit to do any act or acts which the judge may deem reasonable and necessary for the welfare of such child"
- "if [the judge] deems it for the best interest of such child, and the public welfare"

See Chapter 32, Hemingway Code 1927, Sections 5697 to 5721.

Under Mississippi's Youth Court Law, the youth courts are now statutorily vested with powers that comport to chancery court's parens patriae powers:

> "[The Youth Court Law] shall be liberally construed to the end that each child coming within the jurisdiction of the youth court shall become a responsible, accountable and productive citizen, and that each such child shall receive such care, guidance and control, preferably in such child's own home as is conducive toward that end and is in the state's and the child's best interest. It is the public policy of this state that the parents of each child shall be primarily responsible for the care, support, education and welfare of such children; however, when it is necessary that a child be removed from the control of such child's parents, the youth court shall secure proper care for such child."
>
> Miss. Code Ann. § 43-21-103; *see also* U.R.Y.C.P. 3(c) ("These rules shall be interpreted and applied in keeping with the philosophy expressed in section 43-21-103 of the Mississippi Code.").

These powers, however, must be exercised "with caution and prudence and on full inquiry." *See* Neely v. Craig, 139 So. 835, 838 (Miss. 1932). To facilitate a just, reasonably prompt, and efficient determination in the cause, the court is required to appoint a guardian ad litem to "investigate, make recommendations to the court

or enter reports as necessary to hold paramount the child's best interest." Miss. Code Ann. § 43-21-121; U.R.Y.C.P. 3 and 13(c).

In protecting a child's best interests, the guardian ad litem must conduct an ***INDEPENDENT AND ZEALOUS INVESTIGATION*** of the facts and circumstances relevant to the child's health, safety, and general welfare. Simply relying on the reports and recommendations of others is insufficient:

> "Finally, Mr. Carter, as guardian ad litem for D.K.L., deferred to the therapist's recommendations and stated that he did not have any specific recommendation as to what was in the child's best interest. The court ordered Carter to interview the child and prepare a report for the court to consider. This report is not contained in the record before this Court. In addition, the brief filed by Mr. Carter on behalf of the minor child merely defers to the facts and authority contained in the briefs of Ruth Ann Hall, John Hall and the State of Mississippi. Carter as the guardian for D.K.L., did not have an option to perform or not perform, rather he had an affirmative duty to zealously represent the child's best interest. The record is devoid of any actions on the part of Carter demonstrating such a role."
>
> In re D.K.L., 652 So. 2d 184, 188 (Miss. 1995).

See also:

> In re M.J.S.H.S., 782 So. 2d 737 (Miss. 2001) ("Because the children's guardian ad litem failed to 'zealously' inquire into and protect their best interest, we must vacate and remand, with directions to the guardian ad litem that he interview each child, and make an independent finding as to what is in the children's best interest in this matter.").
>
> Lynne Marie Kohm, *Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence*, 10 J. L. & Fam. Stud. 337, 337-38 (2008) ("This article . . . thoroughly investigates the judicial and statutory rudimentary building blocks of the best interests of the child as a legal standard, and discusses how that standard has developed and evolved over the course of American jurisprudential history.").
>
> H. Lila Hubert, *In the Child's Best Interests: The Role of the Guardian Ad Litem in Termination of Parental Rights Proceedings*, 49 U. Miami L. Rev. 531, 542 (1994) ("The responsibilities of a guardian include conducting an independent investigation, reporting to the court the wishes of the child, offering recommendations for actions which are in the best interests of the child, and protecting the child from the harmful effects of being entangled in the adversarial process. The guardian ad litem is thus critical to the state's parens patriae function.").

401 DISCERNING THE BEST INTERESTS OF THE CHILD

How is "best interests of the child" defined? It's not! Nowhere in the Mississippi Code is the term "best interests of the child" defined. It is a somewhat elusive concept:

> "In light of the current scholarly debate, it is impossible to point to one legal standard defining the 'best interests of the child' approach in domestic law. It is, however, possible to identify the priorities of the 'best interests' approach. Procedurally, the 'best interests' approach prioritizes allowing the child to have a voice. Substantively, the 'best interests' approach prioritizes the child's safety, permanency, and well-being."
>
> Bridgette A. Carr, *Incorporating A "Best Interests of the Child" Approach into Immigration Law and Procedure*, 12 Yale Hum. Rts. & Dev. L.J. 120, 126-27 (2009).

And, one that is often tethered to the value system of the judge:

> "The 'best interest' standard involves decision makers who are interested in the best outcome for children. Each decision maker, however, comes with his or her own set of values, thoughts, and practices regarding child-rearing, and may never see the child whom their decisions affect. Ask anyone who deals with children within the legal system what 'best interest' is, and often they will respond, 'whatever the judge says it is.'"
>
> Judge Carl Funderburk, *Best Interest of the Child Should Not Be an Ambiguous Term*, 33 Child. Legal Rts. J. 229, 229–30 (2013).

On the other hand, "best interests of the child" is consistent with the state's public policy that each child has a right to:

- a safe and stable home;
- reasonably necessary food, clothing, shelter, and medical care; and
- a genuine opportunity–preferably, whenever possible, under the care, guidance, and control of the parent–to become a responsible, accountable, and productive citizen.

See Miss. Code Ann. § 43-21-103 (Construction; statement of policy); Miss. Code Ann. § 93-15-121 (Grounds for termination); U.R.Y.C.P. 3(c) ("These rules shall be interpreted and applied in keeping with the philosophy expressed in section 43-21-103 of the Mississippi Code.").

When a child has been abused or neglected, the court has expansive powers to "apply the curative" to the dysfunctional home situation. But any effective rehabilitative actions requires:

- a complete understanding of the child's home situation and needs, and
- a comprehensive knowledge of available programs and resources for achieving a successful permanency outcome.

See also:

Barber v. Barber, 288 So. 3d 325, 332 (Miss. 2020) ("[A] chancellor's failure to consider a mandatorily appointed guardian *ad litem*'s findings is an error of the utmost seriousness.").

42 U.S.C. § 5106a(b)(2)(B)(xiii) (2017), which provides in part:

"[I]n every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings--
(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and
(II) to make recommendations to the court concerning the best interests of the child;"

402 CONSTITUTIONAL CONSIDERATIONS

"Best interests of the child" has a constitutional dimension:

"Based upon [Article III of the U.S. Constitution and the Judiciary Act of 1789], all courts deal in the rights of the individual. These rights are afforded to all individuals, demanding the inclusion of the constitutional rights of the child when interpreting the best interest of a child. The court, in applying the best interest of the child, must therefore balance the constitutional rights of the child against the constitutional rights of the parents. Where the rights of the child are in conflict with the rights of the parent, the court can limit the parental authority over how the parent raises the child."

Judge Carl Funderburk, *Best Interest of the Child Should Not Be an Ambiguous Term*, 33 Child. Legal Rts. J. 229, 231 (2013).

See also:

> Santosky v. Kramer, 455 U.S. 745, 745 (1982) ("The fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.").
>
> Adams v. Powe, 469 So. 2d 76, 78-79 (Miss. 1985) ("Although aware of the great responsibility placed upon any court when determining whether a parent's fundamental right to rear their offspring should be terminated, we think we would be remiss in our duties if we did not terminate the parental rights to safeguard the childrens' greater right to food, shelter, and opportunity to become useful citizens.").

But, its application is also susceptible to various biases:

> "The child care agency's policy of protecting the welfare of the child is not always 'free of institutional or professional biases.' The child's need for a 'speedy and final determination' may be compromised because of the department's need to follow agency policies. Thus, an objective determination in the child's best interests is not always guaranteed since the state's representatives are responsible for advocating the state's interests."
>
> Jamie D. Manasco, Parent-Child Relationships: *The Impetus Behind the Gregory K. Decision*, 17 Law & Psychol. Rev. 243, 256–57 (1993).

See also:

> Judge Carl Funderburk, *Best Interest of the Child Should Not Be an Ambiguous Term*, 33 Child. Legal Rts. J. 229, 236 (2013) ("It has been argued, due to the vagueness or lack of criteria of the best interest standard, that decision makers are vulnerable to social biases.").

CHAPTER 5

INVESTIGATIONS

500 THOROUGH AND INDEPENDENT INVESTIGATION

- **Zealously protecting the child's best interests**
- **Full transparency to the court**
- **Free of disqualifying personal and social biases**

501 ASSESSING THE CHILD'S HOME SITUATION AND NEEDS

- **Matters to investigate**
- **Reviewing records relevant to the proceedings**

502 CONDUCTING INTERVIEWS

- **Zealously protecting the best interests of the child**
- **Interviewing the child**
- **Interviewing the parent, guardian, or custodian**
- **Interviewing others with relevant information**

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➤ **Zealously protecting the child's best interests**

A guardian ad litem must diligently investigate the case, submit complete reports on the current health, safety, and general welfare of the child, and make sound recommendations for advancing the child's best interests:

> "Because the children's guardian ad litem failed to 'zealously' inquire into and protect their best interest, we must vacate and remand, with directions to the guardian ad litem that he interview each child, and make an independent finding as to what is in the children's best interest in this matter."
>
> M.J.S.H.S. v. Yalobusha Cty. Dep't of Human Servs. ex rel. McDaniel, 782 So. 2d 737, 741 (Miss. 2001).

That requires a thorough and independent investigation:

> "Finally, Mr. Carter, as guardian ad litem for D.K.L., deferred to the therapist's recommendations and stated that he did not have any specific recommendation as to what was in the child's best interest. The court ordered Carter to interview the child and prepare a report for the court to consider. This report is not contained in the record before this Court. In addition, the brief filed by Mr. Carter on behalf of the minor child merely defers to the facts and authority contained in the briefs of Ruth Ann Hall, John Hall and the State of Mississippi. Carter as the guardian for D.K.L., did not have an option to perform or not perform, rather he had an affirmative duty to zealously represent the child's best interest. The record is devoid of any actions on the part of Carter demonstrating such a role."
>
> In re D.K.L., 652 So. 2d 184, 188 (Miss. 1995).

See also,

> McDonald v. McDonald, 39 So. 3d 868, 883 (Miss. 2010) ("[T]he GAL would have been derelict in her duty to zealously represent the boys' best interests if she had failed to interview the boys, consider the opinions of experts, marshal evidence, make an independent recommendation, question witnesses, submit reports, and make herself available for cross-examination.").

➤ **Full transparency to the court**

A guardian ad litem must report to the court all information relevant to the issues in the case:

> "[A] guardian ad litem appointed to investigate and report to the court is obligated to investigate the allegations before the court, process the information found, report all material information to the court, and (if requested) make a recommendation. However, the guardian ad litem should make recommendations only after providing the court with all material information which weighs on the issue to be decided by the court, including information which does not support the recommendation. The court must be provided all material information the guardian ad litem reviewed in order to make the recommendation."
>
> S.G. v. D.C., 13 So. 3d 269, 282 (Miss. 2009).

See also:

> Advisory Committee Note to MRE 401 ("Rule 401 makes no distinction between relevancy and materiality. The concept of materiality is merged into the concept of relevancy and retains no independent viability. Evidence is relevant if it is likely to affect the probability of a fact of consequence in the case.").

➤ **Free of disqualifying personal and social biases**

A guardian ad litem must be "a competent person who has no adverse interest to the minor." *See* U.R.Y.C.P. 13(b). In other words, a guardian ad litem is required to disclose to the court any actual or apparent conflict of interest arising from any relationship, activity, or circumstance that might reasonably be perceived as requiring disqualification.

What is the standard for disqualification? As an arm of the court, a guardian ad litem is subject to the judge's direction and control:

> "A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties."
>
> Canon 3C.(2) of the Code of Judicial Conduct; *see also* U.R.Y.C.P. 13(c) ("The court shall insure that guardians ad litem perform their duties properly and in the best interest of their wards.").

Thus, in upholding the integrity and fairness of the proceedings, guardians ad litem should likewise "disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all the circumstances or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law, ..." Canon 3E.(1) of the Code of Judicial Conduct.

Social biases, on the other hand, are often more subtle in nature. Our perspective of what is "normal" or "appropriate" arises from the familiarity of our own life's experiences. That would also apply to our thoughts of what remedial actions are in the "best interests of the child." As one commentator so aptly stated:

> "Deciding what is best for a child often poses a question no less ultimate than the purposes and value of life itself."
>
> R. Mnookin, *In the Interest of Children* 18 (1985).

See also:

> Lois A. Weithorn, Developmental Neuroscience, *Children's Relationships with Primary Caregivers, and Child Protection Policy Reform*, 63 Hastings L.J. 1487, 1502 (2012) ("[S]ocial biases continued to plague child protection policy and implementation. . . . At times, the system has been criticized for casting too broad a net and doing so in ways that disadvantage racial, ethnic, and cultural minorities, not to mention those living in poverty.").
>
> William Wesley Patton, *Viewing Child Witnesses Through A Child and Adolescent Psychiatric Lens: How Attorneys' Ethical Duties Exacerbate Children's Psychopathology*, 16 Widener L. Rev. 369, 381 (2010) ("A best interest inquiry is not a neutral investigation that leads to an obvious result. It is an intensely value-laden inquiry.").

To safeguard against social biases, a guardian ad litem should carefully evaluate the home situation consistent with the state's public policy that each child has a right to:

- a safe and stable home;
- reasonably necessary food, clothing, shelter, and medical care; and
- a genuine opportunity–preferably, whenever possible, under the care, guidance, and control of the parent–to become a responsible, accountable, and productive citizen.

> *See* Miss. Code Ann. § 43-21-103 (Construction; statement of policy); Miss. Code Ann. § 93-15-121 (Grounds for termination); U.R.Y.C.P. 3(c) ("These rules shall be interpreted and applied in keeping with the philosophy expressed in section 43-21-103 of the Mississippi Code.").

Additionally, a guardian ad litem may want to request that the court appoint an expert on issues of diversity whenever there is reasonable uncertainty about the appropriateness of a particular recommendation for reasons of race, color, gender, sex, sexual orientation, gender identity or expression, religion, national origin, age, or disability.

It should be mentioned, too, that a guardian ad litem is not the decision-maker. Neither is the prosecutor, the child's attorney, the parent's attorney, the CPS social worker, or a CASA volunteer. The judge, alone, is the decision-maker.

But differing perspectives provides valuable input to the decision-making process:

> "Every judge, prosecutor, and attorney carries a great burden of responsibility to assist children, families, and the state in deciding questions of custody, rehabilitation, and reunification. A guardian ad litem can assist all the players with that burden and provide direction and focus to the court with the child as the polestar. We must have no greater societal goal than to direct every resource available toward meeting the needs of children and families in the courtroom and in our communities."
>
> Tara Lea Muhlhauser, *From "Best" to "Better": The Interests of Children and the Role of A Guardian Ad Litem*, 66 N.D. L. Rev. 633, 647 (1990).

Such is also consistent with the directive that "the guardian ad litem should make recommendations only after providing the court with all material information which weighs on the issue to be decided by the court including information which does not support the recommendation." Ballard v. Ballard, 2017 WL 2290495 (Miss.); McDonald v. McDonald, 39 So. 3d 868, 883 (Miss. 2010) (citing S.G. v. D.C., 13 So. 3d 269, 282 (Miss. 2009).

501 ASSESSING THE CHILD'S HOME SITUATION AND NEEDS

➤ Matters to investigate

Before initiating an investigation into the child's home situation and needs, it is important for a guardian ad litem to reflect on what information is needed for achieving reunification or other desirable permanency outcome.

Every investigation should address the following concerns:

- **Why is the home unsafe?**

  Protecting the health, safety, and welfare of the child is the paramount concern.

See, e.g.:

> In re S.A.M., 826 So. 2d 1266, 1274 (Miss. 2002) ("The paramount concern in determining the proper disposition is the best interest of the child, not reunification of the family.").
>
> In re J.S.B., 691 N.W.2d 611, 617 (S.D. 2005) ("Under [the Adoption and Safe Families Act], in considering reunification of parents with children, 'the balancing formula should tip on the side of protecting children, and not on the side of protecting the rights of parents.'").

Generally,

> "Whether or not a child is safe depends upon a *threat of danger*, the child's *vulnerability*, and a family's *protective capacity*.
> . . .
> Vulnerable children are safe when there are no threats of danger within the family *or* when the parents possess sufficient protective capacity to manage any threats.
>
> Children are unsafe when: threats of danger exist within the family[,] *and* children are vulnerable to such threats, *and* parents have insufficient protective capacities to manage or control threats."
>
> Therese Roe Lund & Jennifer Renne, *Child Safety: A Guide for Judges and Attorneys*, A.B.A., 2 (2009).
>
> www.ct.gov/ccpa/lib/ccpa/ABA_Child_Safety_Manual_june32009.pdf

In making these assessments, the guardian ad litem needs to know:

- the nature and extent of the abuse and neglect
- the circumstances surrounding that abuse and neglect
- the child's daily routine
- the child's intellectual, communicative, social, emotional, behavioral, and physical functioning capacities
- the parent's daily routine
- the parent's intellectual, communicative, social, emotional, behavioral, and physical functioning capacities
- the parent's parenting skills, knowledge, and practices

See also Therese Roe Lund & Jennifer Renne, *Child Safety: A Guide for Judges and Attorneys*, A.B.A., 3-5 (2009) (listing questions for assessing threats,

protective capacities, and child vulnerabilities).

www.ct.gov/ccpa/lib/ccpa/ABA_Child_Safety_Manual_june32009.pdf

Sometimes, however, the threats of danger persist despite reasonable efforts at eliminating them:

See, e.g.:

> "Here, the trial court found:
>
> The conditions which led to the removal of the child still exist. . . . There is a strong likelihood that the parents will reconcile upon Father's release from prison. [Child] sustained a broken arm on one occasion and broken ribs on another occasion while in the care of both Mother and Father and both were responsible for the injuries. . . . There is little likelihood these conditions will be remedied to allow the child to be returned to the custody of the child's parent. The court finds extensive services have been provided to attempt to rehabilitate the family.
> . . .
> Despite [the mother's] claimed compliance, the trial court entered its findings concerning a lack of changed conditions and concluded it would be 'gambling with the future health and safety of [child] if she were to be returned to the custody of the parents.' [W]e hold that this conclusion is supported by the record."
>
> In re C.W., 697 N.W.2d 18, 24-25 (S.D. 2005).

- **Was the child subjected to aggravated circumstances, such as abandonment, torture, chronic abuse or sexual abuse?**

This information is important in determining whether reasonable efforts are necessary for maintaining the child in the home.

§ 43-21-603(7)(c)

> (c) Reasonable efforts to maintain the child within his home shall not be required if the court determines that:
> (i) The parent has subjected the child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse and sexual abuse; or
> (ii) The parent has been convicted of murder of another child of that parent, voluntary manslaughter of another child of that parent, aided or abetted, attempted, conspired or solicited to commit that murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the

surviving child or another child of that parent; or
(iii) The parental rights of the parent to a sibling have been terminated involuntarily; and
(iv) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that placement of the child in foster care is in the best interests of the child.

U.R.Y.C.P. 11

(3) Reasonable efforts, judicial determination required. Within sixty (60) days from the date of the child being removed from the child's home pursuant to the court's temporary custody order or custody order, the court shall conduct a hearing to determine whether the Department of Human Services, Division of Family and Children's Services has made reasonable efforts to prevent the removal of the child from the child's home or, pursuant to section 43-21-603(7) of the Mississippi Code, whether reasonable efforts were not required to prevent the removal.

But, even if reasonable efforts are not required, there may be circumstances where terminating the offending parent's parental rights is not in the child's best interests.

§ 93-15-123

Notwithstanding any other provision of this chapter, the court may exercise its discretion not to terminate the parent's parental rights in a proceeding under this chapter ***IF THE CHILD'S SAFETY AND WELFARE WILL NOT BE COMPROMISED OR ENDANGERED*** and terminating the parent's parental right is not in the child's best interests based on one or more of the following factors:

(a) The Department of Child Protection Services has documented compelling and extraordinary reasons why terminating the parent's parental rights would not be in the child's best interests;
(b) There is a likelihood that continuing reasonable efforts for achieving reunification will be successful;
(c) Terminating the parent's parental rights would inappropriately relieve the parent of the parent's financial or support obligations to the child; or
(d) The child is being cared for by the other parent, or a relative, guardian, or custodian, in a residence not occupied by the abusive or neglectful parent and terminating the parent's parental rights would not expedite the process for obtaining a satisfactory permanency outcome.

- **Are there physical and/or mental health issues that need professional attention?**

Severe mental illness or deficiency or extreme physical incapacitation may be grounds for terminating a parent's parental rights by statute:

§ 93-15-121

> Any of the following, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:
> (a) The parent has been medically diagnosed by a qualified mental health professional with a severe mental illness or deficiency that is unlikely to change in a reasonable period of time and which, based upon expert testimony or an established pattern of behavior, makes the parent unable or unwilling to provide an adequate permanent home for the child;
> (b) The parent has been medically diagnosed by a qualified health professional with an extreme physical incapacitation that is unlikely to change in a reasonable period of time and which, based upon expert testimony or an established pattern of behavior, prevents the parent, despite reasonable accommodations, from providing minimally acceptable care for the child; . . .

But, a guardian ad litem should also be attentive of a mental illness or deficiency less than severe, or a physical incapacitation less than extreme, if that condition might cause:

- the parent to be "mentally, morally, or otherwise unfit to raise the child"
- the parent to be "unwilling to provide reasonably necessary food, clothing, shelter, or medical care for the child"
- the parent to "engage in abusive or neglectful conduct" that causes "an extreme and deep-seated antipathy by the child toward the parent, or some other substantial erosion of the relationship between the parent and the child"

These, too, may be grounds for termination of parental rights. *See* Miss. Code Ann. §§ 93-15-119(a)(i) and 93-15-121(d) and (f).

See, e.g.:

> "[The] social service supervisor . . . testified that the child was removed because of [the mother's] admitted inability to care for the child, the obvious neglect of the child and the unsuitable condition of the family home. He described the house as in very poor physical condition due to fire damage to one-half of the house with the only source of heat being an open butane burner in the middle of a room on the floor. In addition, all of

> the utilities were disconnected and the floor was littered with animal feces. Moreover, he explained that approximately one year earlier, [the mother's] other six children were removed because of similar living conditions and also because the children stated that there were large rodents in the house that they played with and considered as pets.
> . . .
> The record supports the juvenile court's findings that [the mother] is unfit to rear her child. Based on her condition of mild mental retardation and her history of refusing to provide reasonably necessary food, clothing and shelter, we cannot say that the juvenile court abused its discretion."
>
> In re C.L.R., 567 So. 2d 703, 706 (La. Ct. App. 1990).

Additionally, the guardian ad litem should consider the child's need for mental health services.

U.R.Y.C.P. 11

> (b)(4) Additional orders. After a child is ordered into custody, the court may:
> (i) arrange for the custody of the child with any private institution or agency caring for children;
> (ii) commit the child to the Department of Mental Health pursuant to section 41-21-61 et seq.; or
> (iii) order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of the child.

- **Does the parent have an alcohol problem or drug dependency?**

Alcohol and drug dependency wreaks havoc in the home:

> "Many parents lose custody of their children because of their substance abuse problems. Between 50 to 90 percent of all child welfare cases involve issues of parental substance abuse, and nationally over 700,000 women abuse drugs while pregnant."
>
> Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* 52 (2014).
>
> http://judgeleonardedwards.com/docs/reasonableefforts.pdf

Once again, a guardian ad litem should always be mindful of the grounds for terminating parental rights. By statute, habitual alcoholism or other drug addiction may be grounds for terminating a parent's parental rights:

§ 93-15-121

> Any of the following, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:
> . . .
> (c) The parent is suffering from habitual alcoholism or other drug addiction and has failed to successfully complete alcohol or drug treatment;

But, even if the parent is not suffering from habitual alcoholism or other drug addiction, a guardian should also be attentive of whether the parent's drinking habits or drug use seeps into other grounds for termination of parental rights, such as abusive or neglectful conduct that causes "an extreme and deep-seated antipathy by the child toward the parent." *See* Miss. Code Ann. § 93-15-121(f).

See, e.g.:

> "A study published by Brown University indicates that substance abuse is a significant characteristic found in domestic violence assailants. . . . When a parent's use of drugs or alcohol causes him or her to commit acts of violence against the other parent, visitation should be denied or closely supervised to protect the child. No child should be forced to visit a parent who is actively using illicit drugs or alcohol. The appointment of a guardian ad litem ensures that the children are not exposed to parental substance abuse, and thus serves to promote the best interests of children."
>
> Honorable Sheila M. Murphy, *Guardians Ad Litem: The Guardian Angels of Our Children in Domestic Violence Court*, 30 Loy. U. Chi. L.J. 281, 289 (1999).

In any event, a parent with an alcohol or drug dependency should be afforded a fair opportunity to participate in a meaningful treatment program:

> "Because parental rights arise from a natural relationship which the law has traditionally recognized as fundamental liberties, these rights may not be abrogated in the absence of the most compelling reasons. . . .
> . . .
> The stability of the [the parents] relationship and their ability to care for [the child] was, as established by the evidence in this case, undermined primarily, if not exclusively by the effects that their drug dependence had on their lives. As such, DFS was under a duty to develop a meaningful Plan supported by appropriate services designed to assist [the parents] in

> meeting the Plan goals. The Court does not believe that the evidence establishes that the State developed such a meaningful Case Plan by following a process which would help these parents be reunited with their child and as such, the Court cannot find that the State has made reasonable efforts to reunify the family or prevent placement.
> . . .
> Petitioner continued to provide Mother with Case Plans requiring [that she] stay clean of drugs yet offering [her] nothing beyond referrals for out-patient treatment already deemed to be ineffective in treating [her] needs. No evidence was presented [of any attempts] to place [her] in residential treatment."
>
> Div. of Family Serv. (DFS) v. N.X., 802 A.2d 325, 336-37 (Del. Fam. Ct. 2002).

- **Is there domestic violence or abuse?**

Domestic violence or abuse is a traumatic event, not only for the victim of the offense, but also for any child who sees it, hears it, or hears about it.

Domestic violence is a crime. *See* Miss. Code. Ann. § 97-3-7 (Simple and aggravated domestic violence). Domestic abuse is a basis for seeking civil protection. *See* Miss. Code. Ann. § 93-21-1 ("This chapter shall be known and may be cited as the 'Protection from Domestic Abuse Law.'").

See also:

§ 93-21-3

> As used in this chapter, unless the context otherwise requires:
> (a) "Abuse" means the occurrence of one or more of the following acts between spouses, former spouses, persons living as spouses or who formerly lived as spouses, persons having a child or children in common, other individuals related by consanguinity or affinity who reside together or who formerly resided together or between individuals who have a current or former dating relationship:
> (i) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon;
> (ii) Placing, by physical menace or threat, another in fear of imminent serious bodily injury;
> (iii) Criminal sexual conduct committed against a minor within the meaning of Section 97-5-23;
> (iv) Stalking within the meaning of Section 97-3-107;
> (v) Cyberstalking within the meaning of Section 97-45-15; or
> (vi) Sexual offenses within the meaning of Section 97-3-65 or 97-3-95.
> "Abuse" does not include any act of self-defense.

§ 93-21-7

> (1) Any person may seek a domestic abuse protection order for himself by filing a petition alleging abuse by the respondent. Any parent, adult household member, or next friend of the abused person may seek a domestic abuse protection order on behalf of any minor children or any person alleged to be incompetent by filing a petition with the court alleging abuse by the respondent. Cases seeking relief under this chapter shall be priority cases on the court's docket and the judge shall be immediately notified when a case is filed in order to provide for expedited proceedings.

Just because there may be no court records of domestic violence or abuse, doesn't mean it's not happening:

> "Domestic abuse is unique in that it typically occurs in the privacy of the home, it frequently involves a pattern of activity that may escalate over time, and it is often underreported. *See Cross*, 577 N.W.2d at 727 (citing Joseph Biden, The Violence Against Women Act of 1991, S.Rep. No. 102–197, at 38 (1991))."
>
> State v. McCoy, 682 N.W.2d 153, 161 (Minn. 2004).

Also, there appears to be a correlation between substance abuse and domestic violence:

> "High rates of co-occurring substance use and domestic violence are well established. A recent study found that fully 92 percent of domestic violence perpetrators had used alcohol or drugs on the day of a domestic violence assault, and 72 percent had a record of prior arrests related to substance use. Other studies have shown that between one-fourth and one-half of men who commit acts of domestic violence are addicted to alcohol or other drugs. Research also shows that alcohol and drug abuse are related to an increased risk of violent death in the home. Early onset of drug-and alcohol-related problems is strongly correlated to domestic violence. In addition, alcohol and drug use has been associated with greater severity of injuries and increased lethality rates when present in conjunction with domestic violence. Although neither alcohol use nor drug use has, by itself, been proven to cause domestic violence, and though the cessation of alcohol or substance abuse is no guarantee that batterers will change their abusive behavior, research does suggest that, overall, domestic violence is reduced through the treatment of alcohol abuse."
>
> Lisa Lightman and Francine Byrne, *Addressing the Co-Occurrence of Domestic Violence and Substance Abuse Lessons from Problem-Solving Courts*, 6 "J. Center for Families, Child. & Cts." 53, 54 (2005).

And, likewise, a mental illness correlation:

> "Domestically violent men are generally more likely than non-violent men to exhibit depression, psychopathy, or evidence of borderline or antisocial personality disorders. Some men–jealous, emotionally dependent intimate terrorists, for example–tend to present both mental disorders and substance abuse problems. Yet 'no consensus on a psychological profile [for batterers] has emerged from the research community.'"
>
> Carolyn B. Ramsey, *The Stereotyped Offender: Domestic Violence and the Failure of Intervention*, 120 Penn St. L. Rev. 337, 387 (2015).

But, mostly it's about intimidation, isolation, and control:

> "In all probability, the clinical profile revealed by battered women reflects the fact that they have been subjected to an ongoing strategy of intimidation, isolation, and control that extends to all areas of a woman's life, including sexuality; material necessities; relations with family, children, and friends; and work. Sporadic, even severe, violence makes this strategy of control effective. But the unique profile of 'the battered woman' arises as much from the deprivation of liberty implied by coercion and control as it does from violence-induced trauma."
>
> Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 Alb. L. Rev. 973, 985–86 (1995).

See also:

> National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 57 (2016) ("The NCJFCJ views battered parents as partners in the protection of their children. Judges should work diligently with system partners to adopt this principle. Cases that are filed naming the battered parent as a perpetrator of abuse and neglect because a child was exposed to domestic violence further traumatize the battered parent.").
>
> Susan L. Pollet, *Economic Abuse: The Unseen Side of Domestic Violence*, N.Y. St. B.J., February 2011, at 40, 40–41 ("Domestic violence can be any 'physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person.' . . . ***WHILE DOMESTIC VIOLENCE IN GENERAL AND ECONOMIC ABUSE IN PARTICULAR ARE PERPETRATED AND SUFFERED BY BOTH MEN AND WOMEN, THE SAD TRUTH IS THAT THE MOST OF SUCH VICTIMS ARE WOMEN.***").

Theresa A. Peterson, *The State of Child Custody in Minnesota: Why Minnesota Should Enact the Parenting Plan Legislation*, 25 Wm. Mitchell L. Rev. 1577, 1613–14 (1999) ("Whether domestic abuse has been present in the home is one of the new factors the guardian ad litem must weigh in considering the best interests of the child and in making a recommendation to the court.").

Compare:

§ 93-5-24(9)(a)(i)

> In every [DIVORCE] proceeding where the custody of a child is in dispute, there shall be a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody or joint physical custody of a parent who has a history of perpetrating family violence. The court may find a history of perpetrating family violence if the court finds, by a preponderance of the evidence, one (1) incident of family violence that has resulted in serious bodily injury to, or a pattern of family violence against, the party making the allegation or a family household member of either party. The court shall make written findings to document how and why the presumption was or was not triggered.

DOMESTIC VIOLENCE AND ABUSE IS DESTRUCTIVE TO THE HEALTH, SAFETY, AND WELFARE OF THE CHILD AND MUST BE ROOTED OUT OF THE HOME COMPLETELY.

THE BATTERED WOMEN'S JUSTICE PROJECT (www.bwjp.org) has developed practice guidelines for identifying domestic violence and for making recommendations that enhance the child's and the non-abusive parent's safety and well-being. Publications of this national resource center that a guardian ad litem may find helpful when investigating a case include:

- *Practice Guides for Family Court Decision-making in Domestic Abuse-Related Child Custody Matters* (2015)
- *Intimate Partner Violence Screening Guide* (2017)
- *A Safer Approach to Decision-making in Domestic Violence-related Child Custody* (2016)

- **What relationships are relevant to achieving a successful permanency outcome?**

Every child has a sphere of influences–both good and bad. Reunification is about correcting behaviors that endanger the health, safety, education or welfare of the child. In zealously protecting the child's best interests, the guardian ad litem needs to consider everyone who could make a difference toward achieving a successful permanency outcome.

Persons to consider, among others, include:

- Foster parents
- Relatives
- Fictive kin, neighbors, and community support persons
- Social workers
- School officials and teachers
- Medical health professionals
- Any prospective adoptive parent

See also:

> Moore v. City of E. Cleveland, 431 U.S. 494, 504 (1977) ("Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition.").
>
> Natasha S. v Sixth Judicial District Court of the State of Nevada, 238 P.3d 858, 858 (2008) ("If the court determines that the child is in need of protection, it may place the child in the temporary or permanent custody of a suitable relative. Custody determinations must be primarily based on the child's best interest.").
>
> John F. Barnicle, *Making Effective Use of the Best Interest Test in Family Law Litigation*, 2013 WL 5757608 (Aspatore, September 2013) ("[T]he relationship of the child with their parents is of course highly relevant, but also their relationship with any other persons who may significantly affect their welfare. Here, activities as mundane as daycare arrangements can significantly affect the outcome depending upon who specifically is providing the daycare.").
>
> John C. Lore III, *Protecting Abused, Neglected, and Abandoned Children: A Proposal for Provisional Out-of-State Kinship Placements Pursuant to the Interstate Compact on the Placement of Children*, 40 U. Mich. J.L. Reform 57, 86 (2006) ("Kinship placement avoids the trauma experienced when children move in with strangers, as children are likely to already be familiar with their new caregivers. Further, the chances of parental contact and the likelihood of

remaining with siblings are greatly improved for children living with relatives instead of being placed in 'nonrelative foster care.'").

- **What are the living arrangements?**

This inquiry is especially important where a parent's lifestyle and care-taking decisions are detrimental to the child's safety and well-being:

> "The mother and father entered into service agreements with DHS in November 2012. Both failed to successfully complete their respective agreements[–including the failure to complete drug rehabilitation, to maintain sufficient housing, to maintain visitation with the children, and to complete a psychological exam.]
> [F]rom 2008 to 2012 while the mother was at work, she kept her children at the home of a longtime friend. During this time the friend was living with a registered sexual offender, who was romantically involved with the friend. While at the friend's home, one of the minor children was inappropriately touched between her legs and buttocks by the sexual offender, was repeatedly asked if she would engage in fellatio with the sexual offender, and observed the sexual offender molest another child.
> [Additionally, the children] personally observed the mother and father engage in sexual activities with each other and other partners, and viewed a pornographic video depicting the same. After having observed the above activities, the children revealed that two of them performed oral sex on each other.
> . . .
> We affirm the chancellor's judgment terminating the parental rights of the appellants."
>
> J.F.G. v. Pearl River Cty. Dep't of Human Servs., 2017 WL 2559787 (Miss. Ct. App. 2017).

See also:

> State ex rel. K.F., 201 P.3d 985, 989–90 (Utah 2009) ("DCFS received a tip alleging that the mother was drinking in the home and neglecting her children. . . . In furtherance of its motion, the State pointed to the following: (1) the mother had recently begun individual counseling and received medication for depression based on an incident in which she cut herself to see if a man cared for her; (2) K.F., then age 12, had stayed out all night with a 19–year–old male, and while her mother knew K.F. was out all night with a male, her mother did not know his age; and (3) a registered sex offender was living in the family's home. As a result, the juvenile court lifted the stay.").

- **Are the child's educational needs being met?**

Mississippi's Compulsory Education Law governs the schooling of compulsory-school-age children:

§ 37-13-91

> (2) The following terms as used in this section are defined as follows:
> (a) "Parent" means the father or mother to whom a child has been born, or the father or mother by whom a child has been legally adopted.
> . . .
> (f) "Compulsory-school-age child" means a child who has attained or will attain the age of six (6) years on or before September 1 of the calendar year and who has not attained the age of seventeen (17) years on or before September 1 of the calendar year; and shall include any child who has attained or will attain the age of five (5) years on or before September 1 and has enrolled in a full-day public school kindergarten program.
> . . .
> (3) A parent, guardian or custodian of a compulsory-school-age child in this state shall cause the child to enroll in and attend a public school or legitimate nonpublic school for the period of time that the child is of compulsory school age, except under the following circumstances:
> (a) When a compulsory-school-age child is physically, mentally or emotionally incapable of attending school as determined by the appropriate school official based upon sufficient medical documentation.
> (b) When a compulsory-school-age child is enrolled in and pursuing a course of special education, remedial education or education for handicapped or physically or mentally disadvantaged children.
> (c) When a compulsory-school-age child is being educated in a legitimate home instruction program.
> The parent, guardian or custodian of a compulsory-school-age child described in this subsection, or the parent, guardian or custodian of a compulsory-school-age child attending any nonpublic school, or the appropriate school official for any or all children attending a nonpublic school shall complete a "certificate of enrollment" in order to facilitate the administration of this section.
> . . .
> (9) Notwithstanding any provision or implication herein to the contrary, it is not the intention of this section to impair the primary right and the obligation of the parent or parents, or person or persons in loco parentis to a child, to choose the proper education and training for such child, ...

See also M.C. v. Com., 347 S.W.3d 471, 473 (Ky. Ct. App. 2011) ("[B]y incurring thirty absences and sixteen tardies, Child was unable to benefit from the instruction, structure, and socialization provided in a classroom setting.").

Often the child's educational needs suffer because of a parent's alcohol or substance abuse:

> "[W]e hold that it was sufficient to justify the trial court's findings that during the period of February 27 through March 5, the parents were under the influence of alcohol and, as a result, the children were not in school.
> . . .
> We agree that the right of parents to the care, custody and control of their children is an important and substantial right protected by, although not specifically enumerated in, both the United States and Alaska Constitutions. Counsel argues that when a state infringes on such a constitutional right, it must be for a legitimate state purpose, and then only by choosing the least restrictive alternative–the least drastic means–which will effectuate that purpose. [*Shelton v. Tucker*, 364 U.S. 479 (1960)]. The 'least restrictive means' principle has been applied by the courts in cases involving freedom of speech and association, travel, mental commitment, privacy, pretrial detention and unreasonable searches and seizures. While parental rights may be of like importance, there is an additional consideration involved. ***THE PARENTS' CONSTITUTIONAL RIGHT TO THE CARE AND CUSTODY OF THEIR CHILDREN MUST BE BALANCED AGAINST THE RIGHTS OF THEIR CHILDREN TO AN ADEQUATE HOME AND EDUCATION.***
> . . .
> The court placed the children in a group home near their residence where they could continue to attend their school. The children were not separated, and provision was made for visits by and with the parents. . . . A program was established for the Division of Family and Children Services to work with the parents in four problem areas of excessive drink, inability to hold continuous employment, health and over-all ability of the parents to discipline themselves and provide a stable home.
> . . .
> [T]he trial court very carefully considered the alternatives available in arriving at a disposition, and that the disposition involves a reasonable and effective choice from among such alternatives after it became necessary for the best interests of the children to remove them from the family home. The decision does not constitute a severance of familial ties, but the establishment of a thoughtful program for rehabilitation of the family unit."

Matter of S. D., 549 P.2d 1190, 1197-1202 (Alaska 1976).

But, any service plan must be reasonable to justify removal from the home:

> "Next, the State did not prove that C.R. was an "educationally neglected" child or that she was receiving a sub-standard education. . . . It is doubtful that any child can be held to be 'educationally neglected' within the meaning of the statute so long as the child is enrolled successfully in a school made available by public means where such school is all that is available in the child's home community. . . . [T]he youth court improperly decided that C.R. would be in a 'better' situation if she was a student at the Mississippi School for the Deaf. A court cannot remove a child from her home and family simply because a more desirable setting is available elsewhere.
> . . .
> We cannot simply decide that a school many miles away is better and remove the child from a parent or parents who are doing the best they can within their resources and who are taking full advantage of the best the state or local school has to offer."
>
> In re C.R., 604 So. 2d 1079, 1083 (Miss. 1992).

See also:

> Reno v. Flores, 507 U.S. 292, 304 (1993) ("Similarly, 'the best interests of the child' is not the legal standard that governs parents' or guardians' exercise of their custody: So long as certain minimum requirements of child care are met, the interests of the child may be subordinated to the interests of other children, or indeed even to the interests of the parents or guardians themselves.").

- **Are there social development concerns?**

Abuse and neglect may have severe and prolonged consequences on a child's social development:

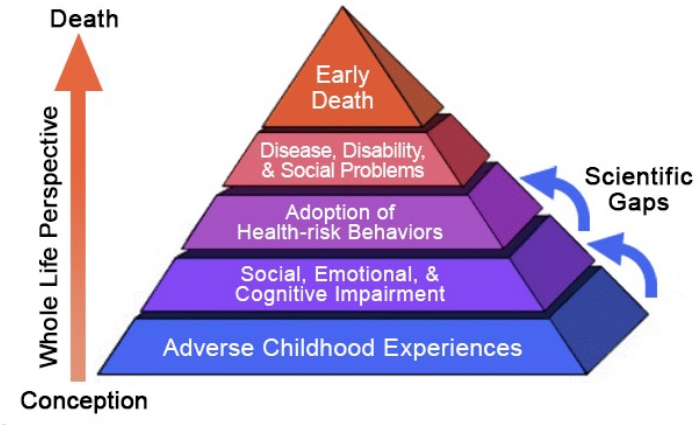
> "'Children who suffer the chronic stress of neglect–e.g., remaining hungry, cold, scared, or in pain--will also focus their brain's resources on survival.' 'Neglect has very profound and long-lasting consequences on all aspects of child development–poor attachment formation, understimulation, development delay, poor physical development, and antisocial behavior.'"
>
> Jennifer R. Meiselman Titus, *Adding Insult to Injury: California's Cruel Indifference to the Developmental Needs of Abused and Neglected Children from Birth to Three*, 39 Cal. W. L. Rev. 115, 129 (2002).

Therefore, it is imperative for a guardian ad litem to be able to recognize signs of developmental delays or behavioral issues for referrals. The child's future well-being hangs in the balance:

> "More specifically, children exposed to extreme or lasting trauma have a higher rate of developing (as adults) substance abuse issues, high teen pregnancy rates, high levels of anxiety, extreme mental health disorders, developmental delays, improper brain development, engagement in criminal/violent behaviors, and higher rates of various physical ailments. These factors are typically combined to lead to shorter life spans and an 'intergenerational cycle of significant adversity, with its predictable repetition of limited educational achievement and poor health.'"
>
> Tiffany Simmons, J.D. et. al., *The Cost of the Government's Failure to Protect Children Witnessing Parental Arrest and Detainment*, 7 Am. U. Bus. L. Rev. 199, 210-11 (2018).

See also:

> Substance Abuse and Mental Health Services of the U.S. Department of Health & Human Services (www.samhsa.gov/) ("Adverse childhood experiences (ACEs) are stressful or traumatic events, including abuse and neglect. They may also include household dysfunction such as witnessing domestic violence or growing up with family members who have substance use disorders. ACEs are strongly related to the development and prevalence of a wide range of health problems throughout a person's lifespan, including those associated with substance misuse.").



www.samhsa.gov/capt/sites/default/files/images/adverse-childhood-experiences-pyramid-lg.jpg

- **Are there ethnic, cultural, or religious considerations?**

When assessing appropriate services, a guardian ad litem should take account ethnic, cultural, and religious concerns:

> "Juvenile law differs from many other areas of the law, in that it requires knowledge and understanding of child and adolescent psychology, the dynamics and effects of child abuse and neglect, an understanding of special education law, ethnic, cultural and religious sensitivity, and the ability to build trust and establish rapport with clients–both children and adults–who are suffering both from the situation that brought them into the child welfare system, and often, from separation of their family. These people require considerable empathy, understanding, and patience."
>
> Pamela A. Marsh, *From the Children's Corner*, Vt. B.J., Summer 2011, at 41.

But, not at the expense of the child's best interests:

> "[W]hat may be considered as acceptable and common within one culture may be unacceptable within another. There have been concerns raised that social standards in the treatment of children could be biased in favor of some selected segments of society, such as the White-middle class and others who are in positions of social and professional power. The dialectic here has been cultural relativism versus universalism. Clearly, promoting cultural relativism at the expense of the best interest of either the child or society is not wise."
>
> Sandra T. Azar & Phillip Atiba Goff, *Can Science Help Solomon? Child Maltreatment Cases and the Potential for Racial and Ethnic Bias in Decision Making*, 81 St. John's L. Rev. 533, 571 (2007).

See also,

> Santosky v. Kramer, 455 U.S. 745, 763 (1982) ("Because parents subject to termination proceedings are often poor, uneducated, or members of minority groups, such proceedings are often vulnerable to judgments based on cultural or class bias.").

- **Is the parent in need of financial assistance?**

When a hurricane, ice-storm, or earthquake hits a community, the daily routine of the people affected by the disaster comes to a screeching halt. Utility services for water and electricity are shut down. Roads are impassable. Homes are destroyed. People are living in shelters. Basic necessities are scarce. Schools and businesses close. Hospitals are overwhelmed. After a few weeks or months, the electricity comes back on, the faucet works, streets are clear of debris, new roofs adorn homes, stores are open for business, and the school buses roll. All is good as the people return to their day-to-day lives. Now, think what it must be like everyday for a parent who has no job, no income, no prospect for gainful employment, no housing, no transportation, and no hope for attaining them. It's a desperate situation that can easily lead to dejection and despair.

In protecting the child's best interests, a guardian ad litem should zealously pursue, and advocate for, resources to improve the dynamics of the home situation. On the financial front, this requires making the following inquiries:

- Is the parent employed? If so, what is the parent's income?
- Does the parent receive financial support from other sources?
- Does the parent have a recognized disability?
- What is the parent's educational background?
- Does the parent have special talents or skills?
- Does the parent or child have special needs?
- Does the parent need housing assistance?
- Does the parent have access to reliable transportation?
- Does the parent have a cell phone or internet connection?
- Does the parent receive federal or state financial assistance?

For example,

Aid to Families with Dependent Children (AFDC)
Supplemental Nutrition Assistance Program (SNAP) (e.g., food stamps)
Temporary Assistance for Needy Families (TANF)
Supplemental Security Income (SSI)
Social Security Disability Insurance (SSDI)
VA Disability Compensation
Medicaid

Failing to address a parent's lack of financial resources is detrimental to achieving a desirable permanency outcome:

> "***[T]HE FAMILY CASE PLAN DOES NOT APPEAR TO ADEQUATELY ADDRESS ONE OF THE PREDOMINANT OBSTACLES FACING THE [MOTHER], HER ALLEGED LACK OF FINANCIAL RESOURCES.***

> . . .
> In formulating the improvement period and family case plans, courts and social service workers should cooperate to provide a workable approach for the resolution of family problems which have prevented the child or children from receiving appropriate care from their parents. The formulation of the improvement period and family case plans should therefore be a consolidated, multi-disciplinary effort among the court system, the parents, attorneys, social service agencies, and any other helping personnel involved in assisting the family.
> . . .
> [T]his Court respectfully recommends that the lower court make all reasonable efforts to promptly conclude these proceedings, to the end that these children may enjoy a stable and certain future as early as is practicable. The urgency of the lower court's further consideration is underscored by the seriousness of these matters, as well as the fact that considerable delays, over which no party had control, were encountered in the proceedings."
>
> In re Edward B., 558 S.E.2d 620, 632-35 (W. Va. 2001).

Additionally, a parent's financial circumstances may invoke due process concerns:

> In its Fourteenth Amendment, our Constitution imposes on the States the standards necessary to ensure that judicial proceedings are fundamentally fair. A wise public policy, however, may require that higher standards be adopted than those minimally tolerable under the Constitution. Informed opinion has clearly come to hold that an indigent parent is entitled to the assistance of appointed counsel not only in parental termination proceedings, but also in dependency and neglect proceedings as well.
>
> Lassiter v. Dep't of Soc. Servs. of Durham Cty., N. C., 452 U.S. 18, 33–34 (1981).

See also:

> Troxel v. Granville, 530 U.S. 57, 66 (2000) ("[T]he Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.").
>
> Prince v. Massachusetts, 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.").

Miss. Code. Ann. § 43-21-201(2) ("When a party first appears before the youth court, the judge shall ascertain whether he is represented by counsel and, if not, inform him of his rights including his right to counsel. If the court determines that a parent or guardian who is a party in an abuse, neglect or termination of parental rights proceeding is indigent, the youth court judge may appoint counsel to represent the indigent parent or guardian in the proceeding.").

Miss. Code Ann. § 93-15-113(b) ("The court shall then determine whether the parent before the court is represented by counsel. If the parent wishes to retain counsel, the court shall continue the hearing for a reasonable time to allow the parent to obtain and consult with counsel of the parent's own choosing. If an indigent parent does not have counsel, the court shall determine whether the parent is entitled to appointed counsel under the Constitution of the United States, the Mississippi Constitution of 1890, or statutory law . . . .").

- **Are there special needs or concerns?**

A guardian ad litem should also be attentive to special needs that will facilitate a successful reunification:

> "Special needs of adults and children are case specific. Examples may include parent(s)'s physical conditions (i.e., brain injury, AIDS, epilepsy, etc.), mental health issues, and developmental issues. The child's special needs should also be taken into account when recommending an order/access arrangement (i.e., child with asthma and parent(s) refuse(s) to stop smoking in the house, etc). Special needs of the parent(s) and the child(ren) should be considered in relation to how they may lead to risks in each specific case."
>
> Michael Saini & Rachel Birnbaum, *The Supervised Visitation Checklist: Validation with Lawyers, Mental Health Professionals, and Judges*, 49 Fam. L.Q. 449, 475 (2015).

Important inquiries:

- Is the child in need of special care?

See also:

> Miss. Code. Ann. § 43-21-105(o) ("'A child in need of special care' means a child with any mental or physical illness that cannot be treated with the dispositional alternatives ordinarily available to the youth court.").

Margaret S. Price, *Best Practices in Handling Family Law Cases Involving Children with Special Needs*, 28 J. Am. Acad. Matrim. Law. 163, 167 (2015) citing Merle McPherson et al., *A New Definition of Children with Special Health Care Needs*, 102 PEDIATRICS 137 (July 1998) ("Children with special health care needs are defined as those 'children who have or are at increased risk for chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally.'").

John Crouch, *The Child's Attorney New ABA Rules Clarify the Roles of Lawyers Who Represent Children*, 26-WTR Fam. Advoc. 31, Winter 2004, at 32 ("In the case of a child with special needs, the representative has a duty of vigorous, specific, knowledgeable advocacy to ensure that a child with such needs receives appropriate services to address the physical, mental, or developmental disabilities. The guardian ad litem should additionally be familiar with available services and how to secure them or, at the very least, be able to recommend them to the parents or request that the court order such services to be sought.").

- Are there special needs of the parent?

See, e.g.:

In re Adoption of Lenore, 770 N.E.2d 498, 503 (Mass. App. Ct. 2002) ("[T]here is no doubt that DSS is required to make reasonable efforts to strengthen and encourage the integrity of the family before proceeding with an action designed to sever family ties. The requirement includes accommodating the special needs of biological parents who are handicapped or disabled. Nevertheless, heroic or extraordinary measures, however desirable they may at least abstractly be, are not required.").

- Are there other special concerns?

For example,

A pending divorce.
A parent in prison or on probation or parole.
Pending criminal charges against a parent.
A former domestic partner who is stalking a parent.
Bullying at school.
A teenage mother attending school.
A learning disorder or a physical disability.
Transportation to work.
Visitation issues.

See also:

> Lanette P. Dalley, *Imprisoned Mothers and Their Children: Their Often Conflicting Legal Rights*, 22 Hamline J. Pub. L. & Pol'y 1, 14 (2000) ("The children of imprisoned mothers have special needs and circumstances unlike children in divorce cases. . . . Indeed, the majority of the 89 children in this study suffered from a variety of serious emotional problems (76%) and chronic health problems (47%) which existed before their mother's imprisonment. In some cases, the problems exacerbated during maternal imprisonment. The potential of these problems negatively impacting the children forever is tremendous.").

➤ **Reviewing records relevant to the proceedings**

At regular intervals in the proceedings, the guardian ad litem must assess the child's home situation and what "reasonable efforts" are necessary for obtaining a desirable permanency outcome. That requires reviewing all records relevant to the proceedings.

> "A GAL always serves pursuant to a written order of appointment, setting forth the specific duties and responsibilities expected by the court.
> . . .
> A guardian ad litem should obtain all records and other data relevant to the case, including but not limited to psychological data on parents, social service agency reports, report cards, counseling records of the child, photographs of the respective homes, police reports or other reports of domestic violence, any criminal records of parents, etc."
>
> John Crouch, *The Child's Attorney New ABA Rules Clarify the Roles of Lawyers Who Represent Children*, Fam. Advoc., Winter 2004, at 31, 33.

Such will allow the guardian to:

- better assess the current home situation,
- ask the right questions for improving the home situation, and
- make complete reports and sound recommendations on matters of custody, reunification, and permanency.

Records of particular importance to review:

- **Abuse and/or neglect records**

For example,

Reports of abuse and/or neglect
Intake recommendations
Informal adjustments
Custody orders
Shelter hearing orders
Petitions
Adjudication orders
Disposition orders
Permanency hearing orders
Foster care reviews
Permanency review hearing orders
Termination orders

Prior abuse and/or neglect records involving the same parent should not be overlooked!

See, e.g:

> "The court may rely on evidence of a parent's treatment of siblings to show a pattern of abuse and neglect, and a general inability to protect the children from harm. The evidence of mother's abuse and neglect of her first seven children clearly established a pattern of abuse and neglect relevant to her ability to properly care for J.J.P. Moreover, the evidence showed that, despite years of services aimed at improving her parenting, none of the seven children removed from her home were ever returned to her care. Further, the court found that, currently, mother denied that she was ever abusive to any of her children and that she had allowed her children to have unsupervised contact with a known sex offender. She minimized her neglect of the children and the condition of her home and denied responsibility for the children's absence from school. Although mother had recently enrolled in a parenting class, her failure to recognize her responsibility for the conditions that led to the other children being removed from her home made it clear that she would be unable to resume parental care of J.J.P. in a reasonable time."
>
> In re J.J.P., 719 A.2d 394, 397 (Vt. 1998).

See also In re N.M., 215 So. 3d 1007, 1013 (Miss. Ct. App. 2017) ("[The] Youth Court Act's definition of a 'neglected child' is sufficiently comprehensive to include a newborn child whose parents have previously demonstrated that they are unwilling or unable to provide proper care for the child. . . . However, because the DHS petition failed to charge that N.M. was a neglected child, we must find the youth court exceeded its authority and jurisdiction in the present case.").

- **Child in need of supervision records**

Prior and/or pending child in need of supervision records involving the same parent could indicate some dysfunction in the home environment that was previously overlooked. A child in need of supervision, such as a runaway, might possibly be an undetected abused and neglected child acting out.

§ 43-21-105

> (k) "Child in need of supervision" means a child who has reached his seventh birthday and is in need of treatment or rehabilitation because the child:
> (i) Is habitually disobedient of reasonable and lawful commands of his parent, guardian or custodian and is ungovernable; or
> (ii) While being required to attend school, willfully and habitually violates the rules thereof or willfully and habitually absents himself therefrom; or
> (iii) Runs away from home without good cause; or
> (iv) Has committed a delinquent act or acts.

- **Delinquency records**

Prior and/or pending delinquency records involving the same parent could likewise indicate some dysfunction in the home environment that was previously overlooked. Again, a delinquent child might be an undetected abused and neglected child acting out.

§ 43-21-105

> (i) "Delinquent child" means a child who has reached his tenth birthday and who has committed a delinquent act.
> (j) "Delinquent act" is any act, which if committed by an adult, is designated as a crime under state or federal law, or municipal or county ordinance other than offenses punishable by life imprisonment or death. A delinquent act includes escape from lawful detention and violations of the Uniform Controlled Substances Law and violent behavior.
> . . .
> (u) "Records involving children" means any of the following from which the child can be identified:
> (i) All youth court records as defined in Section 43-21-251;
> (ii) All forensic interviews conducted by a child advocacy center in abuse and

neglect investigations;
(iii) All law enforcement records as defined in Section 43-21-255;
(iv) All agency records as defined in Section 43-21-257; and
(v) All other documents maintained by any representative of the state, county, municipality or other public agency insofar as they relate to the apprehension, custody, adjudication or disposition of a child who is the subject of a youth court cause.

See also:

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 77 (2016) ("Research shows that child abuse and neglect are among the key risk factors for delinquency, with crossover youth often having a family history of criminal behavior, mental health, and/or substance abuse problems. Between one-half and three-quarters of crossover youth have had prior contact with the juvenile justice system in some way (e.g., a status offense or delinquency charge resulting in diversion or not resulting in processing). Crossover youth are often truant from school, and when they do attend, they often have poor academic performance and exhibit behavioral problems. Crossover youth themselves have higher rates of mental health and substance abuse problems, with many exhibiting symptoms or having diagnoses for mental health disorders or substance abuse.").

Aracely Muñoz Contreras, *Girls in America: Sex and Deviancy in the Age of HIV/aids*, 7 J. Gender Race & Just. 357, 369 (2003) ("Differentiating between the ages of children who violate the juvenile code and children protected by it in cases of abuse and neglect creates a context in which children whose abuse has been intercepted by the system are viewed as more worthy of protection. This difference ignores the fact that many children, especially girls, engage in delinquent behavior as a result of the sexual and physical abuse they have experienced, and, therefore, also merit protection.").

- **Federal or state criminal records**

A parent's prior and/or pending felony and/or misdemeanor convictions may provide insight on issues relevant to the proceedings.

Important inquiries:

- Does the parent have a prior federal or state conviction? If so, what was the offense?
- Is there a pending charge against the parent? If so, what are the terms of release?
- Is the parent on probation or parole? If so, what are the conditions of that probation or parole?

Offenses particularly pertinent include: domestic violence, child abuse or neglect, drug charges, DUI, and any offense listed under Section 93-15-121(h).

§ 93-15-121(h)

> Any of the following, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:
> . . .
> (h)(i) The parent has been convicted of any of the following offenses against any child:
> 1. Rape of a child under Section 97-3-65;
> 2. Sexual battery of a child under Section 97-3-95(c);
> 3. Touching a child for lustful purposes under Section 97-5-23;
> 4. Exploitation of a child under Sections 97-5-31 through 97-5-37;
> 5. Felonious abuse or battery of a child under Section 97-5-39(2);
> 6. Carnal knowledge of a step or adopted child or a child of a cohabitating partner under Section 97-5-41; or
> 7. Human trafficking of a child under Section 97-3-54.1; or
> (ii) The parent has been convicted of:
> 1. Murder or voluntary manslaughter of another child of the parent;
> 2. Aiding, abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of the child or another child of the parent; or
> 3. A felony assault that results in the serious bodily injury to the child or another child of the parent.

- **Records of civil actions**

Some civil actions may also be relevant to the proceedings, such as protection from domestic abuse orders; civil commitments; and divorce decrees.

Important inquiries:

- Was an emergency or temporary domestic abuse protection order ever issued against a parent? If so, what were the terms of the order? Was it violated?
- Was a parent involuntarily committed for alcoholism or a drug addiction? *See* Miss. Code Ann. § 41-31-1 et seq. and § 41-32-1 et seq.
- Is a parent divorced? If so, what were the grounds for granting it? *See* Miss. Code Ann. § 93-5-1.

§ 93-5-1

> Divorces from the bonds of matrimony may be decreed to the injured party for any one or more of the following twelve (12) causes:
> First. Natural impotency.
> Second. Adultery, ...
> Third. Being sentenced to any penitentiary, and not pardoned before being sent there.
> Fourth. Willful, continued and obstinate desertion for the space of one (1) year.
> Fifth. Habitual drunkenness.
> Sixth. Habitual and excessive use of opium, morphine or other like drug.
> Seventh. Habitual cruel and inhuman treatment, including spousal domestic abuse. . . .
> Eighth. Having mental illness or an intellectual disability at the time of marriage, if the party complaining did not know of that infirmity.
> Ninth. Marriage to some other person at the time of the pretended marriage between the parties.
> Tenth. Pregnancy of the wife by another person at the time of the marriage, if the husband did not know of the pregnancy.
> Eleventh. Either party may have a divorce if they are related to each other within the degrees of kindred between whom marriage is prohibited by law.
> Twelfth. Incurable mental illness. . . . .”

- **Physical and mental health records**

Physical and mental health records of both the child and the parent are especially important in assessing “reasonable efforts” for reunification.

§ 43-21-251

> (1) The court records of the youth court shall include:
> . . .
> (ii) A “medical examination” is an examination by a physician of a child who is the subject of a youth court cause or of his parent. The youth court may order a medical examination at any time after the intake unit has received a written complaint. Whenever possible, a medical examination shall be conducted on an outpatient basis. A medical examination of a parent of the child who is the subject of the cause shall not be ordered unless the physical or mental ability of the parent to care for the child is a relevant issue in the particular cause and the parent to be examined consents to the examination.
> (iii) A “mental health examination” is an examination by a psychiatrist or psychologist of a child who is the subject of a youth court cause or of his parent. The youth court may order a mental health examination at any time after the intake unit has received a written complaint. Whenever possible, a mental health examination shall be conducted on an outpatient basis. A mental health

> examination of a parent of the child who is the subject of a cause shall not be ordered unless the physical or mental ability of the parent to care for the child is a relevant issue in the particular cause and the parent to be examined consents to the examination.

See also:

> Commissioner Sherrill L. Rosen, *Guardian Ad Litem Practice*, 63 UMKC L. Rev. 371, 378 (1995) ("Usually the appointing court will or can be persuaded to issue an order which allows the guardian ad litem access to the child's records from doctors, therapists, schools and other institutions upon presentation of that order. Obtaining records of the parties, particularly their own medical records, can be a problem, although case law and judges tend to support acquisition of such records over the parties' privilege when custody is at issue.").

- **Counseling records**

There's an expression, "Insanity is doing the same thing over and over again and expecting a different result." Sometimes treatment or counseling works the first time, and sometimes it doesn't. But, on the fourth or fifth go-around with no signs of progress, it might be time to try a different approach–at least from a "reasonable efforts" standpoint.

Important inquiries:

- Has the parent received treatment or counseling for drug or alcohol dependency, domestic abuse, or other behavioral problem?
- What progress has the parent made toward rehabilitation?
- Are there alternatives for addressing the behavioral problem?

- **School records**

The child's school records might reveal disturbing trends, such as an unusual number of absences, classroom disruptions, or failing grades.

- **Agency records involving children**

Such would include both valid and invalid complaints.

"Any report to the Department of Human Services shall contain the names and addresses of the child and his parents or other persons responsible for his care, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries and any other information that might be helpful in establishing the cause of the injury and the identity of the perpetrator." Miss. Code Ann. § 43-21-353(2).

- **CPS investigations and service plans**

§ 43-15-13

> (5) . . . Each child's review plan once every six (6) months shall be filed with the court which awarded custody and shall be made available to natural parents or foster parents upon approval of the court. The court shall make a finding as to the degree of compliance by the agency and the parent(s) with the child's social service plan. The court also shall find that the child's health and safety are the paramount concern.

§ 93-15-115

> When reasonable efforts for reunification are required 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, the court hearing a petition under this chapter may terminate the parental rights of a parent if, after conducting an evidentiary hearing, the court finds by clear and convincing evidence that:
> (a) The child has been adjudicated abused or neglected;
> (b) The child has been in the custody and care of, or under the supervision of, the Department of Child Protection Services for at least six (6) months, ***AND, IN THAT TIME PERIOD, THE DEPARTMENT OF CHILD PROTECTION SERVICES HAS DEVELOPED A SERVICE PLAN FOR THE REUNIFICATION OF THE PARENT AND THE CHILD****;*
> (c) A permanency hearing, or a permanency review hearing, has been conducted pursuant to the Uniform Rules of Youth Court Practice and the court has found that the Department of Child Protection Services, or a licensed child caring agency under its supervision, has made ***REASONABLE EFFORTS OVER A REASONABLE PERIOD TO DILIGENTLY ASSIST THE PARENT IN COMPLYING WITH THE SERVICE PLAN*** but the parent has failed to substantially comply with the terms and conditions of the plan and that reunification with the abusive or neglectful parent is not in the best interests of the child; and
> (d) Termination of the parent's parental rights is appropriate because reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome based on one or more of the grounds set out in Section 93-15-119 or 93-15-121.

See also:

> In re S., 47 So. 3d 715, 720 (Miss. Ct. App. 2010) ("We find that considering the evidence in a light most favorable to the State, a reasonable person could have found, by a preponderance of the evidence, both children were neglected. Furthermore, we defer to the youth court judge's observation of the temperament, maturity, and demeanor of the children and parents. We also note that Cole was

provided a service plan by DHS. As she progresses with the plan, she will be eligible for unsupervised visitation; and ultimately, upon compliance with the plan, the children could be returned to Cole's custody.").

- **CAC forensic interviews**

"Children's Advocacy Centers of Mississippi (CACM) is an accredited chapter of the National Children's Alliance. As a membership organization with numerous local Advocacy Centers throughout the state, we bring together multidisciplinary teams to streamline the process of child abuse situations. Our goal is always to put the needs of the child first, and we bring all services under one umbrella. By bringing together many disciplines, including law enforcement, child protection, prosecution, mental and/or medical health, victim advocacy and child advocacy, we work together to conduct interviews and make team decisions about investigation, treatment, management and prosecution of child abuse cases."

www.childadvocacyms.org

502 CONDUCTING INTERVIEWS

➤ **Zealously protecting the best interests of the child**

A guardian ad litem has an affirmative duty to zealously protect the best interests of the child. *See* In re D.K.L., 652 So.2d 184, 188 (Miss.1995). That means interviewing those persons with relevant information on the child's health, safety, and general welfare:

> "The mother in the case before us appears to be attacking the guardian ad litem's investigatory skills. This assertion does appear to have considerable merit. It is hard for this Court to imagine that a guardian ad litem, without ever visiting the children he/she represents, can be fully informed as to their best interests. Although there may be unusual situations where this is not the case, such does not present itself here. At the very least, [the guardian ad litem] should have visited the children to ascertain their current status and evaluate how they were progressing developmentally.
>
> While we are careful to allow the guardian ad litem as much flexibility as possible, we believe that in this case [the guardian ad litem] should have been prepared to testify as to the present health, education, estate and general welfare of the children. This of necessity would require [the guardian ad litem to] have interviewed the minor children, their current custodians, and prospective adoptive parents, if any. Additional record reviews, such as school grades and current medical and or psychological

> records . . . would be helpful. The interview with the daughter can be done within the restraints previously established by [the psychotherapist]. . . . Since this is a termination of parental rights case, some contact with the natural mother may be appropriate."
>
> M.J.S.H.S. v. Yalobusha Co. Dep't. of Human Servs., 782 So. 2d 737, 741 (Miss. 2001).

See also:

> D.J.L. v. Bolivar County Dep't of Human Servs., 824 So. 2d 617, 623 (Miss. 2002) ("The guardian ad litem should interview each child and prepare independent recommendations for the trial court's consideration.").
>
> Chitwood v. Stone County Dep't of Child Protection Services, 2020 WL 2126713 (Miss. Ct. App.) ("[The father] contends that the GAL did not fully represent T.C.'s interest because she failed to interview [him] prior to the termination hearing. We disagree. . . . The GAL repeatedly attempted to contact [the father] before and after their one interaction in court. She gave [him her contact information, and [he] failed to contact her.").
>
> I.R. v. Dep't of Children & Family Servs., 904 So. 2d 583, 586 (Fla. Dist. Ct. App. 2005) ("The guardian ad litem . . . only spoke once with the mother over the phone. She had never met her nor observed the mother's interactions with the child during visitations. Yet [she] concluded that the mother was incapable of safely caring for the child due to her mental illness. . . . [But] the testimony from Dr. Rothe indicates that with the proper psychotherapy, the mother will have the tools she needs to manage her disorder and prevent future psychotic breaks. Clearly, the Department failed to establish here that long-term therapy would not have improved the mother's mental health condition.").

Keep in mind, too, that a guardian ad litem may need to interview a child, a parent, or other interested person on more than one occasion to report information relevant to a particular proceeding. One conversation over the phone is not very persuasive:

> "The guardian ad litem assigned to the case testified that she only spoke once with the mother over the phone. She had never met her nor observed the mother's interactions with the child during visitations. Yet the guardian ad litem concluded that the mother was incapable of safely caring for the child due to her mental illness. She stated the child was appropriately placed and was bonded with her aunt, uncle and cousins."
>
> I.R. v. Dep't of Children & Family Servs., 904 So. 2d 583, 586 (Fla. Dist. Ct. App. 2005).

➤ **Interviewing the child**

Interviewing children involves "linguistic complexities" not readily apparent. Reading books, articles, and study materials on questioning children is encouraged. In the introduction to her book, Anne Graffam Walker, Ph.D., emphasizes the importance of approaching the interview from the child's perspective:

> "I have written [this book] because I am deeply concerned by the fact that children in our courts today are being denied a right that should belong to everyone who enters the legal system: to have an equal opportunity not only to understand the language of the proceedings, but to *be understood*. This is a situation that puts not just children, but all those who stand both with and against the child, in jeopardy."
>
> Anne Graffam Walker, *Handbook on Questioning Children: A Linguistic Perspective* 1 (3rd Edition, ABA 2013).

It should be pointed out that an investigative interview is a "forensic" interview in the sense that the questions and responses will be "relating to, used in, or appropriate for courts of law. . . ." Black's Law Dictionary 676 (8th ed. 2004). ***BUT, IT DOESN'T CARRY THE RELIABILITY OF A FORENSIC INTERVIEW CONDUCTED BY THOSE SPECIALLY TRAINED TO INTERVIEW A CHILD PURSUANT TO FORENSIC INTERVIEW PROTOCOLS AND TECHNIQUES.*** *See, e.g.* Miss. Code. Ann. § 43-1-55; *see also* MRE 803(25) ("Tender Years Exception").

Below are a few suggestions when interviewing the child:

- **Review all available records relevant to the case.**

This allows the guardian ad litem to be more receptive to the child's responses by putting context around them. It is also preparatory to asking the right questions for reports and recommendations on what "reasonable efforts" are needed for a desirable permanency outcome.

See also:

> Jacqueline Bhabha and Wendy A. Young, *Through a Child's Eyes: Protecting the Most Vulnerable Asylum Seekers*, 75 No. 21 Interpreter Releases 757, 771 (1998) ("The Lutheran Immigration and Refugee Service, based on its extensive experience working with refugee children, identifies the following factors as influencing a child's developmental stage: (1) chronological age; (2) physical and emotional health; (3) physical, psychological, and emotional development; (4) societal status; (5) cultural background; (6) cognitive processes; (7) education; (8) language capability; and (9) experiential and historical background.").

- **Choose a comfortable setting.**

Locations for the conducting the interview might include the child's home, the foster home, the child's school, or a conference room at the courthouse. Whatever setting is selected, it is important to make the child feel at ease:

> "The characteristics of an interview setting can greatly impact a child's comfort level. An interview room or setting should generally appear child friendly, private, simple, and free of distractions."
>
> Jennifer Anderson, Julie Ellefson, Jodi Lashley, Anne Lukas Miller, Sara & Olinger, Amy Russell, Julie Stauffer, Judy Weigman, *The Cornerhouse Forensic Interview Protocol: Ratac*, 12 T.M. Cooley J. Prac. & Clinical L. 193, 263 (2010).

Additionally, the guardian ad litem should make sure that a trustworthy adult is somewhere nearby–preferably in an adjoining room that is in plain sight. Also, any persons who might stifle a child from speaking freely should leave the premises.

See also:

> 1 Kan. Law & Prac., Family Law § 5:11 ("Sometimes it is helpful to interview with the parents present to observe the interaction of the parent and child. If the child is in a foster home, interviewing the child in that home will give the attorney a view of the child's adjustment to the home.").

- **Consider time limitations.**

Best practices are to conduct several short interviews instead of a single lengthy one.

See, e.g.:

> Amy Russell, *Best Practices in Child Forensic Interviews: Interview Instructions and Truth-Lie Discussions*, 28 Hamline J. Pub. L. & Pol'y 99, 111 (2006) ("A general guideline for a child's attention span is three to five minutes per year. Hence, a four-year-old child who does not have any disabilities or mental health disorders might be able to actively participate in an interview somewhere between twelve and twenty minutes.").
>
> Commissioner Sherrill L. Rosen, *Guardian Ad Litem Practice*, 63 UMKC L. Rev. 371, 378 (1995) ("The length of the interview depends on the age of the child and their attention span. Generally under age five, it shouldn't last more than 30 minutes, and the guardian ad litem is lucky if it lasts that long. Over that age, anywhere from 45 minutes to an hour is normal, again depending on the child. More than an hour is probably unproductive and may be counter-productive.").

- **Explain to the child in simple terms your role in the proceedings.**

Assure the child that you are there to protect his or her best interests for a safe, healthy, and happy life. Inform the child that you are acting as an arm of the court and not as the child's attorney. Let the child know that any statements made to you that are relevant to the issues in the case must be reported to the court. *See* U.R.Y.C.P. 13(c).

But, be flexible as the circumstances warrant. A young child, or even an older one, might not understand what the phrase "acting as an arm of the court" means. Perhaps, the following equivalency approach might be both informative and trust-building:

GAL: Hello Joseph. My name is Joyce and I will be asking you a few questions today. By what name do you like to go by: Joseph or Joey or Joe?
Child: My friends call me Joey.
GAL: For our talk, may I call you Joey?
Child: Yes.
GAL: Today, Joey, I will be asking you a few questions to make sure you are healthy, safe, and well taken care of. Is that okay?
Child: Yes.
GAL: I am not acting as your attorney. Anything you say to me, I will tell the judge. What you have to say is very important to us. Is that okay?
Child: Yes.
GAL: My hope is for you to return home sometime soon. I want your mom and dad to get the help and assistance they need to make that possible. But, what is most important to me is your current health, safety, and well-being. Is that okay?
Child: Yes.

See also:

Marcia M. Boumil, Cristina F. Freitas, Debbie F. Freitas, *Legal and Ethical Issues Confronting Guardian Ad Litem Practice*, 13 J. L. & Fam. Stud. 43, 56 (2011) ("[Scholars] point out that the risks of not warning the child, including a loss of trust, potential for psychological damage, and the child's right to due process, far outweigh the risks of the child not divulging important information once warned.").

Jennifer Anderson, Julie Ellefson, Jodi Lashley, Anne Lukas Miller, Sara & Olinger, Amy Russell, Julie Stauffer, Judy Weigman, *The Cornerhouse Forensic Interview Protocol: Ratac*, 12 T.M. Cooley J. Prac. & Clinical L. 193, 260 (2010) ("An interviewer should attempt to convey warmth by fully introducing herself or himself to the child, smiling frequently, using the child's preferred name, making frequent eye contact, speaking with a gentle tone, and sitting with a relaxed manner and open body position.").

- **Use age-appropriate vocabulary and short sentences.**

Below are some helpful tips when interviewing a child:

> "Use words that are short (1-2 syllables) and common."
> "Translate difficult words into easy phrases."
> "Use proper names and places instead of pronouns."
> "Use concrete, visualizable nouns ('back yard') instead of abstract ones ('area')."
> "Use verbs that are action oriented."
> "Substitute simple, short verb forms for multi-word phrases when possible."
> "Use active voice for verbs instead of passive."
>
> Anne Graffam Walker, *Handbook on Questioning Children: A Linguistic Perspective* app. C at 109 (3rd Edition, ABA 2013).

See also:

> Lyon, T. D., *Ten step investigative interview* (2005) at http://works.bepress.com/thomaslyon/5/
>
> Ahern, E. C., & Lyon, T. D., *Supplemental investigative interview questions* (2011) at http://works.bepress.com/thomaslyon/74/

- **Avoid asking "why" questions or making inquiries on specific abuses**

"Protecting a child from trauma, or from further trauma, needs to be a primary goal during the interview." Jennifer Anderson, et al., *The Cornerhouse Forensic Interview Protocol: Ratac*, 12 T.M. Cooley J. Prac. & Clinical L. 193, 259 (2010).

The adage "FIRST DO NO HARM" is most appropriate when interviewing a child:

> "When talking to a young child, the shorter the sentence the better. Also avoid asking 'why'; it not only tends to elicit the response 'because' in younger children, it also may have a negative connotation such as 'Why did you do this?' Additionally, a child should not be pressured to discuss specifics because it may make them uncomfortable and uncooperative, especially around abuse issues. Instead, be sensitive to both the child's behavior, as well as statements, looking for any incongruity between the two."
>
> Commissioner Sherrill L. Rosen, *Guardian Ad Litem Practice*, 63 UMKC L. Rev. 371, 378 (1995).

See also:

> Claire Chiamulera, *Representing Child Abuse Victims: Forensic Interviewing Tips (Part 2)*, 34 Child. L. Prac. 58, 59 (2015) ("Why questions often make a child feel blamed and create confusion because they ask for someone else's motivation for doing something.").

It should be noted, too, that specific details of the abuse is likely available through other sources–such as doctors, therapists, social reports, or forensic interviews. It is not necessary for you to pry from the child the terrible events of the alleged abuse or neglect:

> "What is important is how many times the child has been previously interviewed and what was said. Often the guardian ad litem will be in line after parents, doctors, therapists and police who have interviewed the child as to specific allegations."
>
> Commissioner Sherrill L. Rosen, *Guardian Ad Litem Practice*, 63 UMKC L. Rev. 371, 378 (1995).

YOU ARE NOT CONDUCTING A FORENSIC INTERVIEW FOR PURPOSES OF PROSECUTING THE CASE.

Your role is not to create a wedge between the child and the parent. Quite the opposite. Instead, ask yourself, "What can be done to restore the custody of the child to the parent without compromising the child's health, safety or general welfare?"

- **Establish trust by listening to the child's responses.**

Another important aspect of the initial interview is to establish trust between you and the child. Remember, you are a *STRANGER* to the child. Most children are told not to talk to strangers. Avoid asking questions that, in the child's mind, might seem accusatory against the parent. The child may have great love and affection for the parent despite the abuse or neglect. Instead,

ASK WHAT THE CHILD THINKS WOULD MAKE THE HOME SITUATION BETTER.

Then,

LISTEN TO THE CHILD'S ANSWERS. PERHAPS FOR THE FIRST TIME THE CHILD REALIZES THAT SOMEBODY CARES: "I HAVE A VOICE! MY THOUGHTS AND FEELINGS COUNT! I AM BEING HEARD!"

What if the child discloses information but then later insists that it not be repeated to anyone else? Trust is key. Remind the child that you are required to report the disclosure to the judge, but that it will only be used for improving the home situation and for

ensuring that the child's best interests are protected. If the child is distressed about that reminder, then try to assuage those fears:

> "This situation becomes further complicated if the child, after receiving a non-confidentiality warning, thereafter discloses significant information, only to insist it be kept 'off the record.' In these situations, the [guardian ad litem] can remind the child that information disclosed must be reported to the court, watch for non-verbal cues, and help the child work through the worrisome information."
>
> Marcia M. Boumil, Cristina F. Freitas, Debbie F. Freitas, *Legal and Ethical Issues Confronting Guardian Ad Litem Practice*, 13 J. L. & Fam. Stud. 43, 56-57 (2011).

Remember, it may take time for the child to trust again:

> "Betrayal describes the dynamic that accompanies a child's realization that someone she depends on is hurting her. She may realize that the trusted adult has misrepresented the activities they were engaging in. She may also feel betrayed by trusted adults that did not intervene to protect her, disbelieved her, or minimized her experience."
>
> William Wesley Patton, *Viewing Child Witnesses Through A Child and Adolescent Psychiatric Lens: How Attorneys' Ethical Duties Exacerbate Children's Psychopathology*, 16 Widener L. Rev. 369, 379 (2010).

See also:

> Marcia M. Boumil, Cristina F. Freitas, Debbie F. Freitas, *Legal and Ethical Issues Confronting Guardian Ad Litem Practice*, 13 J. L. & Fam. Stud. 43, 56 (2011) ("Establishing trust is no small task for the GAL: parents may instruct the child to not speak about certain matters; the child may not speak easily to strangers; or the child may try to manipulate the interview to achieve a desired result.").
>
> Commissioner Sherrill L. Rosen, *Guardian Ad Litem Practice*, 63 UMKC L. Rev. 371, 378 (1995) ("[A] child should not be pressured to discuss specifics because it may make them uncomfortable and uncooperative, especially around abuse issues. Instead, be sensitive to both the child's behavior, as well as statements, looking for any incongruity between the two.").

- **Follow-up interviews**

Inform the child that you may want to talk with him or her again sometime in the near future. Give the child your contact information.

➤ **Interviewing the parent, guardian, or custodian**

In the *Handbook on Questioning Children: A Linguistic Perspective*, Anne Graffam Walker, Ph.D., states:

> "We question one child at a time. Each child has his or her own unique growth pattern, and his or her own family experience which shaped the learning of language. Therefore the child you are questioning may or may not fit the general characteristics of whatever topic is being discussed in this text. *That is markedly true in the case of children (or adults, for that matter) who have a developmental disability, come from a culture different from our own, or who have been maltreated.*"
>
> Anne Graffam Walker, Handbook on Questioning Children: A Linguistic Perspective 11 (3rd Edition, ABA 2013).

Likewise, it is best to question one parent at a time. A parent who is a victim of domestic abuse may "clam up" if the abusing spouse is in the same room or nearby. Also, there may be confidences that a parent might want to disclose to you but won't with the other parent present.

See also:

> John Crouch, *The Child's Attorney New ABA Rules Clarify the Roles of Lawyers Who Represent Children*, Fam. Advoc., Winter 2004, at 31, 31–34 ("The guardian ad litem should meet with both parents and any other caregivers, including but not necessarily limited to extended family, child-care providers, social service workers, etc. Again, if the parents are represented by independent counsel, permission to meet with a parent should be obtained from the parent's attorney. Unless the attorney consents, the interview should take place with counsel present.").

Below are a few suggestions when interviewing a parent:

- **Review all available records relevant to the case.**

Once again, reviewing all relevant records is preparatory to asking the right questions for reports and recommendations on what "reasonable efforts" are needed for a desirable permanency outcome. Doing so will also allow the guardian ad litem to better discern whether a parent is being forthright in answering questions.

For example,

GAL:	Do you think that you may have an alcohol problem or a drug addiction?
Parent:	Absolutely not.
GAL:	Public records indicate that you have two previous DUI convictions within the past five years. Any comment?

- **Explain to the parent your role in the proceedings.**

Inform the parent:

- that you have been appointed by the court "to act as an arm of the court in protecting the interest of the child, and not as the parties' attorney, and that any statements made to [you] affecting the health, safety, or welfare of the child will be reported to the court." *See* U.R.Y.C.P. 13(c);

- that as an "arm of the court" it is your duty to investigate the home situation and to make recommendations to the court concerning the care, support, education and welfare of the child. *See* Miss. Code Ann. § 43-21-103; and

- that you will be reporting to the court the parent's willingness and progress in complying with the terms and conditions any CPS service plan or other court imposed orders.

Again, always be mindful that you are not prosecuting the case or acting as legal counsel or therapist to the child or the parent. Instead, your role is to zealously, competently, and without bias, investigate, make recommendations, and enter reports as instructed by the court in holding paramount the child's best interest. *See* U.R.Y.C.P. 13(c); In re D.K.L., 652 So. 2d 184, 188 (Miss. 1995).

See also:

> Marcia M. Boumil, Cristina F. Freitas, Debbie F. Freitas, *Legal and Ethical Issues Confronting Guardian Ad Litem Practice*, 13 J. L. & Fam. Stud. 43, 55 (2011) ("In order to ensure that parties understand that these professionals are not acting in the capacity of a therapist but instead have a duty to report to the court, GALs are commonly required to provide non-confidentiality warnings prior to interviewing parties in a case.").

- **Address the home situation.**

The depth of the interview regarding the home situation will largely depend on the facts and circumstances of the case and what information is needed for a particular hearing. Prior to the adjudication hearing, it's probably best not to delve into the allegations of abuse or neglect. That information is contained in the report of abuse and neglect to the intake unit. *See* U.R.Y.C.P. 8.

Below are some inquiries relevant to protecting the child's best interests. Some might think that it would be more *efficient* to submit these questions to the parent in a written questionnaire. Maybe so, but certainly not more effective. Sometimes, it is also important to witness the parent's demeanor in responding to a question. Is the parent fidgeting, smirking, or glowering? Does the parent seem agreeable or uncooperative? Asking questions directly also provides an opportunity for establishing with the parent a rapport of sensible expectations, impartiality, and fairness.

Important inquiries:

- What is the child's daily routine? Weekend routine?
- Does the child have any intellectual, communicative, social, emotional, behavioral, or physical concerns that need attention?
- What is the parent's daily routine? Weekend routine?
- Does the parent have any intellectual, communicative, social, emotional, behavioral, and physical concerns that need attention?
- What are the parent's parenting skills, knowledge, and practices?
- Does the parent have a high school degree or a GED?
- Does the parent or child have physical and/or mental health issues that need *immediate professional* attention?
- Does the parent have an alcohol problem or drug dependency?
- Has the parent *ever* been a victim of domestic violence or abuse?
- Are there relatives that the parent would trust in providing temporary or long-term care for the child? What are the reasons for that trust?
- Are there relatives that the parent would not trust in providing temporary or long-term care for the child? What are the reasons for that distrust?

- Are there any reliable friends who might be helpful in providing support–such as transportation to court hearings, work, medical appointments, or visitations?

- Is the parent presently dating anyone? How does the child feel towards that person? Does that person have a criminal history or mental health issues?

- What are the living arrangements? Who lives in the home? Any visitors?

- Where does the child go to school? How are the child's grades? Any disciplinary problems? Who is the child's best friend at school?

- Does the parent have any ethnic, cultural, or religious concerns that should be brought to the attention of the court?

- Is the parent in need of financial assistance?

- Does the parent or child have any special needs?

- Are there any special concerns–such as a pending divorce or probation conditions?

See also:

"The American Bar Association's Child Safety Guide advocates the use of six background questions to assess the threat of danger, vulnerability of the child, and protective capacities of the parent(s):
1. What is the nature and extent of the maltreatment?
2. What circumstances accompany the maltreatment?
3. How does the child function day-to-day?
4. How does the parent discipline the child?
5. What are overall parenting practices?
6. How does the parent manage his or her own life?

There is a significant chance of missing information, misperceptions, or bias influencing the answers to these questions. For example, many women experiencing domestic violence never disclose the abuse to their closest friends and family, let alone to their attorneys or a government agency empowered to remove their children."

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 133 (2016).

- **Discuss the CPS Service Plan.**

If Child Protection Services has a service plan for the parent, then discuss each condition of that plan. ***ASK THE PARENT IF THERE ARE ANY CONCERNS IN COMPLYING WITH ANY OF THE TERMS.*** Any objections to the services offered should be resolved early in the process.

See, e.g.,

> In re C.B., 611 N.W.2d 489, 493-94 (Iowa 2000) ("[The mother] objected to the lack of visitation after she returned to Iowa, but did not object to other reunification efforts by the DHS until the termination proceeding. We have repeatedly emphasized the importance for a parent to object to services early in the process so appropriate changes can be made.").
>
> In re M.C., 908 N.W.2d 884 (Iowa Ct. App. 2017) ("[The mother] has not identified any specific service that should have been offered to facilitate reunification. Nor has she identified any particular deficiency in the services offered. In the juvenile court, Kelly did not request additional services. Nor did she identify any particular deficiency in the services offered. 'We have repeatedly emphasized the importance for a parent to object to services early in the process so appropriate changes can be made.'").

- **Establish trust by listening to the parent's concerns.**

Trust is key to working with parents, too. As with a child, you are a *STRANGER* to them. Some may even perceive you as a *STRANGER WHO IS CONSPIRING WITH OTHERS TO TAKE AWAY THEIR CHILD*. Others may simply have difficulty trusting anyone because someone they once trusted had shattered the happiness of their adolescence with instances of abuse or neglect. Perhaps there is even a lingering bitterness or resentment that nobody had come to their rescue. Still others may be anxious, confused, or scared of what's coming next. Most are not familiar with the workings of the child protection system and its procedures. And then there are those who are languishing in an abusive relationship only because there seems to be no way out. For them, loyalty to the status quo has been a survival mechanism *to keep the child*. In their minds, "Loose lips sink ships!" Therefore, it is imperative to explain to the parent that:

IT IS IN THE CHILD'S BEST INTERESTS THAT REASONABLE EFFORTS FOR REUNIFICATION ARE SUCCESSFUL.

Mississippi's Youth Court Law makes clear that the parent is the preferred care-giver:

§ 43-21-103

> "This chapter shall be liberally construed to the end that each child coming within the jurisdiction of the youth court shall become a responsible, accountable and productive citizen, and that each such child shall receive such care, guidance and control, ***PREFERABLY IN SUCH CHILD'S OWN HOME*** as is conducive toward that end and is in the state's and the child's best interest. It is the public policy of this state that the parents of each child shall be primarily responsible for the care, support, education and welfare of such children; however, when it is necessary that a child be removed from the control of such child's parents, the youth court shall secure proper care for such child."

See also:

> Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* 111 (2014) ("We are a society that believes that children belong with their own family. When that family abuses or neglects their child, we intervene to protect the child, and in the great majority of cases, we support and successfully maintain the family unit.").

It is also important to ease the parent's apprehension of future proceedings. Let the parent know what hearings are upcoming, the time lines for those hearings, and their purposes. Additionally, inform the parent that you will be conducting investigations, making recommendations, and entering reports for the protection of the child's best interests in a complete, diligent, prompt, fair, and efficient manner at every stage of the proceedings. Be forthright and transparent in this disclosure. In other words, be sure that the parent understands on the front end that you are required to report to the court "all material information" relevant to the proceedings, including that which may not support your recommendation. Otherwise, later on some parents might consider your report as just another betrayal in a system that is "rigged" against them.

See also:

> Commissioner Sherrill L. Rosen, *Guardian Ad Litem Practice*, 63 UMKC L. Rev. 371, 378–79 (1995) ("Going to interview the child at home is not making a "home study," a term distasteful to many lawyers. It is for the purpose of observing the child in familiar surroundings. On the other hand, attorneys for parents seem to expect guardians ad litem to make "surprise visits," something the Division of Family Services does not do anymore. It serves no useful purpose and could even be dangerous.").

➤ **Interviewing others with relevant information**

After reviewing records and interviewing the child and each parent, a guardian ad litem should conduct interviews of other persons who might "shed light" on the care, custody, and well-being of the child and the home situation, including:

- Foster parents
- Relatives
- Fictive kin, neighbors, and community support persons
- Social workers
- School officials and teachers
- Medical health professionals
- Any prospective adoptive parent

See also:

> National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 48 (2016) ("After GALs/CASAs have been appointed on an abuse and/or neglect case, they should . . . [interview] the child, parents, social workers, foster parents, teachers, therapists, daycare providers, and other relevant persons to determine the facts and circumstances of the child's situation.").

CHAPTER 6

REPORTS AND RECOMMENDATIONS

600 REPORTING RELEVANT INFORMATION

601 MAKING BEST INTERESTS RECOMMENDATIONS

- **Processing information acquired through records and interviews**
- **Assessing available resources**
- **Promoting a successful permanency outcome**

602 REPORTS AND RECOMMENDATIONS CHECKLIST

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600 REPORTING RELEVANT INFORMATION

After reviewing all relevant records and conducting interviews, the guardian ad litem should make a complete assessment of the home situation, including the needs of both the child and parent for achieving a successful reunification, and then report that information to the court:

> "Therefore, a guardian ad litem appointed to investigate and report to the court is obligated to investigate the allegations before the court, process the information found, report all material information to the court, and (if requested) make a recommendation. However, the guardian ad litem should make recommendations only after providing the court with all material information which weighs on the issue to be decided by the court, including information which does not support the recommendation. The court must be provided all material information the guardian ad litem reviewed in order to make the recommendation."
>
> S.G. v. D.C., 13 So. 3d 269, 282 (Miss. 2009).

See also:

> Charles T. Cromley, Jr., *"(a)s Guardian Ad Litem I'm in A Rather Difficult Position."*, 24 Ohio N.U. L. Rev. 567, 593 (1998) ("[T]he guardian ad litem's task is to place the relevant information before the court for determination.").

601 MAKING BEST INTERESTS RECOMMENDATIONS

➤ Processing information acquired through records and interviews

At each stage of the proceedings, the guardian ad litem should review all information acquired in the course of investigating the home situation so that a complete report is submitted to the court. See S.G. v. D.C., 13 So. 3d 269, 282 (Miss. 2009) ("[A] guardian ad litem appointed to investigate and report to the court is obligated to investigate the allegations before the court, process the information found, report all material information to the court, . . .").

Relevant information to report:

- Names, dates, times, and locations of all interviews and/or other significant communications, including an explanation of the relationship to the child.
- Whether both the parent and child were informed of the guardian ad litem's role as required by U.R.Y.C.P. 13(c).
- Whether information was acquired in the course of the investigation that may

have raised disqualification concerns in serving as a guardian ad litem in the case.

- The nature and circumstances of the alleged abuse and/or neglect.
- The risks in returning the child to the custody of the parent, including the threats of danger, the child's vulnerability, and the family's protective capacity.
- Whether "reasonable efforts" are not required because the child was subjected to aggravated circumstances, such as abandonment, torture, chronic abuse or sexual abuse.
- Physical and/or mental health issues needing professional or emergency attention.
- Alcohol or drug dependency.
- Domestic violence or abuse, including any past or current protection orders.
- Relationships important toward achieving a successful permanency outcome.
- Living arrangements, including a listing all persons residing in the home.
- Child's educational needs. Parent's educational history.
- Social development concerns.
- Ethnic, cultural, or religious considerations as these pertain to providing reasonable efforts over a reasonable period in diligently assisting the parent in complying with the service plan.
- Parent's financial situation, including the need for housing assistance, transportation, and financial aid.
- Whether the parent has legal counsel or desires legal counsel.
- Special needs or concerns of the parent and/or child.
- Any court or state agency records relevant to the proceedings.
- Parent's parenting skills, knowledge, and practices.
- Child's daily routine. Parent's daily routine.
- Any terms or conditions of the CPS service agreement that the parent finds unreasonable.

See also:

Margaret S. Price, *Best Practices in Handling Family Law Cases Involving Children with Special Needs*, 28 J. Am. Acad. Matrim. Law. 163, 166 (2015) ("Special needs issues are complex, and can be a challenge for an experienced attorney. It can be too much to expect the pro se litigant to handle these issues. Beginning these cases correctly can help to ensure that the needs and rights of the parties are being honored. Starting off on the right track can make properly handling the special needs issues a more manageable task.").

Victor E. Flango, *Measuring Progress in Improving Court Processing of Child Abuse and Neglect Cases*, 39 Fam. Ct. Rev. 158, 161 (2001) ("Courts must guarantee to families the right to express their points of view before they are required to accept services.").

➤ **Assessing available resources**

How best to acquire information on available resources? A simple approach is to simply ask the child protection agency:

> **"**Judges should ask their local social services/child protection agencies for a list of services they provide to prevent removal of children from parental care and rehabilitate families. This should not be difficult as the department would simply be describing how social workers perform their daily work. Attorneys [and guardians ad litem] should also receive a copy of that list.
>
> Some caveats accompany this approach:
>
> 1. In creating the list of services, the agency should include the capacity of the service provider. How many families can the service accommodate? A service would not be considered available if there were long waiting lists of clients. Some jurisdictions have addressed this problem by giving priority access to families attempting to reunify with their children.
>
> 2. The agency should indicate to the court whether the service has proven to be effective. The federal Family First Prevention Services Act emphasizes using evidence-based services. A list of evidence-based services is available online. Many services are not on the evidence-based list. That does not mean, however, that they have not been evaluated for effectiveness. The agency should be able to explain to the court how it has evaluated the effectiveness of a particular service. Social service agencies across county and state borders could work together to create lists of services that have proven effectiveness. The goal is to refer families to effective services so that families will benefit from participation."
>
> Judge Leonard Edwards, *Overcoming Barriers to Making Meaningful Reasonable Efforts Findings* 4 (2019)
>
> http://judgeleonardedwards.com/docs/overcoming-barriers-aba-01-30-2019.pdf

See also:

> National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 25 (2016) ("Judges need to understand how the child welfare agency's key service providers operate and to know the resources available in the community, their capacity, and their effectiveness.").

Children's Defense Fund: Leave No Child Behind, *Family First Prevention Services Act: Historic New Reforms for Child Welfare* ("[Family First Prevention Services Act] includes long-overdue historic reforms to help keep children safely with their families and avoid the traumatic experience of entering foster care, emphasizes the importance of children growing up in families and helps ensure children are placed in the least restrictive, most family-like setting appropriate to their special needs when foster care is needed."). www.childrensdefense.org

Kathleen A. Bailie, *The Other "Neglected" Parties in Child Protective Proceedings: Parents in Poverty and the Role of the Lawyers Who Represent Them*, 66 Fordham L. Rev. 2285, 2296–97 (1998) ("If intervention is focused on protective services rather than punitive measures, then the child welfare agency can make a positive difference in troubled families' lives. Even if the agency's intervention is sensitive to issues of poverty, though, poor families will still face significant challenges. The cycle of poverty, indeed, is difficult for any family to break. . . . [T]he same deficiencies that initially led to the charges of neglect–such as poor housing, lack of child care, lack of transportation, and stress–can make complying with the child welfare agency's service plan extremely difficult. Nevertheless, such compliance is critical to reunifying and preserving the family unit.").

➤ **Promoting a successful permanency outcome**

A guardian ad litem's recommendations should address the needs of the parent and the child for attaining a successful reunification. But, a guardian ad litem is ordinarily not a qualified health professional or a qualified mental health professional. Yet, a guardian ad litem might be tempted to delve into matters better reserved for experts:

"Morphing From Investigator to Expert
A GAL is often called upon to make recommendations that connect the factual investigation with reliable and relevant science–or nonscientific methodologies–for allocating parental rights and responsibilities. In concrete terms, this may mean a recommendation about: overnights for an infant; how old is too old to force visitation; what form of visitation is most beneficial to a child at various developmental stages; or whether relocation away from one parent is a good parenting decision.
. . .
If the proffered evidence is not lay opinion under Rule 701 then, of logical necessity, the evidence is expert evidence that must meet the qualification and foundational requirements to be admitted in court. In most child custody cases, GALs are lawyers without social science, statistical, or research training. Yet, GALs do observe and experience directly much (though not all) of the data included in the investigation, so a foundation under Rule 701 is rarely a problem."

> Dana E. Prescott, *Inconvenient Truths: Facts and Frictions in Defense of Guardians Ad Litem for Children*, 67 Me. L. Rev. 43, 61–62 (2014).

It should be noted that the Mississippi Rules of Evidence apply to adjudication hearings. *See* U.R.Y.C.P. 24(b)(3) ("Adjudication hearings shall be conducted: . . . (ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;"). But, except for the rules on privileges, they do not apply to probable cause hearings or disposition hearings. *See* MRE 1101(b).

Irrespective, a guardian ad litem should not make recommendations that could be harmful to the goal of attaining a successful permanency outcome:

> "Too often, guardians ad litem are charged with making recommendations about the child's best interests, with scarce resources for investigation and little expertise about making such a determination."
>
> Charisa Smith, *The Conundrum of Family Reunification: A Theoretical, Legal, and Practical Approach to Reunification Services for Parents with Mental Disabilities*, 26 Stan. L. & Pol'y Rev. 307, 319 (2015).

Compare:

> Roland Beaudoin, *To Change is Simple to Improve is Difficult (A Cautionary Note)*, 17 Me. B.J. 188, 190-91 (2002) ("Judges are not trained or qualified to perform the work of psychologists, substance abuse counselors, group facilitators, or mediators, yet they are increasingly thrust into those roles. When systems are adopted which are premised on the judge's possessing these skills, there is an increased likelihood of unrealistic expectations and failure; or, at least, a temptation to trumpet success without adequate study and to "surround [oneself] in a comforting glow of positive illusions." There is also a likelihood of harmful, rather than helpful, decisions in individual cases which sometimes involve complex social and psychological issues.").
>
> Joy Lazo, *True or False: Expert Testimony on Repressed Memory*, 28 Loy. L.A. L. Rev. 1345, 1353–54 (1995) ("Repression of traumatic memories keeps painful or unacceptable ideas, impulses, and feelings out of conscious awareness and 'enable[s] the victim to survive by controlling thoughts and feelings to the point at which there is no recognition of victimization.' Recall of such memories can be triggered by psychotherapy, hypnosis, sodium amytal or sodium pentothal, or events completely unrelated to therapy.").

602 REPORTS AND RECOMMENDATIONS CHECKLIST

✓ Does the Indian Child Welfare Act [ICWA] possibly apply?

For example,

- Is a *PARENT* eligible for tribal membership? Registered with a Native American tribe? Of Native American heritage?
- Is the *CHILD* eligible for tribal membership? Registered with a Native American tribe? Of Native American heritage?
- Does the family live on tribal land?

✓ If taken into custody without a custody order, then was the child released to the parent, guardian or custodian within 24 hours? Or, alternatively, did the court issue within twenty-four (24) hours a temporary custody order? Was the parent, guardian or custodian notified that the child was taken into custody?

✓ Did the court make a contrary to the welfare determination? Such a finding is required no later than either sixty (60) days of the child's removal from the home or sixty (60) days after relative placement for purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act.

✓ Is there a safety plan for returning the child to the home?

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 56 (2016) ("If the judge determines the child is unsafe, a safety plan is needed to ensure safety while working with the family. This plan is distinct from a case plan–it must have an immediate effect on controlling threats to the child's safety. Under ASFA, the court must consider if the agency made reasonable efforts to prevent removal. The judge initially must decide on a sufficient, feasible, and sustainable safety plan. The goal is to control threats in the least intrusive way. If an in-home safety plan is sufficient and the agency did not implement one, then the agency failed to provide reasonable efforts to prevent removal.").

✓ Are the premises safe for returning the child to the home? If not, then what reasonable remedy or accommodation would make the premises safe? Is the parent able and willing to carry out the suggested measures?

See also:

> "Emergency Placement Safety Checklist.
> The Emergency Placement Safety Checklist requires the family protection specialist or caseworker to:
> conduct a local law enforcement background check;
> conduct a MACWIS background check;
> conduct a gun safety check (all weapons shall be safely stored away);
> check that all utilities are working;
> check that there is access to an operable telephone;
> check that there is clear access to exits;
> check that hazardous substances are safeguarded;
> check that premises are free of rodents and insects;
> check that the refrigerator, stove and oven are operable;
> check that there is a functional sewage system; and
> check that the interior plumbing has running warm and cold water."
>
> Comment to U.R.Y.C.P. 11(b)(2).

✓ Is the parent able and willing to provide the child with the basic necessities of food, shelter, clothing? If not, then how might the deficiency be reasonably remedied or accommodated?

✓ If the child is not in the custody of the parent, then is there a reasonable visitation schedule?

See, e.g.:

> National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 56 (2016) ("If an out-of-home safety plan is necessary, the court needs to consider the kind and amount of family time and the minimum conditions for the child to return home.").

✓ Is there a need for an interpreter?

See also:

> Comment to Rule 1 of the Mississippi Rules on Standards for Court Interpreters:
>
> "For those individuals with limited English proficiency (LEP), the failure to comprehend the English language can be a barrier to understanding and exercising their legal rights and may result in the deprivation of meaningful access to the judicial system by those individuals. This rule is

promulgated to assist the courts in this state in providing equal access to the courts for LEP participants."

https://courts.ms.gov/aoc/courtinterpreter/resources.php

Miss. Code Ann. § 13-1-301et seq. (Interpreter for the deaf or hearing impaired).

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 57 (2016) ("Certified court interpreters should be used where available if a family is non-English speaking. Under no circumstances should a family member, party to the case, or other hearing participant interpret the proceedings for another person in attendance.").

✓ Does the parent and/or child have mental or physical health issues? If so, then is emergency care needed? Should the parent and/or child be referred to a qualified health professional or mental health professional?

✓ Has there been a screening and/or an assessment? If not, then should the GAL request them?

See also:

§ 43-21-105

(bb) "Assessment" means an individualized examination of a child to determine the child's psychosocial needs and problems, including the type and extent of any mental health, substance abuse or co-occurring mental health and substance abuse disorders and recommendations for treatment. The term includes, but is not limited to, a drug and alcohol, psychological or psychiatric evaluation, records review, clinical interview or the administration of a formal test and instrument.
(cc) "Screening" means a process, with or without the administration of a formal instrument, that is designed to identify a child who is at increased risk of having mental health, substance abuse or co-occurring mental health and substance abuse disorders that warrant immediate attention, intervention or more comprehensive assessment.

Children's Safe Center of Mississippi ("The Children's Safe Center . . . provides care for children and young adults who are suspected of being neglected or abused. [O]ur mission is to provide a safe environment for mistreated children and their families. Trained child abuse professionals provide medical examinations and treatment in a child-friendly atmosphere. Staff members are trained child abuse professionals with

extensive medical, courtroom and investigative experience in child maltreatment.").

www.umc.edu/Childrens/Childrens-Forensic-Medicine/Forensic-Medicine.html

✓ Are there prior or pending cases in other courts relevant to the proceedings? If so, then what are those cases and what is their relevancy in the matter before the court (e.g., domestic violence charges, protection from domestic abuse orders, or divorce decrees)?

See also:

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 57 (2016) ("The NCJFCJ views battered parents as partners in the protection of their children. Judges should work diligently with system partners to adopt this principle. Cases that are filed naming the battered parent as a perpetrator of abuse and neglect because a child was exposed to domestic violence further traumatize the battered parent.").

✓ Are there aggravated circumstances (e.g., abandonment, torture, chronic abuse, and/or sexual abuse)? If so, then is there a compelling reason for attempting "reasonable efforts" at reunification?

See also:

§ 93–15–123

"Notwithstanding any other provision of this chapter, the court may exercise its discretion not to terminate the parent's parental rights in a proceeding under this chapter if the child's safety and welfare will not be compromised or endangered and terminating the parent's parental right is not in the child's best interests based on one or more of the following factors:
(a) The Department of Child Protection Services has documented compelling and
extraordinary reasons why terminating the parent's parental rights would not be in the child's best interests;
(b) There is a likelihood that continuing reasonable efforts for achieving reunification will be successful;
(c) Terminating the parent's parental rights would inappropriately relieve the parent of the parent's financial or support obligations to the child; or
(d) The child is being cared for by the other parent, or a relative, guardian, or custodian, in a residence not occupied by the abusive or neglectful

parent and terminating the parent's parental rights would not expedite the process for obtaining a satisfactory permanency outcome."

✓ Are there indications of an alcohol problem or a drug addiction? What is the basis for that assessment?

For example,

- Multiple DUI convictions
- Convictions of other crimes involving alcohol or drug use
- Hospitalization because of alcohol or drug abuse
- Treatment for alcohol or drug dependency
- Admission by parent during interview

See also:

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 89 (2016) ("Parental alcohol and substance misuse is a formidable social problem and a major risk factor for child maltreatment and neglect. Prevalence estimates suggest that parental alcohol and substance use is a significant contributor to various levels of child welfare system involvement, with some estimates indicating that between 60 percent and 80 percent of substantiated child abuse and neglect cases involve substance abuse by a custodial guardian or parent.").

✓ Are there educational concerns?

For example,

- If the child is too young to be enrolled in school, then is there an early intervention educational program available in the community?

- Does the current school placement support the child's educational needs? If not, then what additional support is lacking?

- What are the child's grades? Is there a particular subject that the child has difficulty with? Are there any barriers that seem to be preventing the child's from achieving academic success?

- Is there a history of truancy?

- Is there an Individualized Education Plan (IEP) to ensure educational stability? If so, then is that plan appropriate for the child's age and developmental status?

See also:

42 U.S.C. § 675(1)(G)

"As used in this part or part B of this subchapter:
(1) The term "case plan" means a written document which meets the requirements of section 675a of this title and includes at least the following:
(G) A plan for ensuring the educational stability of the child while in foster care, including--
(i) assurances that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and
(ii)(I) an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 7801 of Title 20) to ensure that the child remains in the school in which the child is enrolled at the time of each placement; or
(II) if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school."

✓ Have diligent efforts been made to locate all persons related to the child by the third degree? If not, then what relatives have not been contacted? What additional efforts might prove successful in locating these persons?

Relative placement is preferred under federal law:

"One strategy to avoid placement and facilitate reunification involves the identification and engagement of fathers and relatives. For a variety of reasons fathers are often not involved in the juvenile dependency process. Yet fathers may provide a placement for the child and have resources that benefit the child. By identification and engagement the father also dramatically increases the number of the child's relatives.

The federal government recognized the importance of relatives in child welfare cases when it passed the Fostering Connection to Success and Increasing Adoptions Act in 2008. This Act emphasizes the importance of identifying and engaging family members and mandates that local social service agencies actively and diligently identify, locate, and give notice to a child's relatives within thirty days of the child's removal from the home. The Act indicates that relatives are preferred placements for children who

must be removed from their biological parents. The Act identifies several best practices including family finding, family group conferencing, and guardian kinship navigators, all processes which help engage and assist families participate in child welfare proceedings."

Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* 102 (2014).

http://judgeleonardedwards.com/docs/reasonableefforts.pdf

See also:

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 109 (2016) ("The Fostering Connections Act (P.L. 110-351) requires due diligence by the agency and the court to identify and provide notice to all adult relatives of the child within 30 days of removal.").

✓ Does the CPS service agreement satisfactorily rehabilitate the home situation? If not, then what additional services, terms, or conditions are needed?

✓ Personal observations when interviewing the child

For example,

- *DOES THE CHILD DESIRE LEGAL COUNSEL?*

  See also National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 43 (2016) ("Because fundamental rights of the child–as well as the parents–are at stake in these proceedings, best practice calls for the appointment of an attorney who will advocate the child's position from the very beginning of the case.").

- What was the child's mood or temperament during the interview? (For example: cheerful, calm, shy, restless, sad, anxious, angry, fearful, detached)

  See also National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 74 (2016) ("Children entering foster care may experience grief at the separation from or loss of relationship with the parents and face emotional and psychological challenges as they try to adjust to new environments which often lack stability. Research has found for example,

that within three month of placement, many children exhibit signs of depression, aggression, or withdrawal.").

- Does the child's intellectual abilities and communicative skills seem good, adequate, or poor?

- Does the child seem to have the ability to recognize the onset of threatening situations and to respond appropriately?

  See, e.g., Therese Roe Lund & Jennifer Renne, *Child Safety: A Guide for Judges and Attorneys*, A.B.A., 9-13 (2009) ("A threat of danger is a specific family situation or behavior, emotion, motive, perception or capacity of a family member. . . . Recall that for a child to be unsafe, there must be a threat of danger, and that child must be vulnerable to those threats. . . . Considering a child's vulnerability involves both knowing about the child's ability to protect himself from threats and knowing how the child is able to care for himself. . . . Self-protection means recognizing danger and acting to secure safety for one's self; it is not calling 911, CPS, or the school after an event.").

- What are the child's feelings toward the parent(s)?

- What is the child's sense of security within the home?

  See, e.g., National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 48 (2016) ("After GALs/CASAs have been appointed on an abuse and/or neglect case, they should do the following: . . . Determine the thoughts and feelings of the child about the situation, taking into account the child's age, maturity, culture and ethnicity, and degree of attachment to family members, including siblings. Also to be considered are continuity, consistency, and a sense of belonging.").

- Is there a relative, fictive kin, or other person that the child seems to trust more than others? Is there someone that the child distrusts?

- Did the child voice any special concerns or needs?

✓ Personal observations when interviewing the parent

For example,

- *DOES THE PARENT DESIRE LEGAL COUNSEL?*

  See also National Council of Juvenile and Family Court Judges,

Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases 42 (2016) ("Because critically important decisions will be made at the very first hearing, parents should be represented by counsel as early in the process as possible.").

- What was the parent's mood or temperament during the interview? (For example: cheerful, calm, shy, restless, sad, anxious, angry, fearful, or detached)

- Does the parent's intellectual abilities and communicative skills seem good, adequate, or poor?

- What are the parent's feelings toward the child? Does the parent like being a parent? Does the parent have reasonable expectations for the child? Is the parent protective of the child?

- What are the parent's parenting skills, knowledge, and practices? Are there any shortcomings in these areas?

  See, e.g., Therese Roe Lund & Jennifer Renne, *Child Safety: A Guide for Judges and Attorneys*, A.B.A., 4 (2009) (listing of inquiries on parenting practices).

- Is the parent employed? If not, then does the parent have any special skills for attaining gainful employment? Is the parent indigent? If so, then has the parent completed an Affidavit of Substantial Hardship?

- What is the highest grade level that the parent has completed?

- Are the parent's financial management skills good, adequate, or poor?

- Are the parent's self-care skills good, adequate, or poor?

- Is there a relative, fictive kin, or other person that the parent seems to trust more than others? Is there someone that the parent distrusts?

- Are there any family members or community groups who might be willing to provide some measure of support?

- Did the parent express any objections to the terms and conditions of the services?

- Did the parent voice any special concerns or needs?

CHAPTER 7

REASONABLE EFFORTS

700 WHEN REASONABLE EFFORTS ARE REQUIRED

- ➤ **To prevent removal of the child from the home**
- ➤ **For achieving reunification or other permanency outcome**
- ➤ **For terminating a parent's parental rights**

701 WHEN REASONABLE EFFORTS ARE NOT REQUIRED

702 WHAT ARE REASONABLE EFFORTS?

- ➤ **Statutory definition**
- ➤ **Determined on a case-by-case basis**
- ➤ **Reasonable care and due diligence**
- ➤ **Appropriate and available services**
- ➤ **Failure to substantially comply with the service plan**

703 WHEN REASONABLE EFFORTS ARE UNSUCCESSFUL

- ➤ **Parent's fundamental liberty interest**
- ➤ **Child's greater rights**
- ➤ **Options if reunification is unsuccessful**

704 REASONABLE EFFORTS CHECKLIST

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700 WHEN REASONABLE EFFORTS ARE REQUIRED

➤ **To prevent removal of the child from the home**

U.R.Y.C.P. 11

(b) Child protection proceedings.
(1) When a custody order may be issued. The youth court judge or referee, or the judge's designee, or a chancellor when hearing, pursuant to section 93-11-65 of the Mississippi Code, an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action, and no other judge of another court, may issue an order to take into custody a child within the exclusive original jurisdiction of the youth court, for a period not to exceed forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays, if the court finds and the custody order recites that:
(i) there is probable cause the child is within the jurisdiction of the court; and
(ii) there is probable cause that custody is necessary.

Custody shall be deemed necessary: (1) when a child is endangered or any person would be endangered by the child; or to insure the child's attendance in court at such time as required; or when a parent, guardian or custodian is not available to provide for the care and supervision of the child; and (2) there is no reasonable alternative to custody. Unless there is substantial compliance with these procedures, the court shall order the child to be released to the custody of the child's parent, guardian, or custodian. Any order placing a child into custody shall comply with the requirements provided in section 43-21-301 of the Mississippi Code.

(2) Order requirements. The temporary custody order or custody order may be written or oral, but, if oral, reduced to writing within forty-eight (48) hours, excluding Saturdays. Sundays, and statutory state holidays. The written order shall:
(i) specify the name and address of the child, or, if unknown, designate the child by any name or description by which the same can be identified with reasonable certainty;
(ii) specify the age of the child, or, if unknown, that the child is believed to be of an age subject to the jurisdiction of the youth court;
(iii) state that the effect of the continuation of the child's residing within the child's own home would be contrary to the welfare of the child, that the placement of the child in foster care or relative care is in the best interest of the child;
(iv) state and specify, unless the reasonable efforts requirement is bypassed under section 43-21-603(7)(c) of the Mississippi Code, that:
(a) reasonable efforts have been made to maintain the child within the child's own home, but that the circumstances warrant the child's removal and there is no reasonable alternative to custody; or

(b) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within the child's own home, there is no reasonable alternative to custody, and reasonable efforts be made towards the reunification of the child with the child's family;
(v) state that the child be brought immediately before the youth court or be taken to a place designated by the order to be held pending review of the order;
(vi) state the date issued and the youth court by which the order is issued; and
(vii) be signed by the youth court judge or referee, the judge's designee, or chancellor, with the title of his/her office.

No child in the custody of the Department of Human Services, Division of Family and Children's Services shall be placed in a foster care setting that has not been licensed or approved as meeting the Department of Human Services, Division of Family and Children's Services licensure standards, except that a child may be placed with a relative if there is: (1) an emergency process, as developed by the Department of Human Services, Division of Family and Children's Services in conjunction with the Council on Accreditation, that enables, after an initial screening of the relative's home in accordance with Mississippi's Settlement Agreement and Reform Plan, the child to be placed with the relative as soon as the child enters placement, and (2) a full licensing process, which shall be completed no later than ninety (90) calendar days after the child has entered placement. The Department of Human Services, Division of Family and Children's Services may waive non-safety licensing requirements for relative foster placements in individual cases pursuant to federal regulations.

(3) Reasonable Efforts, Judicial Determination Required. Within sixty (60) days from the date of the child being removed from the child's home pursuant to the court's temporary custody order or custody order, the court shall conduct a hearing to determine whether the Department of Human Services, Division of Family and Children's Services has made reasonable efforts to prevent the removal of the child from the child's home or, pursuant to section 43-21-603(7) of the Mississippi Code, whether reasonable efforts were not required to prevent the removal.
(i) If reasonable efforts are made, but removal remains in the best interest of the child. If the court determines that the Department of Human Services, Division of Family and Children's Services has made reasonable efforts to prevent the removal of the child from the child's home but that removal remains in the best interest of the child, the court shall adopt a permanency plan and a concurrent plan and order that the Department of Human Services, Division of Family and Children's Services make reasonable efforts to timely finalize the permanency plan and concurrent plan for the child. Thereafter, until the permanency plan or concurrent plan is achieved, the court shall conduct a permanency hearing and permanency review hearings pursuant to these rules.
(ii) If reasonable efforts are not required for removal of the child. If the court determines that, pursuant to section 43-21-603(7) of the Mississippi Code,

reasonable efforts were not required to prevent the removal of the child from the child's home, it shall adopt a permanency plan and concurrent plan and order that the Department of Human Services, Division of Family and Children's Services make reasonable efforts to timely finalize the adopted permanency plan and concurrent plan for the child. Thereafter, until the permanency plan or concurrent permanency plan is achieved, the court shall conduct a permanency hearing and permanency review hearings pursuant to these rules.

(4) Additional orders. After a child is ordered into custody, the court may:
(i) arrange for the custody of the child with any private institution or agency caring for children;
(ii) commit the child to the Department of Mental Health pursuant to section 41-21-61 et seq.; or
(iii) order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of the child.

Advisory Note to Rule 11(b)(2)

For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "reasonable efforts" determination must be made no later than 60 days from the date the child is removed from the home. See 42 U.S.C. §§ 672(a)(2)(A), -671(a)(15) (2008); 45 C.F.R. § 1356.21(b)(1) (2008).

For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "contrary to the welfare" determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home. See 42 U.S.C. § 672(a)(2)(A) (2008); 45 C.F.R. § 1356.21(c) (2008).

§ 43-21-603

(7) If the youth court orders that the custody or supervision of a child who has been adjudicated abused or neglected be placed with the Department of Human Services or any other person or public or private agency, other than the child's parent, guardian or custodian, the youth court shall find and the disposition order shall recite that:
(a)(i) Reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or
(ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody; and
(b) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that the placement of the child in foster care is in the best interests of the child; or . . .

➤ **For achieving reunification or other permanency outcome**

U.R.Y.C.P. 11

(3) . . . (i) If reasonable efforts are made, but removal remains in the best interest of the child. If the court determines that the Department of Human Services, Division of Family and Children's Services has made reasonable efforts to prevent the removal of the child from the child's home but that removal remains in the best interest of the child, the court shall adopt a permanency plan and a concurrent plan and order that the Department of Human Services, Division of Family and Children's Services make reasonable efforts to timely finalize the permanency plan and concurrent plan for the child. Thereafter, until the permanency plan or concurrent plan is achieved, the court shall conduct a permanency hearing and permanency review hearings pursuant to these rules.
(ii) If reasonable efforts are not required for removal of the child. If the court determines that, pursuant to section 43-21-603(7) of the Mississippi Code, reasonable efforts were not required to prevent the removal of the child from the child's home, it shall adopt a permanency plan and concurrent plan and order that the Department of Human Services, Division of Family and Children's Services make reasonable efforts to timely finalize the adopted permanency plan and concurrent plan for the child. Thereafter, until the permanency plan or concurrent permanency plan is achieved, the court shall conduct a permanency hearing and permanency review hearings pursuant to these rules.

➤ **For terminating a parent's parental rights**

§ 93-15-115

When reasonable efforts for reunification are required 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, the court hearing a petition under this chapter may terminate the parental rights of a parent if, after conducting an evidentiary hearing, the court finds by clear and convincing evidence that:
(a) The child has been adjudicated abused or neglected;
(b) The child has been in the custody and care of, or under the supervision of, the Department of Child Protection Services for at least six (6) months, and, in that time period, the Department of Child Protection Services has developed a service plan for the reunification of the parent and the child;
(c) A permanency hearing, or a permanency review hearing, has been conducted pursuant to the Uniform Rules of Youth Court Practice and the court has found that the Department of Child Protection Services, or a licensed child caring agency under its supervision, has made reasonable efforts over a reasonable period to diligently assist the parent in complying with the service plan but the parent has failed to substantially comply with the terms and conditions of the plan and that reunification with the abusive or neglectful parent is not in the best interests of the

child; and
(d) Termination of the parent's parental rights is appropriate because reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome based on one or more of the grounds set out in Section 93-15-119 or 93-15-121.

See also:

In re R.B., 291 So. 3d 1116, 1122 (Miss. Ct. App. 2019) ("Here, . . . the chancellor correctly recognized [that] section 93-15-115(c) are findings that the youth court makes [on] whether CPS should file a TPR petition.").

Miss. Code Ann. § 93-15-127 ("Termination under this chapter of a parent's parental rights does not affect the parental rights of another parent.").

701 WHEN REASONABLE EFFORTS ARE NOT REQUIRED

§ 43-21-603

(7) If the youth court orders that the custody or supervision of a child who has been adjudicated abused or neglected be placed with the Department of Human Services or any other person or public or private agency, other than the child's parent, guardian or custodian, the youth court shall find and the disposition order shall recite that:
. . .
(c) Reasonable efforts to maintain the child within his home shall not be required if the court determines that:
(i) The parent has subjected the child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse and sexual abuse; or
(ii) The parent has been convicted of murder of another child of that parent, voluntary manslaughter of another child of that parent, aided or abetted, attempted, conspired or solicited to commit that murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of that parent; or
(iii) The parental rights of the parent to a sibling have been terminated involuntarily; and
(iv) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that placement of the child in foster care is in the best interests of the child.
Once the reasonable efforts requirement is bypassed, the court shall have a permanency hearing under Section 43-21-613 within thirty (30) days of the finding.

This statutory provision averts the likelihood of a future catastrophe:

> "[T]he youth court found that the best interest of T.T. required that proceedings begin to terminate S.T.'s parental rights without a six-month period to work towards reunification with S.T. . . . The alleged and adjudicated abuse of the two children still in DHR custody and the deceased child is extensive. Each child has experienced broken bones that were unexplained by S.T. Further, DHR's permanent plan for B.H. Jr. is for him to be adopted and S.T.'s parental rights terminated.
> [There is] sufficient evidence [that] documents the abuse of T.T.'s siblings. [T]he potential harm to T.T. warrants his removal from the environment. The youth court's finding that remaining in S.T.'s custody was not in the best interest of T.T. is supported by the record.."
>
> T.T. v. Harrison Cty. Dep't of Human Servs., 90 So. 3d 1283, 1287 (Miss. Ct. App. 2012).

See also:

> G.Q.A. v. Harrison County Dep't of Human Servs., 771 So. 2d 331, 336 (Miss. 2000) ("[The Adoption and Safe Families Act] clarifies that a child need not be forced to remain in or be returned to an unsafe home and allows the States to place the safety and welfare of the child before the interests of abusive parents.").
>
> Petition of Beggiani, 519 So. 2d 1208, 1213 (Miss. 1988) ("[T]he natural mother of the children had, prior to the custody hearings, executed a surrender of parental rights and consent to adoption. Consequently, there was no manner in which to reunite B.L.P. and C.M.P. with the closest member of their family-their mother.").

702 WHAT ARE REASONABLE EFFORTS?

➤ **Statutory definition**

§ 43-21-105

> The following words and phrases, for purposes of this chapter, shall have the meanings ascribed herein unless the context clearly otherwise requires:
> . . .
> (gg) "Reasonable efforts" means the exercise of reasonable care and due diligence by the Department of Human Services, the Department of Child Protection Services, or any other appropriate entity or person to use appropriate and available services to prevent the unnecessary removal of the child from the home or provide other services related to meeting the needs of the child and the parents.

Compare:

> "Federal law has long required State agencies to demonstrate that reasonable efforts have been made to provide assistance and services to prevent the removal of a child from his or her home and to make it possible for a child who has been placed in out-of-home care to be reunited with his or her family.
>
> 'Reasonable efforts' are made when the child and his or her family are provided with services that are relevant to their situation, which may include:
>
> - Child care
> - Homemaker services
> - Individual, group, and family counseling
> - Health-care services
> - Behavioral health evaluation and treatment
> - Drug and alcohol abuse counseling
> - Parent education
> - Vocational counseling
>
> Community-based family support services that promote the safety and well-being of children and families also may be offered. These services are designed to:
>
> - Increase family strength and stability
> - Increase parent confidence and competence
> - Afford children safe, stable, and supportive family environments
> - Enhance child development"
>
> Child Welfare Information Gateway, *Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children: Summary of State Laws* (2016).
>
> www.childwelfare.gov/pubpdfs/reunify.pdf

See also:

> 42 U.S.C.A. § 671(a)(15)
>
> (a) Requisite features of State plan
> In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which–
> . . .
> (15) provides that--

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;
(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families--
(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and
(ii) to make it possible for a child to safely return to the child's home;
(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an interstate placement), and to complete whatever steps are necessary to finalize the permanent placement of the child;
. . .
(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that--
(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);
(ii) the parent has--
(I) committed murder (which would have been an offense under section 1111(a) of Title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of Title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
(iii) the parental rights of the parent to a sibling have been terminated involuntarily;
(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)--
(i) a permanency hearing (as described in section 675(5)(C) of this title), which considers in-State and out-of-State permanent placement options for the child, shall be held for the child within 30 days after the determination; and
(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and
(F) reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State and out-of-State placements2 may be

made concurrently with reasonable efforts of the type described in subparagraph (B);

Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation*, 12 B.U. Pub. Int. L.J. 259, 260 (2003) ("Since the inception of the federal reasonable efforts provision, much commentary and debate have ensued about exactly what kind of effort and quality of services the reasonable efforts clause dictates. Despite legislative, regulatory, and oversight enhancements, the federal government has continually bypassed opportunities to explain the affirmative duties the reasonable efforts provision imposes upon states. Instead, Congress has only defined the limits beyond which the obligation to make reasonable efforts does not survive.").

➤ **Determined on a case-by-case basis**

Reasonable efforts depend on the particular circumstances of the case and the appropriate and available services for meeting the needs of the child and parents. Guardians ad litem serve an important role by investigating these needs, monitoring the efforts in meeting them, and reporting to the court any shortcomings of reasonable accommodations, assistance, or services.

See, e.g.:

In re Venita L., 236 Cal. Rptr. 859, 868 (Cal. Ct. App. 1987) ("[The] mother claims the juvenile court ignored her efforts at reunification and focused instead on the problems related to the father's alcohol abuse. She suggests the court should have made separate findings as to each parent here. We agree.").

In the Matter of Myers, 417 N.E.2d 926, 931 (Ind. App. 1981) ("The question of what constitutes "reasonable services" is one which can not be answered by a definitive statement. Instead, it must be answered on the basis of any given factual situation, for it is clear that services which might be reasonable in one set of circumstances would not be reasonable in a different set of circumstances.").

State ex rel. State Office for Servs. to Children & Families v. Frazier, 955 P.2d 272, 281 (Or. Ct. App. 1998) ("The type and sufficiency of efforts that the state is required to make and whether the types of actions it requires parents to make are reasonable depends on the particular circumstances.").

Dana E. Prescott, *Inconvenient Truths: Facts and Frictions in Defense of Guardians Ad Litem for Children*, 67 Me. L. Rev. 43, 45 (2014) ("[E]ach family system presents unique social and environmental histories.").

A judge is given a great deal of discretion in determining whether an agency, institution, or person has made reasonable efforts in reunifying the family.

See, e.g.:

> Suter v. Artist M., 503 U.S. 347, 362 (1992) ("To the extent such history may be relevant, our examination of [42 U.S.C.A. § 671] leads us to conclude that Congress was concerned that the required reasonable efforts be made by the States, but also indicated that the Act left a great deal of discretion to them.").

A key inquiry in this determination is simply:

HAS THE PARENT BEEN PROVIDED A FAIR AND MEANINGFUL OPPORTUNITY FOR REUNIFICATION?

See, e.g.:

> In re T.A.P., 742 So. 2d 1095, 1104-05 (Miss. 1999) ("While J.P. may not have performed admirably toward her children on all occasions, nevertheless, this record before us does not support [the court's] decision to "effectively terminate" her rights by denying her custody and visitation. . . . J.P. should be granted an opportunity to be reunified with her children in light of the plan created by the psychologist appointed by the [court]. Regardless of the financial disparity between the mother and the foster parents, the mother loves her children and should be allowed to prove she will do what is necessary to care for them.").
>
> State in Interest of K.K., 397 P.3d 745, 747–48 (Utah Ct. App. 2017) ("'Reasonable efforts' has been defined as 'a fair and serious attempt to reunify a parent with a child prior to seeking to terminate parental rights.' . . . Ultimately, reasonableness is an objective standard that 'depends upon a careful consideration of the facts of each individual case.'").

Accountability is key:

> "The court owes a duty to the child and family to hold the agency accountable for its performance. A number of options exist for the court to consider when making a reasonable efforts determination.
>
> - subpoena agency witnesses to testify about the agency's failure to make reasonable efforts.
> - allow the agency a brief continuance to show why a negative finding should not be made.
> - order the agency not to seek reimbursement for the cost of the child's care.
> - order the agency to develop specific services and file appropriate documents where necessary.
> - issue orders to show cause or contempt orders.
> - submit reports on noncompliance to state or federal agencies.

> Many judges are reluctant to make "no reasonable efforts" findings because the child welfare agency loses money, often the local agency is under-resourced, and a loss of money would further weaken the agency. Judges must overcome that reluctance to ensure that the agency is doing its job."
>
> Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* 94-95 (2014).
>
> http://judgeleonardedwards.com/docs/reasonableefforts.pdf

➤ **Reasonable care and due diligence**

Guardians ad litem should provide continual oversight to the court on whether the supervising agency is exercising "reasonable care and due diligence" of "appropriate and available services" in meeting the needs of the child and the parents. *See* Miss. Code Ann. § 43-21-105 (gg).

Every service plan should:

- **identify the economic, emotional, mental, and physical problems leading to the loss of custody,**

See, e.g.:

> In re Riva M., 286 Cal. Rptr. 592, 599 (Cal. Ct. App. 1991) (an ICWA case where the court stated, "[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult (such as helping to provide transportation and offering more intensive rehabilitation services where others have failed)."

- **prioritize the problems that need attention for reunification to occur, and**

See, e.g.:

> In re Ronald YY, 475 N.Y.S.2d 597, 599 (N.Y. App. Div. 1984) ("An agency is required to 'mold its efforts in the context of and in recognition of a parent's individual situation' . . . In the instant case, the evidence indicates that [the parent] clearly had an alcohol problem and it was certainly appropriate for petitioner to conclude that such problem required prompt priority attention.").

Compare:

> In re ATE, 222 P.3d 142, 146-47 (Wyo. 2009) ("So, what began as a case about ensuring [that the] children had a clean, safe environment with appropriate medical, dental and other care, became a case about whether [Father] wanted to be with his children enough to stop using marijuana. The court understands [Father's] frustration with the situation. At one point, he was required to attend a parenting class. He was not allowed admission to the parenting class because he was supposed to bring the children with him. But, he was not allowed to have the children with him because he had had a positive [urinalysis] for marijuana. DFS then uses this non-compliance with requirements to support the petition to terminate parental rights. . . . [This] court is unable to conclude that reasonable efforts were undertaken by DFS to rehabilitate this parent with respect to the situation that brought the family to the attention of the State.").

- **offer reasonable services to remedy the problems.**

See, e.g.:

> Matter of Jose F., 224 Cal. Rptr. 239, 246 (Cal. Ct. App. 1986) ("[T]he trial court is directed to conduct a new trial limited to a determination whether reasonable services have been provided or offered to Ms. V. which were designed to aid her to overcome the problems which led to the deprivation or continued loss of custody of [her children] and whether, despite the availability of these services, return of the children to Ms. V. would be detrimental to the children.").

When implementing a service plan, the supervising agency should provide a fair and meaningful opportunity for compliance by:

- **performing its responsibilities efficiently, diligently, and in good faith,**

See, e.g.:

> Matter of Sheila G., 462 N.E.2d 1139, 1148 (N.Y. 1984) ("An agency must always determine the particular problems facing a parent with respect to the return of his or her child and make affirmative, repeated, and meaningful efforts to assist the parent in overcoming these handicaps.").
>
> In re Joyce Ann R, 371 N.Y.S.2d 607, 610 (Fam. Ct. 1975) (The Agency must therefore perform efficiently, diligently, and in good faith.").

- **informing the parents of the consequences for failing to comply with the service plan,**

See, e.g.:

> In re Laura F., 662 P.2d 922, 930–31 (Cal. 1983) ("Della was counseled by various social workers and advised of the changes she had to make in order to regain custody of her children. Her failure to win back the children indicates her lack of interest or capacity rather than the inadequacy of the services offered.").
>
> Adams v. Tupelo Children's Mansion, Inc., 185 So. 3d 1070, 1075 (Miss. Ct. App. 2016) ("[Tupelo Children's Mansion] made diligent efforts to implement a plan for return. The agreements also emphasized that procedures to terminate parental rights would begin if Christine and Kevin did not cooperate. Both [parents] signed the agreements [but] failed to comply with [its] requirements. For example, the GAL noted that both parents failed to visit or call as often as agreed to and failed to provide any significant financial support. Nor did they obtain a home study to show their home was suitable for placement. Further, Christine tested positive for drugs during the time the agreements were in effect.").

- **reasonably assisting the parents in complying with the terms and conditions of the service plan essential to reunification,**

See, e.g.:

> In re H.K., 455 N.W.2d 529, 532 (Minn. Ct. App. 1990) ("Services must go beyond mere matters of form so as to include real, genuine assistance. . . . Whether the county has met its duty of reasonable efforts requires consideration of the length of the time the county was involved and the quality of effort given.").
>
> In re Kaliyah S., 455 S.W.3d 533, 556 (Tenn. 2015) ("Reasonable efforts entail more than simply providing parents with a list of service providers and sending them on their way. The Department's employees must use their superior insight and training to assist parents with the problems the Department has identified in the permanency plan, whether the parents ask for assistance or not.").
>
> In re Edward B., 558 S.E.2d 620, 632 (W. Va. 2001) ("[T]he strategies recommended in the plan were never employed to address the family's problems. . . . Additionally, the family case plan does not appear to adequately address one of the predominant obstacles facing the Appellant, her alleged lack of financial resources.").

- **reasonably accommodating the parents in complying with the terms and conditions of the service plan essential to reunification,**

See, e.g.:

> In re Steven N., 749 A.2d 678, 681 (Conn. App. Ct. 2000) ("[T]he department provided intensive family preservation programs, counseling, child guidance counseling, Rescue Head Start, a preschool intervention program, an infant toddler program and the PEDAL program at the former Newington Children's Hospital, a parent aide, parenting classes, respite care, visitation and transportation assistance. The [parent] embarked on these programs but failed to complete any of them.").
>
> In re Leckrone, 413 N.E.2d 977, 980 (Ind. Ct. App. 1980) ("The Whitley County Welfare Department . . . has either provided or offered to provide a variety of support services to the family. Furniture, food stamps, Aid to Dependent Children funding, transportation services, homemaker services and intensive case work were offered and often utilized by the family.").
>
> In re JL, 989 P.2d 1268, 1272 (Wyo. 1999) ("In-home and outreach classes utilized every feasible educational approach to communicate with Appellants. Appellants were given parenting classes, anger management counseling, individual counseling, and job counseling for a period extending over six years.").

- **promptly advising the parents when terms and conditions are not being satisfactorily met, and**

See, e.g.:

> Amanda H. v. Superior Court, 83 Cal. Rptr. 3d 229, 234 (Cal. Ct. App. 2008) ("While it was mother's responsibility to attend the programs and address her problems, it was the social worker's job to maintain adequate contact with the service providers and accurately to inform the juvenile court and mother of the sufficiency of the enrolled programs to meet the case plan's requirements.").

- **making inquiries on why a parent has discontinued a particular service.**

See, e.g.:

> In re Charmaine T., 570 N.Y.S.2d 209, 211 (N.Y. App. Div. 1991) ("[A]fter the mother stopped participating in this program, the caseworker made neither further arrangements nor any attempts to discover why the mother ended her participation. Indeed, there is evidence in the record which suggests that at about the time that the mother stopped therapy she had been raped and was left completely traumatized, confused and unable to cope. It is clear that on this record

the agency failed to show by clear and convincing evidence that it exercised diligent efforts in helping strengthen the mother-child relationship . . . .").

But there are limits to what is required for "reasonable care and due diligence"–especially where the supervising agency has worked extensively with the parent but with no appreciable progress. As aptly noted by the Nebraska Supreme Court: "Children cannot, and should not be suspended in foster care, or be made to await uncertain parental maturity." In re Ty M., 655 N.W.2d 672, 677 (Neb. 2003).

See, e.g.:

B.J.K.A. v. Cleburne Cty. Dep't of Human Res., 28 So. 3d 765, 772 (Ala. Civ. App. 2009) ("We note that the law speaks in terms of 'reasonable' efforts, not unlimited or even maximal efforts.").

M.A.J. v. S.F., 994 So. 2d 280, 292 (Ala. Civ. App. 2008) ("DHR worked with the mother on an intensive basis during the eight-month period at issue, without success and with every indication that further efforts would not be successful.").

In re Melody L., 962 A.2d 81, 92 (Conn. 2009) ("[R]easonable efforts means doing everything reasonable, not everything possible.").

➤ **Appropriate and available services**

Guardians ad litem should provide continual oversight to the court on whether the supervising agency has offered "appropriate and available services" in meeting the needs of the child and the parents. *See* Miss. Code Ann. § 43-21-105 (gg). Reasonable efforts in this context often depends upon what resources are available within the local community. Therefore, it is important that the guardian ad litem is fully aware of all public and private resources that are available for meeting the needs of the parents and children at each stage of the proceedings.

See, e.g.:

J.J. v. Lee Cty. Dep't of Human Res., 979 So. 2d 823, 832 (Ala. Civ. App. 2007) ("In this case, the juvenile court had before it clear and convincing evidence that the mother could only parent the child with constant supervision by persons trained in proper parenting techniques. Undisputed evidence proved that DHR did not have the resources to employ a person 24 hours a day to supervise and to guide the mother's interaction with the child.").

In re Jonathan T., 808 A.2d 82, 88 (N.H. 2002) ("[T]he State must put forth reasonable efforts given its available staff and financial resources to maintain the legal bond between parent and child.

Key inquiries to consider when reviewing the reasonableness of the service plan:

- **Does it meet the essential needs of the child and parent for reunification?**

See, e.g.:

> In re Alvin R., 134 Cal. Rptr. 2d 210, 218 (Cal. Ct. App. 2003)("And yet, time was *critical*. The longer parent and child live with no visitation, the less likely there will ever be any meaningful relationship. Under such circumstances, we cannot find that substantial evidence supports the finding that reunification services were reasonable.").
>
> In re Dino E., 8 Cal. Rptr. 2d 416, 421 (Cal. Ct. App. 1992) ("[T]he plan must be specifically tailored to fit the circumstances of each family, and must be designed to eliminate those conditions which led to the juvenile court's jurisdictional finding.").
>
> In re Child of E.V., 634 N.W.2d 443, 448 (Minn. Ct. App. 2001) ("[T]he court failed to find the case plan's requirements germane or necessary to correct the conditions that led to the out-of-home placement.").
>
> In re M.A., 408 N.W.2d 227, 236 (Minn. Ct. App. 1987) ("[T]he plan was primarily a litany of required services that were not related to the conditions that eventually gave rise to the dependency adjudication.").
>
> In re Adoption/Guardianship Nos. J9610436 & J9711031, 796 A.2d 778, 798 (Md. 2002) ("[CCDSS] failed . . . to provide a timely and sufficiently extensive array of available programs for petitioner, who, while perhaps hampered by some cognitive limitations, is eager and may well be able, with properly tailored services, to care for his children. From the moment petitioner came to ask for help, CCDSS, as far as we can discern, provided only untailored reunification services.").
>
> In re Amber W, 481 N.Y.S.2d 886, 889–90 (N.Y. App. Div. 1984) ("The local agency must determine 'the particular problems facing a parent' and 'make affirmative, repeated, and meaningful efforts to assist the parent in overcoming these handicaps' . . . [In this case] petitioner did not appear to give proper consideration to the fact that [the mother] was very young, had been raped several times in her life, had lost her father who committed suicide, and was experiencing a difficult pregnancy.").

- **What is the measure and quality of the services being offered?**

An extensive array of professional services that is suitably tailored to the family's needs is often compelling evidence of reasonable efforts.

See, e.g.:

> In re Brianna C., 912 A.2d 505, 512 (Conn. App. Ct. 2006) (reasonable efforts satisfied where the services offered included domestic violence services, parenting classes, and programs to assess the child's cognitive ability).
>
> Matter of Welfare of J.J.B., 390 N.W.2d 274, 281 (Minn. 1986) (reasonable efforts satisfied where 21 different social and medical service agencies assisted in helping the parent correct the conditions that led to the dependency determination).
>
> In re D'Anna KK, 751 N.Y.S.2d 326, 328 (N.Y. App. Div. 2002) (reasonable efforts satisfied where the services offered included supervised visitation, parent aide services, mental health counseling, and transportation).
>
> Matter of Michael U, 639 N.Y.S.2d 1021, 1023 (N.Y. App. Div. 1996) (reasonable efforts satisfied where the services offered included regularly scheduled visitations, transportation, foster care progress reports, training to care for the children's special medical needs, and referrals to mental health evaluations and parenting classes.).

- **Are there overreaching terms and conditions?**

See, e.g.:

> In re G.S.R., 72 Cal. Rptr. 3d 398, 406 (Cal. Ct. App. 2008). ("Again, with respect to the AA meetings, there is no evidence Gerardo's sobriety was ever in issue during this case, nor any evidence his failure to attend meetings posed a danger to the boys. As for the lack of housing, DCFS may not bootstrap the fact that Gerardo was too poor to afford housing, which would not have served as a legitimate ground for removing the boys in the first place, to support findings of detriment, all of which flow directly from the circumstances of Gerardo's poverty and his concomitant willingness to leave his sons in his family's care while he stayed close, maintained familial ties and worked to raise rent money. This is particularly so when DCFS might have assisted Gerardo to obtain affordable housing, but made no effort to do so.").
>
> In re Precious J., 50 Cal. Rptr. 2d 385, 387 n.2 (Cal. Ct. App. 1996) ("The plan which was originally proposed by the Department contained several boilerplate requirements [that] were not applicable to the circumstances of this case.").

- **Reasonable period of time to complete the terms and conditions?**

See, e.g.:

> M.A.J. v. S.F., 994 So. 2d 280, 291 (Ala. Civ. App. 2008) ("Juvenile courts should give parents a reasonable opportunity to rehabilitate, and reasonable rehabilitation efforts should continue at least to the time of the permanency hearing so long as the parent is progressing toward the ultimate goal of family reunification.").
>
> Armando L. v. Superior Court, 42 Cal. Rptr. 2d 222, 226 (Cal. Ct. App. 1995) ("The evidence shows that reasonable services were provided or offered to [the parent but] that he made no attempt during the first 13 months of the minor's life to avail himself of them . . . .").

- **Reasonable opportunity for input on the terms and conditions?**

See, e.g.:

> In re C.B., 611 N.W.2d 489, 493–94 (Iowa 2000) ("We have repeatedly emphasized the importance for a parent to object to services early in the process so appropriate changes can be made.").

- **Was financial assistance made available?**

See, e.g.:

> In re Kristin W., 271 Cal.Rptr. 629, 639 (Cal. Ct. App. 1990) ("A court cannot lawfully deprive a parent of the custody of his children because the parent is unemployed. Therefore, it was error for the court to rely on petitioner's unemployment to support the permanency planning order.").
>
> Matter of Lisa L, 499 N.Y.S.2d 237, 239 (N.Y. App. Div. 1986) ("In designing a suitable strategy, the agency should be sensitive to the particular needs and capabilities of the parents and should not be unrealistic in light of the financial circumstances of the parents. Of course, the responsibilities are not one-sided, for the parents are obligated to cooperate with the agency in fulfilling their responsibilities toward the child.").
>
> In re A.J.H., 2005 WL 3190324 (Tenn. Ct. App. 2005) ("[T]he state simply cites budgetary concerns as an excuse for the incomplete assessment. . . . We find that DCS failed to meet its burden of showing by clear and convincing evidence that it took reasonable steps to address D.H.'s admitted inability [because of costs] to comply with the parenting plan without assessment or treatment for the conditions identified in the psychological evaluations conducted at the State's behest.").

In re Edward B., 558 S.E.2d 620, 632 (W. Va. 2001) ("Additionally, the family case plan does not appear to adequately address one of the predominant obstacles facing the Appellant, her alleged lack of financial resources.").

- **Were alternative services considered?**

See, e.g.:

In re Taylor J., 168 Cal. Rptr. 3d 149, 153 (Cal. Ct. App. 2014) ("It was not until five months before the 12-month review hearing that the DCFS worker found out that Mother was participating in an online domestic violence program and told Mother online programs were not acceptable to DCFS. The record does not show that the worker made any effort to assist Mother to find an alternative person-to-person program in the vicinity of her home and one that she could afford.").

In re D.A., 772 A.2d 547, 550 (Vt. 2001) ("The findings of the court indicate that mother was able in the past, with the assistance of father and others, to act as D.A.'s primary caregiver. Because of financial problems and mother's medical conditions, which sapped her energy, parents' ability to care for D.A. deteriorated. Mother has addressed her medical conditions and has more energy. . . . If D.A. were returned to parents, mother's sister, who has two special needs children and has received specialized training, and D.A.'s grandmother would be available to assist parents in caring for D.A.").

- **Was there a reasonable search for relatives who might be willing to provide care and support for the parent and/or child?**

See, e.g., Fostering Connections to Success and Increasing Adoptions Act of 2008.

➤ **Failure to substantially comply with the service plan**

Before a court may involuntarily terminate the parental rights of a parent, there must be clear and convincing evidence that the parent failed to substantially comply with the terms and conditions of the service plan despite "reasonable efforts over a reasonable period of time to diligently assist the parent in complying with the service plan." *See* Miss. Code Ann. § 93-15-115. This is consistent with the construction of the Mississippi Youth Court Law:

> [The Youth Court Law] shall be liberally construed to the end that each child coming within the jurisdiction of the youth court shall become a responsible, accountable and productive citizen, and that each such child shall receive such care, guidance and control, preferably in such child's own home as is conducive toward that end and is in the state's and the child's best interest. It is the public

policy of this state that the parents of each child shall be primarily responsible for the care, support, education and welfare of such children; however, when it is necessary that a child be removed from the control of such child's parents, the youth court shall secure proper care for such child.

Miss. Code Ann. § 43-21-103.

See, e.g.:

K.D.G.L.B.P. v. Hinds Cty. Dep't of Human Servs., 771 So. 2d 907, 914 (Miss. 2000) ("As in *Adams*, the record is replete with evidence that the mother was given considerable opportunity and warning that she must change her lifestyle. DHS required nothing more of the mother than asking that she provide her two minor children with the most basic necessities for a healthy life. In the present case, the best interest of the children would best be served by the termination of the mother's parental rights.").

Adams v. Powe, 469 So. 2d 76, 79 (Miss. 1985) ("Nothing was required of the Powes by the welfare department beyond the Powes providing their children with the most basic necessities for a healthy life which were well within the Powes' capabilities if they were so inclined.").

H.D.H. v. Prentiss County Dep't of Human Servs., 979 So. 2d 6, 12 (Miss. Ct. App. 2008) ("[W]e agree with DHS's argument that abuse of one child is enough under Mississippi Code Annotated section 93–15–103(3)(c) to terminate H.D.H.'s parental rights to all three children. In fact, the Mississippi Supreme Court has stated that "no mother should be permitted to have custody or control of any children if she permits one child to be molested." Carson v. Natchez Children's Home, 580 So.2d 1248, 1258 (Miss.1991). It is of no matter that the child H.D.H. was convicted of abusing under Mississippi Code Annotated section 97–5–39(2) may not be his biological son.").

Key inquiries to consider when assessing whether the parent has failed to substantially comply with the service plan:

- **Was there a fair and meaningful opportunity to sign a service agreement and to comply with its terms?**

See, e.g.:

In re T.A.P., 742 So. 2d 1095, 1105 (Miss. 1999) ("J.P. should be granted an opportunity to be reunified with her children in light of the plan created by the psychologist appointed by the family court. Regardless of the financial disparity between the mother and the foster parents, the mother loves her children and should be allowed to prove she will do what is necessary to care for them.").

Brown v. Panola Cty. Dep't of Human Servs., 90 So. 3d 662, 666 (Miss. Ct. App. 2012) ("DHS did not seek termination of Erica's parental rights [for] almost four years after the children were removed from her care. During that time, Erica had numerous opportunities to sign a service agreement with DHS and comply with its terms, yet she failed to do so. Based on Erica's failure to implement a service agreement with DHS, the youth court determined that reunification was not in Josh's and Kyle's best interests.").

R.F. v. Lowndes Cty. Dep't of Human Servs., 17 So. 3d 1133, 1138 (Miss. Ct. App. 2009) ("Sturgis testified that she attempted several times to contact R.F. about coming to the LCDHS office to sign a service agreement, but R.F. failed to do so. A proper service agreement would have informed R.F. of what she should have done to maintain her parental rights. By not entering into a service agreement with the LCDHS, R.F. failed to learn how to act properly so that T.D.F. could be placed in her care.

B.S.G. v. J.E.H., 958 So. 2d 259, 269 (Miss. Ct. App. 2007) ("[E]ach time B.S.G. regained custody or visitation with E.D., [she] would abuse drugs and/or leave E.D. for extended periods in the care of relatives, which ultimately placed the responsibility of E.D.'s best interest with the youth court. This cycle continued for over two years, essentially until B.S.G. was incarcerated.").

N.E. v. L.H., 761 So. 2d 956, 965 (Miss. Ct. App. 2000) ("Without a current reference as to [the mother's] present residence and status, the testimony presented can only be described as too far removed in time to support a finding that she is still 'unstable' so as not to be able to enter into a service agreement.").

- **Was the parent warned of the consequences for failing to comply?**

See, e.g.:

In re B.A.H., 225 So. 3d 1220, 1242 (Miss. Ct. App. 2016) ("Next, we find that there was credible evidence that, despite diligent efforts by DHS, Hall failed to eliminate behaviors that prevented the placement of Ben and Kate in Hall's home. The behavior at issue was Hall's continued cohabitation and relationship with Brown even while he continued to use drugs. There was credible testimony that this behavior continued despite warnings that it would prevent reunification.").

- **Was there diligent assistance in accommodating the parent's financial situation, work or school schedule, or need for transportation?**

See, e.g.:

> In re S.T.M.M., 942 So. 2d 266, 270 (Miss. Ct. App. 2006) ("Many other requirements of the service agreement were also not completed, to include drug tests, parenting classes, and anger management classes. A.E.R. explained that her inability to complete parenting classes or anger management classes was a result of her lack of transportation, money for gasoline, and scheduling conflicts between the classes and her job(s). Given the time frame A.E.R. had to complete the requirements, almost a year and a half, we find this excuse lacking as well. DHS provided these classes free of charge to A.E.R. with the only real requirement being she attend the classes. She failed to do this despite enrolling in four separate classes.").

- **Was the parent cooperative?**

See, e.g.:

> E.J.W. v. State Dep't of Human Res., 709 So. 2d 57, 59 (Ala. Civ. App. 1998) ("A department worker testified that . . . she had offered drug treatment to the mother as a way of regaining custody of the child and that the mother had refused treatment. She also stated that the mother did not visit the child and that the mother did not pay any support for the child. The record further reveals that the department had offered employment assistance, housing arrangements, and parenting classes to the mother, which she refused.").
>
> In re Kyara H., 83 A.3d 1264, 1278 (Conn. App. Ct. 2014) ("The futility of any attempts on the part of the department to engage with and involve the [parent] in reunification services could not be any clearer. 'The department is not required to provide reasonable efforts to a parent when the parent refuses to participate or engage in any of those efforts.'").
>
> In re Jonathan C., 860 A.2d 305, 308 (Conn. App. Ct. 2004) ("[T]he department arranged for monthly meetings with all service providers involved with the family to discuss specific needs and how best to address them, facilitated visitation throughout the duration of its involvement with the family and referred the [parent] to numerous services, including the Bridgeport housing authority to help her obtain housing, and ECAR, a comprehensive agency that addresses a broad range of parenting needs. Testimonial and documentary evidence in the record demonstrates how many of those efforts were met with apathy and a lack of cooperation by the [parent].").

In re C.B.Y., 936 So. 2d 974, 980-81 (Miss. Ct. App. 2006) ("[W]e find substantial credible evidence to support the youth court's finding that A.Y.'s decision to remain on runaway status prevented the DHS from returning C.B.Y. to A.Y. Furthermore, A.Y. testified that she avoided contact with the DHS, and she admitted that she never made herself available to enter into a service agreement with the DHS.").

- **Would additional efforts have been futile?**

See, e.g.:

In re Krystal J., 869 A.2d 706, 710 (Conn. App. Ct. 2005) ("On the basis of the evidence adduced at the hearing regarding the services provided by the department to the [parent], the court concluded that '[t]he department has made reasonable efforts to reunify this family and further efforts are not necessary in view of the [parent's] rock-like determination to refuse services.' Upon reviewing the record in this case, we conclude that the court had an adequate basis to determine that further efforts by the department were not appropriate.").

In re Jonathan C., 860 A.2d 305, 310 (Conn. App. Ct. 2004) ("Throughout the duration of the department's involvement with the family, the [parent] demonstrated a lack of cooperation and progress, and revealed an apathetic attitude toward the repeated and extensive reunification efforts that were made. The evidence before the court, highlighted in its memorandum of decision, more than adequately supports its determination that the [parent] was unable or unwilling to benefit from the department's reunification efforts.").

In re Antony B., 735 A.2d 893, 901 (Conn. App. Ct. 1999) ("Testimony reflect[s] that the department made numerous attempts at assisting the [mother] and, specifically, attempted to treat the problems associated with her [schizo-affective disorder but the parent rejected many of the services offered to her, rejected her need to be stabilized with the help of regular medication and did very little to attempt to rehabilitate herself]. . . . The department is required only to make 'reasonable efforts.' It is axiomatic that the law does not require a useless and futile act.").

In re Welfare of I.A.Q., 2001 WL 1407698 (Minn. Ct. App. 2001) ("The evidence shows that the county provided housing services to R .Q. Even had the county supplied less-than-adequate services, the evidence shows that it would have been futile to provide additional services. R.Q.'s lack of progress on the housing front demonstrates the inevitable-that R.Q. will continue in the patterns that led to the out-of-home placement.").

Matter of St. Christopher O, 611 N.Y.S.2d 930, 932 (N.Y. App. Div. 1994) ("[T]he caseworkers . . . urged [the parents] to seek mental health counseling and attend parenting classes. In addition, [the parents] were provided with homemaking services. Despite these efforts, [the parents] failed to learn appropriate parenting skills due to their uncooperative attitude and refused mental health counseling. Where, as here, an agency's reasonable attempts to nurture the parent-child relationship are opposed or met with indifference by uncooperative and recalcitrant parents, the agency shall be deemed to have met its statutory duty.").

703 WHEN REASONABLE EFFORTS ARE UNSUCCESSFUL

➤ **Parent's fundamental liberty interest**

Parents have a fundamental liberty interest in raising their children:

> "The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures."
>
> Santosky v. Kramer, 455 U.S. 745, 753–54 (1982).

It's a constitutional right that has been firmly supported for years:

> "The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed 'essential,' *Meyer v. Nebraska*, [262 U.S. 390, 399 (1923)], 'basic civil rights of man,' *Skinner v. Oklahoma*, [316 U.S. 535, 541 (1942)], and '(r)ights far more precious . . . than property rights,' *May v. Anderson*, [345 U.S. 528, 533 (1953)]. 'It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.' *Prince v. Massachusetts*, [321 U.S. 158, 166 (1944)]. The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, *Meyer v. Nebraska*, [supra, 262 U.S. at 399], the Equal Protection Clause of the Fourteenth Amendment,

> *Skinner v. Oklahoma*, [supra, 316 U.S., at 541], and the Ninth Amendment, Griswold v. Connecticut, [381 U.S. 479, 496 (1965)] (Goldberg, J., concurring)."
>
> Stanley v. Illinois, 405 U.S. 645, 651 (1972)/

See also:

> M.L.B. v. S.L.J., 519 U.S. 102, 116 (1996) ("Choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as 'of basic importance in our society,' rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect.").

Terminating a parent's parental right is a serious and solemn decision requiring proof by clear and convincing evidence. *See* M.L.B. v. S.L.J., 519 U.S. 102, 121 (1996) ("Consistent with *Santosky*, Mississippi has, by statute, adopted a 'clear and convincing proof' standard for parental status termination cases."). Further, termination of parental rights statutes are subject to strict scrutiny. *See* Chism v. Bright, 152 So. 3d 318, 322 (Miss. 2014) ("State statutes providing for the termination of parental rights are subject to strict scrutiny and "[c]ourts may not add to the enumerated grounds." Deborah H. Bell, *Bell on Mississippi Family Law* 409 (2005) (citing *Gunter v. Gray*, 876 So.2d 315 (Miss.2004)); *see also Rias v. Henderson*, 342 So.2d 737, 739 (Miss.1977) (holding that statutes affecting fundamental constitutional rights are subject to strict scrutiny).").

Guardians ad litem should report to the court:

- **the parent's need for an interpreter,**

See, e.g.:

> Comment to Rule 1 of the *Rules on Standards for Court Interpreters* ("For those individuals with limited English proficiency (LEP), the failure to comprehend the English language can be a barrier to understanding and exercising their legal rights and may result in the deprivation of meaningful access to the judicial system by those individuals.").
>
> Rule 3 of the *Rules on Standards for Court Interpreters* ("(B) Recognition of the need for a court interpreter may arise from a request by a party or counsel, the court's own voir dire of a party or witness, or disclosures made to the court by parties, counsel, court employees, or other persons familiar with the ability of the person to understand and communicate in English.").
>
> Comment to Rule 3 of the *Rules on Standards for Court Interpreters* ("If any doubt exists regarding the ability of a person to comprehend proceedings fully or

to adequately express himself or herself in English, an interpreter should be appointed.").

- **the parent's need for an attorney, and**

See, e.g.:

K.D.G.L.B.P. v. Hinds County Department of Human Services, 771 So. 2d 907, 910 (Miss. 2000) ("One of the most important factors to be considered in applying the standards for court appointed counsel is whether the presence of counsel would have made a determinative difference.").

Green v. Mississippi Dept. of Human Services, 40 So. 3d 660, 664 (Miss. Ct. App. 2010) ("[R]elying on the United States Supreme Court's holding in Lassiter [452 U.S. 18 (1981)], our supreme court stated that the appointment of counsel in termination proceedings is wise but not mandatory, and courts should determine the need for court-appointed counsel on a case-by-case basis.").

Kathleen A. Bailie, *The Other "Neglected" Parties in Child Protective Proceedings: Parents in Poverty and the Role of the Lawyers Who Represent Them*, 66 Fordham L. Rev. 2285, 2294 (1998) ("[P]oor parents involved in child protective proceedings are in more dire need of effective and competent legal representation today than ever before. With a philosophy throughout the child welfare system that is presumptively against their hopes of reuniting with their children, with the media's watchful eye on incidents of child abuse and neglect, and with less time in which to effect significant changes in their lives, parents in poverty need effective advocacy at all stages of child protective proceedings.").

- **other due process considerations.**

See, e.g.:

In re V.M.S., 938 So. 2d 829, 835-36 (Miss. 2006) ("Since the commencement of these proceedings in the trial court, Valerie has lived in several foster homes, unhappily moving from home to home, but has now ended up in her current foster home where she is comfortable and adjusting well to her life. This however is still inadequate alone to support a termination of the mother's parental rights. . . . It is a consideration, but this Court has never allowed termination of parental rights only because others may be better parents.").

In Interest of C.R., 604 So. 2d 1079, 1083 (Miss. 1992) ("A court cannot remove a child from her home and family simply because a more desirable setting is available elsewhere. The court must first find a failure of the child's environment and then take steps to protect the minor's interests. In the instant case, the mother of C.R. had done all suggested to her by the Bolivar County Welfare Department.

> . . . We cannot simply decide that a school many miles away is better and remove the child from a parent or parents who are doing the best they can within their resources and who are taking full advantage of the best the state or local school has to offer.").
>
> In re S.T.M.M., 942 So. 2d 266, 272 (Miss. Ct. App. 2006) ("It is evident that the reason A.E.R. did not comply with the service agreement is not the cost of the requirements, but her lack of desire to do so, failing even to complete those requirements with no cost.").

➤ **Child's greater rights**

The child has fundamental rights too:

> "Although aware of the great responsibility placed upon any court when determining whether a parent's fundamental right to rear their offspring should be terminated, we think we would be remiss in our duties if we did not terminate the parental rights to safeguard the childrens' greater right to food, shelter, and opportunity to become useful citizens. . . . The record is replete with evidence that the Powes were given considerable opportunity and warning that they must change their lifestyle. Nothing was required of the Powes by the welfare department beyond the Powes providing their children with the most basic necessities for a healthy life which were well within the Powes' capabilities if they were so inclined."
>
> Adams v. Powe, 469 So. 2d 76, 78–79 (Miss. 1985).

The guardian ad litem has the responsibility to fully protect the best interests of the child, which requires being prepared to testify as to the present health, education, estate and general welfare of the child.

See, e.g.:

> In re M.J.S.H.S., 782 So. 2d 737, 741 (Miss. 2001) ("Because the children's guardian ad litem failed to "zealously" inquire into and protect their best interest, we must vacate and remand, with directions to the guardian ad litem that he interview each child, and make an independent finding as to what is in the children's best interest in this matter.").

IN SAFEGUARDING THE CHILD'S BEST INTERESTS, THE GUARDIAN AD LITEM SHOULD ALWAYS BE ASKING WHETHER REASONABLE EFFORTS ARE BEING MADE TO ENSURE:

- a safe and sound home;
- good schooling;
- surroundings free of abuse or neglect;
- surroundings free of domestic violence;
- surroundings free of habitual alcoholism or drug abuse;
- adequate shelter, clothing, and medical needs; and
- adequate services addressing a child's special needs.

All children should have an opportunity to become useful and productive citizens. *See* Miss. Code Ann. § 43-21-103 ("[The Youth Court Law] shall be liberally construed to the end that each child coming within the jurisdiction of the youth court shall become a responsible, accountable and productive citizen, . . ."). Guardians ad litem should not take on the role of minimalists. It's not "What is the very least we can do for this family?" but rather "What is the most we can do to meet this family's needs for reunification that is clearly reasonable taking into consideration appropriate and available state and local resources?" Even so, success depends largely upon the parent's willingness to follow through on the services offered.

See, e.g.:

> In re Juvenile 2006-833, 937 A.2d 297, 301 (N.H. 2007) ("In assessing the State's efforts, the family division must consider whether the services provided have been accessible, available and appropriate. However, we have recognized that the State's ability to provide adequate services is constrained by its staff and financial limitations.").
>
> State in Interest of P.H. v. Harrison, 783 P.2d 565, 572 (Utah Ct. App. 1989) ("[R]ehabilitation is a two-way street which 'requires commitment on the part of the parents, as well as the availability of services from the State.' The parent must be willing to 'acknowledge past deficiencies and [exhibit a] desire to improve as a parent and correct the abuses and neglect.' 'If after a reasonable period of time, no positive change[s] in parenting skills occur, a termination of parental rights is appropriate. Children cannot remain in limbo indefinitely where there is no reasonable likelihood of their parents gaining necessary parenting abilities.'").

➤ **Options if reunification is unsuccessful**

The paramount objective is a safe and permanent home. But if a parent fails to substantially comply with the terms and conditions of the service plan, then the options for attaining a successful permanency outcome are limited–namely:

- **placement with a durable legal custodian,**

§ 43-21-105(y)

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

§ 43-21-609(b)

> Place the child in the custody of his parents, a relative or other person subject to any conditions and limitations as the court may prescribe. If the court finds that temporary relative placement, adoption or foster care placement is inappropriate, unavailable or otherwise not in the best interest of the child, durable legal custody may be granted by the court to any person subject to any limitations and conditions the court may prescribe; such durable legal custody will not take effect unless the child or children have been in the physical custody of the proposed durable custodians for at least six (6) months under the supervision of the Department of Human Services. The requirements of Section 43-21-613 as to disposition review hearings do not apply to those matters in which the court has granted durable legal custody. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities;

§ 43-15-13(4)

> (4) . . . The department need not initiate termination of parental rights proceedings where the child has been placed in durable legal custody, durable legal relative guardianship, or long-term or formalized foster care by a court of competent jurisdiction.

See also:

> In re S.A.M., 826 So. 2d 1266, 1279 (Miss. 2002) ("[T]he intent of durable legal custody is merely to avoid the required annual dispositional reviews by the youth court and constant oversight and monitoring by DHS, not a complete preclusion of the court's jurisdiction, DHS's further involvement or court ordered review hearings as needed.").

- **placement with a durable legal relative guardianship,**

§ 43-21-105(dd)

> "Durable legal relative guardianship" means the legal status created by a youth court order that conveys the physical and legal custody of a child or children by durable legal guardianship to a relative or fictive kin who is licensed as a foster or resource parent.

§ 43-21-609(c)

> In neglect and abuse cases, the disposition order may include any of the following alternatives, giving precedence in the following sequence:
> . . .
> (c)(i) Grant durable legal relative guardianship to a relative or fictive kin licensed as a foster parent if the licensed relative foster parent or licensed fictive kin foster parent exercised physical custody of the child for at least six (6) months before the grant of durable legal relative guardianship and the Department of Child Protection Services had legal custody or exercised supervision of the child for at least six (6) months. In order to establish durable legal relative guardianship, the youth court must find the following:
> 1. That reunification has been determined to be inappropriate;
> 2. That the relative guardian or fictive kin guardian shows full commitment to the care, shelter, education, nurture, and reasonable medical care of the child; and
> 3. That the youth court consulted with any child twelve (12) years of age or older before granting durable legal relative guardianship.
> (ii) The requirements of Section 43-21-613 as to disposition review hearings do not apply to a hearing concerning durable legal relative guardianship. However, the Department of Child Protection Services must conduct an annual review and recertification of the durable legal relative guardianship to determine whether it remains in the best interest of the child. If a material change in circumstances occurs adverse to the best interest of the child, the parent, relative guardian, fictive kin guardian, or Department of Child Protection Services may petition the court to review the durable legal relative guardianship;

§ 43-15-13(4)

> (4) . . . The department need not initiate termination of parental rights proceedings where the child has been placed in durable legal custody, durable legal relative guardianship, or long-term or formalized foster care by a court of competent jurisdiction.

- **continued foster care on a permanent or long-term basis because of the child's special needs or circumstances, or**

See U.R.Y.C.P. 29 ("The judge or referee shall, at the permanency hearing, determine the future status of the child, including, but not limited to, whether the child should be: . . . (v) continued in foster care on a permanent or long-term basis because of the child's special needs or circumstances.").

§ 43-15-13

> (4) . . . The department need not initiate termination of parental rights proceedings where the child has been placed in durable legal custody, durable legal relative guardianship, or long-term or formalized foster care by a court of competent jurisdiction.

- **terminating the parent's parental rights and adoption.**

See Miss. Code Ann. § 93-15-101 ("This chapter shall be known and may be cited as the 'Mississippi Termination of Parental Rights Law.'").

704 REASONABLE EFFORTS CHECKLIST

Guardians ad litem should provide continual oversight to the court on whether the supervising agency is exercising "reasonable care and due diligence" of "appropriate and available services" in meeting the needs of the child and the parents. *See* Miss. Code Ann. § 43-21-105 (gg).

✓ Every service plan should:

- identify the economic, emotional, mental, and physical problems leading to the loss of custody,
- prioritize the problems that need attention for reunification to occur, and
- offer reasonable services to remedy the problems.

✓ When implementing a service plan, the supervising agency should provide a fair and meaningful opportunity for compliance by:

- performing its responsibilities efficiently, diligently, and in good faith,
- informing the parents of the consequences for failing to comply with the service plan,
- reasonably assisting the parents in complying with the terms and conditions of the service plan essential to reunification,
- reasonably accommodating the parents in complying with the terms and conditions of the service plan essential to reunification,
- promptly advising the parents when terms and conditions are not being satisfactorily met, and
- making inquiries on why a parent has discontinued a particular service.

✓ Key inquiries when reviewing the reasonableness of the service plan:

- Does it meet the essential needs of the child and parent for reunification?
- What is the measure and quality of the services being offered?
- Are the visitation terms fair and meaningful?
- Are there overreaching terms and conditions?
- Reasonable period of time to complete the terms and conditions?
- Reasonable opportunity for input on the terms and conditions?
- Was financial assistance made available?
- Were alternative services considered?
- Was there a reasonable search for relatives who might be willing to provide care and support for the parent and/or child?

✓ Key inquiries on whether the parent has failed to substantially comply with the service plan:

- Was there a fair and meaningful opportunity to sign a service agreement and to comply with its terms?
- Was the parent warned of the consequences for failing to comply?
- Was there diligent assistance in accommodating the parent's financial situation, work or school schedule, or need for transportation?
- Was the parent cooperative?
- Would additional efforts have been futile?

✓ Guardians ad litem should report to the court:

- the parent's need for an interpreter,
- the parent's need for an attorney, and
- other due process considerations.

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CHAPTER 8

FEDERAL LAWS AND REGULATIONS

801 COMPLIANCE WITH FEDERAL LAWS IMPACTING FUNDING

802 FEDERAL CHILD WELFARE LEGISLATION

- **Listing of federal laws**
- **Summary of federal laws**

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801 COMPLIANCE WITH FEDERAL LAWS IMPACTING FUNDING

U.R.Y.C.P. 7

(a) Federal laws requiring compliance. ***THESE RULES REQUIRE COMPLIANCE WITH FEDERAL LAWS WHICH IMPACT FUNDING FOR CASES WITHIN THE JURISDICTION OF THE YOUTH COURT***, including:

. . .

(4) Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997) (codified as amended in scattered sections of 42 U.S.C.);

(5) Title IV-E of the Social Security Act., 42 U.S.C. §§ 670-79(b) (2008);

(6) Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et seq.

(b) Federal regulations requiring compliance. These rules require compliance with federal regulations which impact funding for cases within the jurisdiction of the youth court, including:

. . .

(3) 45 C.F.R. §§ 1355, -1356 (2008).

Advisory Note to Rule 7

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice.

. . .

Rule 7(a)(4).

Sections of Title IV-E of the Social Security Act affected by the Adoption and Safe Families Act include: 42 U.S.C. §§ 671, -672, -673, -673b; -674, -675, -677, -678, -679b (2008).

Rule 7(a)(5).

Title IV-E of the Social Security Act authorizes payments for foster care and transitional independent living programs for children pursuant to the eligibility criteria contained therein. See 42 U.S.C. § 670 (2008).

See also:

John N. Hudson, *Jurist in Residence Letter* (2018) (setting forth Title IV-E requirements for reimbursement). **Jurist in Residence Letter**

➤ Listing of federal laws

Children's Bureau web site contains a list of recently passed child welfare legislation:

P.L. 115-271 - Substance Use–Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act or the SUPPORT for Patients and Communities Act
P.L. 115-123 - Bipartisan Budget Act of 2018 (also Family First Prevention Services Act)
P.L. 115-119 - RAISE Family Caregivers Act
P.L. 114-198 - Comprehensive Addiction and Recovery Act of 2016
P.L. 114-22 - Justice for Victims of Trafficking Act of 2015
P.L. 113-183 - Preventing Sex Trafficking and Strengthening Families Act
P.L. 112-34 - Child and Family Services Improvement and Innovation Act of 2011
P.L. 111-320 - CAPTA Reauthorization Act of 2010
P.L. 111-148 - Patient Protection and Affordable Care Act
P.L. 110-351 - Fostering Connections to Success and Increasing Adoptions Act of 2008
P.L. 109-432 - Tax Relief and Health Care Act of 2006
P.L. 109-288 - Child and Family Services Improvement Act of 2006
P.L. 109-248 - Adam Walsh Child Protection and Safety Act of 2006
P.L. 109-239 - Safe and Timely Interstate Placement of Foster Children Act of 2006
P.L. 109-171 - Deficit Reduction Act of 2005
P.L. 109-113 - Fair Access Foster Care Act of 2005
P.L. 108-145 - Adoption Promotion Act of 2003
P.L. 108-36 - Keeping Children and Families Safe Act of 2003
P.L. 107-133 - Promoting Safe and Stable Families Amendments of 2001
P.L. 106-279 - Intercountry Adoption Act of 2000
P.L. 106-177 - Child Abuse Prevention and Enforcement Act of 2000
P.L. 106-169 - Foster Care Independence Act of 1999
P.L. 105-89 - Adoption and Safe Families Act of 1997
P.L. 104-235 - Child Abuse Prevention and Treatment Amendments of 1996
P.L. 104-188 - Interethnic Adoption Provisions (IEPA) of the Small Business Job Protection Act of 1996

www.acf.hhs.gov/cb/laws-policies/federal-laws/legislation

See also:

Child Welfare Policy Manual which contains "mandatory policies that are based in federal law and/or program regulations [and] also provides interpretations of federal laws and program regulations initiated by inquiries from state and tribal child welfare agencies or ACF Regional Offices." www.acf.hhs.gov/cb/laws-policies

➤ **Summary of federal laws**

Child Welfare Information Gateway web site contains a factsheet on "Major Federal Legislation Concerned With Child Protection, Child Welfare, and Adoption" which is accessible at: www.childwelfare.gov/pubPDFs/majorfedlegis.pdf

Child Welfare Information Gateway. (2019). *Major Federal legislation concerned with child protection, child welfare, and adoption.* Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

See also:

> In re S.A.M., 826 So. 2d 1266, 126 (Miss. 2002) ("Congress recently enacted the Adoption and Safe Families Act of 1997 . . . in order to increase the safety of children. In pursuing that goal, ASFA provides that 'reasonable efforts' to reunite children with their parents 'shall not be required ... if a court of competent jurisdiction has determined that (i) the parent has subjected the child to aggravated circumstances as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse.' 42 U.S.C.A. § 671(a)(15)(D)(i) (Supp.2000). Essentially, ASFA clarifies that a child need not be forced to remain in or be returned to an unsafe home and allows the States to place the safety and welfare of the child before the interest of abusive parents.").
>
> In re Interest of S.F., No. 00-0137, 2000 WL 961591 (Iowa Ct. App. July 12, 2000) ("Federal law does make it clear, however, the case plan for each child is an integral element of the reasonable efforts implementation process. The federal regulations implementing the reasonable efforts requirement mandate each child's case plan must contain a description of what services were offered and provided to prevent removal of the child from the home and to reunify the family.").
>
> Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* 24 (2014) ("The Children's Bureau, Administration for Children and Families, conducts Title IV-E Foster Care Eligibility Reviews every few years in each state. The review is a collaborative process between each state agency and its stakeholders.64 The purposes of the review are (1) to determine if the state is in compliance with the child eligibility requirements as outlined in 45 CFR §1356.71 and §§671 and 672 of the Social Security Act and (2) to validate the basis of the financial claims of the state to ensure that the state made appropriate payments on behalf of eligible children and to qualified homes and institutions."). http://judgeleonardedwards.com/docs/reasonableefforts.pdf
>
> North American Council on Adoptable Children (NACAC) web site which provides a summary of key federal laws that affect children in foster care and those who are adopted from care. www.nacac.org/advocate/key-us-child-welfare-laws/

Casey Family Programs web site (www.casey.org/) contains numerous policy resources and practice tools. For example:

The Child Abuse Prevention and Treatment Act (May 21, 2019)
www.casey.org/child-abuse-prevention-treatment-act/

Child and Family Services (CFS) Practice Model: A Safe and Permanent Family for Every Youth (December 28, 2018)
www.casey.org/practice-model/

Fostering Connections to Success and Increasing Adoptions Act: Improving Lives and Opportunities for Children in Foster Care (April 6, 2009)
www.casey.org/fostering-connections-success/

CHAPTER 9

TAKING INTO CUSTODY

900 REPORTING ABUSE OR NEGLECT

- **Duty to report and referrals to the youth court intake unit**
- **CPS to inform the individual of the specific complaints or allegations**
- **CPS duties when report alleges sexual abuse, serious bodily harm, or felonious abuse**
- **Report of abuse or neglect to include certain information**
- **Statewide incoming wide-area telephone service or similar service**
- **Confidentiality of the report and the identity of the reporter**
- **Final dispositions of CPS investigations determined by the youth court**
- **Request for law enforcement officer to accompany CPS in its investigation**
- **Penalties for failure to comply with § 43-21-353**
- **When CPS investigates a report of abuse or neglect in an out-of-home setting**
- **Providing parents or guardians with information of support services**

901 PRELIMINARY INQUIRY

902 COURT ORDERS UPON INTAKE RECOMMENDATIONS

903 INFORMAL ADJUSTMENT PROCESS

904 TEMPORARY CUSTODY ORDERS / CUSTODY ORDERS

905 TAKING INTO CUSTODY WITHOUT A CUSTODY ORDER

906 RELEASE FROM CUSTODY UPON CHANGE OF CIRCUMSTANCES

907 PREPARING FOR THE SHELTER HEARING

908 TAKING INTO CUSTODY CHECKLIST

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➤ **Duty to report and referrals to the youth court intake unit**

§ 43-21-353

(1) Any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, public or private school employee or any other person having ***REASONABLE CAUSE TO SUSPECT THAT A CHILD IS A NEGLECTED CHILD, AN ABUSED CHILD***, or a victim of commercial sexual exploitation or human trafficking shall cause an oral report to be made immediately by telephone or otherwise and followed as soon thereafter as possible by a report in writing to the Department of Child Protection Services, and immediately a referral shall be made by the Department of Child Protection Services to the youth court intake unit, which unit shall promptly comply with Section 43-21-357.

§ 43-21-105

(hh) "Commercial sexual exploitation" means any sexual act or crime of a sexual nature, which is committed against a child for financial or economic gain, to obtain a thing of value for quid pro quo exchange of property or for any other purpose.

§ 97-3-54.1

(4) In addition to the mandatory reporting provisions contained in Sections 43–21–353 and 97–5–51, any person who has reasonable cause to suspect that a minor under the age of eighteen (18) is a trafficked person shall immediately make a report of the suspected child abuse or neglect to the Department of Child Protection Services and to the Statewide Human Trafficking Coordinator. The Department of Child Protection Services or the Statewide Human Trafficking Coordinator, whichever is applicable, shall then immediately notify the law enforcement agency in the jurisdiction where the suspected child abuse neglect or trafficking occurred as required in Section 43–21–353, and the department that received the report shall also commence an initial investigation into the suspected abuse or neglect as required in Section 43–21–353.

A guardian ad litem must adhere to the mandatory reporting requirements set forth in section 43-21-353 of the Mississippi Code, and as otherwise required by law, if there is reasonable cause to suspect that a child is a neglected child or an abused child. This reporting requirement applies to a guardian ad litem when acquiring information for reasonable cause to suspect:

- the abuse or neglect of a child that is more severe, or of a different nature, than what is alleged in the petition;
- the abuse or neglect of a child not named in the petition; and
- any new instances of abuse or neglect of a child after the filing of the petition.

IF THERE IS AN IMMINENT RISK OF HARM TO THE CHILD, THEN CALL 911!

Once a report is made, the Department of Child Protection Services must immediately make a referral to the youth court intake unit, which unit shall promptly comply with Section 43–21–357.

See also:

Miss. Code Ann. § 43-21-351 ("Any person or agency having knowledge that a child residing or being within the county is within the jurisdiction of the youth court may make a written report to the intake unit alleging facts sufficient to establish the jurisdiction of the youth court.").

Miss. Code Ann. § 43-21-355 (providing civil and criminal immunity for reports of abuse or neglect made in good faith).

➤ **CPS to inform the individual of the specific complaints or allegations**

§ 43-21-353

(1) . . . In the course of an investigation, at the initial time of contact with the individual(s) about whom a report has been made under this Youth Court Act or with the individual(s) responsible for the health or welfare of a child about whom a report has been made under this chapter, the Department of Child Protection Services shall inform the individual of the specific complaints or allegations made against the individual. Consistent with subsection (4), the identity of the person who reported his or her suspicion shall not be disclosed at that point. Where appropriate, the Department of Child Protection Services shall additionally make a referral to the youth court prosecutor.

➤ **CPS duties when report alleges sexual abuse, serious bodily harm, or felonious abuse**

§ 43-21-353

(1) . . . Upon receiving a report that a child has been sexually abused, is a victime of commercial sexual exploitation or human trafficking or has been burned, tortured, mutilated or otherwise physically abused in such a manner as to cause serious bodily harm, or upon receiving any report of abuse that would be a felony under state or federal law, the Department of Child Protection Services shall immediately notify the law enforcement agency in whose jurisdiction the abuse occurred. Within forty-eight (48) hours, the department must notify the appropriate prosecutor and the Statewide Human Trafficking Coordinator. The department shall have the duty to provide the law enforcement agency all the names and facts known at the time of the report; this duty shall be of a continuing nature. The law enforcement agency and the department shall investigate the reported abuse immediately and shall file a preliminary report with the appropriate prosecutor's office within twenty-four (24) hours and shall make additional reports as new or additional information or evidence becomes available. ***THE DEPARTMENT SHALL ADVISE THE CLERK OF THE YOUTH COURT AND THE YOUTH COURT PROSECUTOR OF ALL CASES OF ABUSE REPORTED TO THE DEPARTMENT WITHIN SEVENTY-TWO (72) HOURS AND SHALL UPDATE SUCH REPORT AS INFORMATION BECOMES AVAILABLE.*** In addition, if the Department of Child Protection Services determines that a parent or other person responsible for the care or welfare of an abused or neglected child maintains active duty status within the military, the department shall notify the applicable military installation family advocacy program that there is an allegation of abuse or neglect that relates to that child.

➤ **Report of abuse or neglect to include certain information**

§ 43-21-353

(2) Any report shall contain the names and addresses of the child and his parents or other persons responsible for his care, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, any other information that might be helpful in establishing the cause of the injury, and the identity of the perpetrator.

➤ **Statewide incoming wide-area telephone service or similar service**

§ 43-21-353

> (3) The Department of Child Protection Services shall maintain a statewide incoming wide-area telephone service or similar service for the purpose of receiving reports of suspected cases of child abuse, commercial sexual exploitation or human trafficking; provided that any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer or public or private school employee who is required to report under subsection (1) of this section shall report in the manner required in subsection (1).

See also Miss. Code Ann. § 43-21-354 ("The statewide incoming wide area telephone service established pursuant to Section 43-21-353, Mississippi Code of 1972, shall be maintained by the Department of Public Welfare, or its successor, on a twenty-four-hour seven (7) days a week basis.").

➤ **Confidentiality of the report and the identity of the reporter**

§ 43-21-353

> (4) Reports of abuse, neglect, commercial sexual exploitation or human trafficking made under this chapter and the identity of the reporter are confidential except when the court in which the investigation report is filed, in its discretion, determines the testimony of the person reporting to be material to a judicial proceeding or when the identity of the reporter is released to law enforcement agencies and the appropriate prosecutor pursuant to subsection (1). Reports made under this section to any law enforcement agency or prosecutorial officer are for the purpose of criminal investigation and prosecution only and no information from these reports may be released to the public except as provided by Section 43-21-261. Disclosure of any information by the prosecutor shall be according to the Mississippi Uniform Rules of Circuit and County Court Procedure. The identity of the reporting party shall not be disclosed to anyone other than law enforcement officers or prosecutors without an order from the appropriate youth court. Any person disclosing any reports made under this section in a manner not expressly provided for in this section or Section 43-21-261, shall be guilty of a misdemeanor and subject to the penalties prescribed by Section 43-21-267. Notwithstanding the confidentiality of the reporter's identity under this section, the Department of Child Protection Services may disclose a reporter's identity to the appropriate law enforcement agency or prosecutor if the department has reason to suspect the reporter has made a fraudulent report, and the Department of Child Protection Services must provide to the subject of the alleged fraudulent report written notification of the disclosure.

➤ **Final dispositions of CPS investigations determined by the youth court**

§ 43-21-353

> (5) All final dispositions of law enforcement investigations described in subsection (1) of this section shall be determined only by the appropriate prosecutor or court. ***ALL FINAL DISPOSITIONS OF INVESTIGATIONS BY THE DEPARTMENT OF CHILD PROTECTION SERVICES AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION SHALL BE DETERMINED ONLY BY THE YOUTH COURT.*** Reports made under subsection (1) of this section by the Department of Child Protection Services to the law enforcement agency and to the district attorney's office shall include the following, if known to the department:
> (a) The name and address of the child;
> (b) The names and addresses of the parents;
> (c) The name and address of the suspected perpetrator;
> (d) The names and addresses of all witnesses, including the reporting party if a material witness to the abuse;
> (e) A brief statement of the facts indicating that the child has been abused, including whether the child experienced commercial sexual exploitation or human trafficking, and any other information from the agency files or known to the family protection worker or family protection specialist making the investigation, including medical records or other records, which may assist law enforcement or the district attorney in investigating and/or prosecuting the case; and
> (f) What, if any, action is being taken by the Department of Child Protection Services.

➤ **Request for law enforcement officer to accompany CPS in its investigation**

§ 43-21-353

> (6) In any investigation of a report made under this chapter of the abuse or neglect of a child as defined in Section 43-21-105(l) or (m), the Department of Child Protection Services may request the appropriate law enforcement officer with jurisdiction to accompany the department in its investigation, and in such cases the law enforcement officer shall comply with such request.

If this request is made, then the law enforcement officer accompanying the CPS worker may become a witness in the youth court proceedings.

➤ **Penalties for failure to comply with § 43-21-353**

§ 43-21-353

(7) Anyone who willfully violates any provision of this section shall be, upon being found guilty, punished by a fine not to exceed Five Thousand Dollars ($5,000.00), or by imprisonment in jail not to exceed one (1) year, or both.

➤ **When CPS investigates a report of abuse or neglect in an out-of-home setting**

§ 43-21-353

(8) If a report is made directly to the Department of Child Protection Services that a child has been abused or neglected or experienced commercial sexual exploitation or human trafficking in an out-of-home setting, a referral shall be made immediately to the law enforcement agency in whose jurisdiction the abuse occurred and the department shall notify the district attorney's office and Statewide Human Trafficking Coordinator within forty-eight (48) hours of such report. The Department of Child Protection Services shall investigate the out-of-home setting report of abuse or neglect to determine whether the child who is the subject of the report, or other children in the same environment, comes within the jurisdiction of the youth court and shall report to the youth court the department's findings and recommendation as to whether the child who is the subject of the report or other children in the same environment require the protection of the youth court. The law enforcement agency shall investigate the reported abuse immediately and shall file a preliminary report with the district attorney's office within forty-eight (48) hours and shall make additional reports as new information or evidence becomes available. If the out-of-home setting is a licensed facility, an additional referral shall be made by the Department of Child Protection Services to the licensing agency. The licensing agency shall investigate the report and shall provide the department, the law enforcement agency and the district attorney's office with their written findings from such investigation as well as that licensing agency's recommendations and actions taken.

➤ **Providing parents or guardians with information of support services**

§ 43-21-353

(9) If a child protective investigation does not result in an out-of-home placement, a child protective investigator must provide information to the parent or guardians about community service programs that provide respite care, voluntary guardianship or other support services for families in crisis.

In some respects, § 43-21-353(9) is where "reasonable efforts" begins. A guardian ad litem should review the intake report to see if the child protective investigator informed the parent or guardian of available support services and, if so, which ones. Remember, too, that Miss. Code Ann. § 43-21-353(1) requires CPS to update its "report as information becomes available."

See also:

> Miss. Code Ann. § 43-21-105(gg) ("(gg) 'Reasonable efforts' means the exercise of reasonable care and due diligence by the Department of Human Services, the Department of Child Protection Services, or any other appropriate entity or person to use appropriate and available services to prevent the unnecessary removal of the child from the home or provide other services related to meeting the needs of the child and the parents.").

901 PRELIMINARY INQUIRY

➤ Intake recommendations

U.R.Y.C.P. 8

> (b) Child protection proceedings. Whenever an intake screening process has been conducted pursuant to section 43-21-357(1) of the Mississippi Code and it appears that the child is an abused or neglected child, the youth court intake unit shall recommend to the court:
> (1) that the youth court take no action;
> (2) that an informal adjustment process be made;
> (3) that the Department of Human Services, Division of Family and Children's Services, or other appointed intake unit, monitor the child, family and other children in the same environment;
> (4) that the parents be warned or counseled informally; or
> (5) that the matter be referred to the youth court prosecutor for consideration of initiating formal proceedings.
> The youth court shall then, without a hearing, order the appropriate action to be taken in accordance with Rule 9(b) of these rules. ***IF THE INTAKE SCREENING PROCESS DISCLOSES THAT A CHILD NEEDS EMERGENCY MEDICAL TREATMENT, THE JUDGE MAY ORDER THE NECESSARY TREATMENT.***

See also U.R.Y.C.P. 8(c), which sets forth chancery proceedings as to abuse or neglect.

Advisory Note to Rule 8(b)

When the intake unit receives a report of an abused or neglected child it must immediately forward the complaint to the Department of Human Services, Division of Family and Children's Services, or other appointed intake unit, to make an investigation concerning the child, and any other children in the same environment, and promptly present the findings to the intake unit. If it appears from the intake screening process that the child is an abused or neglected child, the intake unit must make a recommendation to the youth court pursuant to Rule 8(b) of this rule – even if the recommendation is that no action be taken. The youth court shall then, without a hearing, order the appropriate action to be taken. This procedure assures that the youth court is made aware of every valid report received by the intake unit. ***THE YOUTH COURT, AND NOT THE INTAKE UNIT, DETERMINES HOW EACH CASE PROCEEDS.***

Advisory Note to Rule 8(c)

Rule 8(c) is to assure, consistent with Rule 2 of these rules, that chancery court procedures for investigating charges of abuse or neglect are consistent with those applicable to youth court. When a chancellor orders the investigation of abuse or neglect, the Department of Human Services, Division of Family and Children's Services follows normal intake procedures. Upon receiving the intake recommendation, the chancery court must decide whether to hear the case or transfer it to youth court. ***IF THE CHANCERY COURT DECIDES TO HEAR THE CASE, THEN IT MUST FOLLOW ALL PROCEDURES REQUIRED OF A YOUTH COURT UNDER THESE RULES.***

See also Miss. Code Ann. § 43–21–357 (preliminary inquiry).

(b) Child protection proceedings.
(1) No action to be taken. The court may order that no action be taken if such is in the best interest of the child and in the interest of justice.
(2) Informal adjustment process to be made. The court may order the Department of Human Services, Division of Family and Children's Services to conduct an informal adjustment process pursuant to sections 43-21-401 through 43-21-407 of the Mississippi Code. No informal adjustment process may commence except upon an order of the court. Every informal adjustment process shall include:
(i) the giving of counsel and advice to the child and the child's parent, guardian, or custodian;
(ii) referrals to public and private agencies which may provide benefits, guidance or services to the child or the child's parent, guardian or custodian; and
(iii) temporary placement of the child or supervision by the Department of Human Services, Division of Family and Children's Services with the consent of the child and the child's parent, guardian or custodian, subject to review by the court.
If the child and the child's parent, guardian or custodian agree to participate in an informal adjustment process, the defense of a failure to provide a speedy trial is waived and a petition may be filed if the informal adjustment process is unsuccessfully terminated under section 43-21-407 of the Mississippi Code. If authorized by the court, an informal adjustment process may be commenced after the filing of a petition.
(3) Monitor the child, family and other children in the same environment. The court may order the Department of Human Services, Division of Family and Children's Services to monitor the child, family and other children in the same environment.
(4) The parent(s) to be warned or counseled informally. The court may order the parent(s) to be warned or counseled informally in accordance with the policies of the Department of Human Services, Division of Family and Children's Services.
(5) Referral to the youth court prosecutor for consideration of initiating formal proceedings. The court may refer the matter to the youth court prosecutor for consideration of initiating formal proceedings, whereupon the youth court prosecutor must:
(i) file a petition;
(ii) make a written request for the court to handle the matter informally, which may include an appropriate recommendation to the court for consideration; or
(iii) make a written request that the court dismiss the proceedings.

903 INFORMAL ADJUSTMENT PROCESS

§ 43-21-401

(1) Informal adjustment pursuant to the informal adjustment agreement provided in Section 43-21-405 shall include:
(a) the giving of counsel and advice to the child and his parent, guardian or custodian;
(b) referrals to public and private agencies which may provide benefits, guidance or services to the child and his parent, guardian or custodian;
(c) temporary placement of the child or supervision by the youth court counselor with the consent of the child and his parent, guardian or custodian, subject to youth court review.
(2) If authorized by the youth court, informal adjustment may be commenced after the filing of a petition.
(3) If the child and his parent, guardian or custodian agree to participate in an informal adjustment process, the defense of a failure to provide a speedy trial is waived and a petition may be filed if the informal adjustment process is unsuccessfully terminated under Section 43-21-407.

§ 43-21-403

When it is determined to make an informal adjustment, the child and his parent, guardian or custodian shall be requested by letter, telephone or otherwise to attend a conference at a designated date, time and place. At the time the request to attend the conference is made, the child and his parent, guardian or custodian shall be informed that attendance at the conference is voluntary and that they may be represented by counsel or other person of their choice at the conference.

§ 43-21-405

(1) The informal adjustment process shall be initiated with an informal adjustment conference conducted by an informal adjustment counselor appointed by the judge or his designee.
(2) If the child and his parent, guardian or custodian appear at the informal adjustment conference without counsel, the informal adjustment counselor shall, at the commencement of the conference, inform them of their right to counsel, the child's right to appointment of counsel and the right of the child to remain silent. If either the child or his parent, guardian or custodian indicates a desire to be represented by counsel, the informal adjustment counselor shall adjourn the conference to afford an opportunity to secure counsel.
(3) At the beginning of the informal adjustment conference, the informal adjustment counselor shall inform the child and his parent, guardian or custodian:
(a) That information has been received concerning the child which appears to establish jurisdiction of the youth court;

(b) The purpose of the informal adjustment conference;
(c) That during the informal adjustment process no petition will be filed;
(d) That the informal adjustment process is voluntary with the child and his parent, guardian or custodian and that they may withdraw from the informal adjustment at any time; and
(e) The circumstances under which the informal adjustment process can be terminated under Section 43-21-407.
(4) The informal adjustment counselor shall then discuss with the child and his parent, guardian or custodian:
(a) Recommendations for actions or conduct in the interest of the child to correct the conditions of behavior or environment which may exist;
(b) Continuing conferences and contacts with the child and his parent, guardian or custodian by the informal adjustment counselor or other authorized persons; and
(c) The child's general behavior, his home and school environment and other factors bearing upon the proposed informal adjustment.
(5) After the parties have agreed upon the appropriate terms and conditions of informal adjustment, the informal adjustment counselor and the child and his parent, guardian or custodian shall sign a written informal adjustment agreement setting forth the terms and conditions of the informal adjustment. The informal adjustment agreement may be modified at any time upon the consent of all parties to the informal adjustment conference.
(6) The informal adjustment process shall not continue beyond a period of six (6) months from its commencement unless extended by the youth court for an additional period not to exceed six (6) months by court authorization prior to the expiration of the original six-month period. In no event shall the custody or supervision of a child which has been placed with the Department of Public Welfare be continued or extended except upon a written finding by the youth court judge or referee that reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody, and that reasonable efforts will continue to be made towards reunification of the family.

U.R.Y.C.P. 13(a)

(a) Appointment of guardian ad litem. The court shall appoint a guardian ad litem for the child when custody is ordered or at the first judicial hearing regarding the case, whichever occurs first,
(1) when a child has no parent, guardian or custodian;
(2) when the court cannot acquire personal jurisdiction over a parent, a guardian or a custodian;
(3) when the parent is a minor or a person of unsound mind;
(4) when the parent is indifferent to the interest of the child or if the interests of the child and the parent, considered in the context of the cause, appear to conflict;
(5) in every case involving an abused or neglected child which results in a judicial proceeding; or
(6) in any other instance where the court finds appointment of a guardian ad litem to be in the best interest of the child.
Upon appointment of a guardian ad litem, the court shall continue any pending proceedings for a reasonable time to allow the guardian ad litem to become familiar with the matter, consult with counsel and prepare for the cause.

U.R.Y.C.P. 11

(b) Child protection proceedings.
(1) When a custody order may be issued. The youth court judge or referee, or the judge's designee, or a chancellor when hearing, pursuant to section 93-11-65 of the Mississippi Code, an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action, and no other judge of another court, may issue an order to take into custody a child within the exclusive original jurisdiction of the youth court, for a period not to exceed forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays, if the court finds and the custody order recites that:
(i) there is probable cause the child is within the jurisdiction of the court; and
(ii) there is probable cause that custody is necessary.

CUSTODY SHALL BE DEEMED NECESSARY: (1) WHEN A CHILD IS ENDANGERED OR ANY PERSON WOULD BE ENDANGERED BY THE CHILD; OR TO INSURE THE CHILD'S ATTENDANCE IN COURT AT SUCH TIME AS REQUIRED; OR WHEN A PARENT, GUARDIAN OR CUSTODIAN IS NOT AVAILABLE TO PROVIDE FOR THE CARE AND SUPERVISION OF THE CHILD; AND (2) THERE IS NO REASONABLE ALTERNATIVE TO CUSTODY.

Unless there is substantial compliance with these procedures, the court shall order the child to be released to the custody of the child's parent, guardian, or custodian.

Any order placing a child into custody shall comply with the requirements provided in section 43-21-301 of the Mississippi Code.
(2) Order requirements. The temporary custody order or custody order may be written or oral, but, if oral, reduced to writing as soon as practicable. The written order shall:
(i) specify the name and address of the child, or, if unknown, designate the child by any name or description by which the same can be identified with reasonable certainty;
(ii) specify the age of the child, or, if unknown, that the child is believed to be of an age subject to the jurisdiction of the youth court;
(iii) state that the effect of the continuation of the child's residing within the child's own home would be contrary to the welfare of the child, that the placement of the child in foster care or relative care is in the best interest of the child;
(iv) state and specify, unless the reasonable efforts requirement is bypassed under section 43-21-603(7)(c) of the Mississippi Code, that:
(a) reasonable efforts have been made to maintain the child within the child's own home, but that the circumstances warrant the child's removal and there is no reasonable alternative to custody; or
(b) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within the child's own home, there is no reasonable alternative to custody, and reasonable efforts be made towards the reunification of the child with the child's family;
(v) state that the child be brought immediately before the youth court or be taken to a place designated by the order to be held pending review of the order;
(vi) state the date issued and the youth court by which the order is issued; and
(vii) be signed by the youth court judge or referee, the judge's designee, or chancellor, with the title of his/her office.

No child in the custody of the Department of Human Services, Division of Family and Children's Services shall be placed in a foster care setting that has not been licensed or approved as meeting the Department of Human Services, Division of Family and Children's Services licensure standards, except that a child may be placed with a relative if there is: (1) an emergency process, as developed by the Department of Human Services, Division of Family and Children's Services in conjunction with the Council on Accreditation, that enables, after an initial screening of the relative's home in accordance with Mississippi's Settlement Agreement and Reform Plan, the child to be placed with the relative as soon as the child enters placement, and (2) a full licensing process, which shall be completed no later than sixty (60) calendar days after the child has entered placement. The Department of Human Services, Division of Family and Children's Services may waive non-safety licensing requirements for relative foster placements in individual cases pursuant to federal regulations.
(3) Reasonable efforts, judicial determination required. Within sixty (60) days from the date of the child being removed from the child's home pursuant to the court's temporary custody order or custody order, the court shall conduct a

hearing to determine whether the Department of Human Services, Division of Family and Children's Services has made reasonable efforts to prevent the removal of the child from the child's home or, pursuant to section 43-21-603(7) of the Mississippi Code, whether reasonable efforts were not required to prevent the removal.

(i) If reasonable efforts are made, but removal remains in the best interest of the child. If the court determines that the Department of Human Services, Division of Family and Children's Services has made reasonable efforts to prevent the removal of the child from the child's home but that removal remains in the best interest of the child, the court shall adopt a permanency plan and a concurrent plan and order that the Department of Human Services, Division of Family and Children's Services make reasonable efforts to timely finalize the permanency plan and concurrent plan for the child. Thereafter, until the permanency plan or concurrent plan is achieved, the court shall conduct a permanency hearing and permanency review hearings pursuant to these rules.

(ii) If reasonable efforts are not required for removal of the child. If the court determines that, pursuant to section 43-21-603(7) of the Mississippi Code, reasonable efforts were not required to prevent the removal of the child from the child's home, it shall adopt a permanency plan and concurrent plan and order that the Department of Human Services, Division of Family and Children's Services make reasonable efforts to timely finalize the adopted permanency plan and concurrent plan for the child. Thereafter, until the permanency plan or concurrent permanency plan is achieved, the court shall conduct a permanency hearing and permanency review hearings pursuant to these rules.

(4) Additional orders. After a child is ordered into custody, the court may:

(i) arrange for the custody of the child with any private institution or agency caring for children;

(ii) commit the child to the Department of Mental Health pursuant to section 41-21-61 et seq.; or

(iii) order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of the child.

Advisory Note to Rule 11(b)(2)

The foster child relative licensing process consists of: (1) an emergency process and (2) a full licensing process. The emergency process requires, in accordance with Mississippi Department of Human Services policies, that background checks and Central Registry checks be completed on all persons residing in the home who are fourteen (14) years of age or older and the completion of an emergency placement safety checklist of the home. The full licensing process requires, in accordance with Mississippi Department of Human Services policies, that the relative completes, within 60 calendar days after the child has been placed in the home, the full home study, fifteen hours of training, and all other licensure requirements. See RESOURCE FAMILY LICENSURE POLICY, MDHS POLICY MANUAL 4500-43 (2008); see also Olivia Y., 351 F. Supp. 2d 543 (S.D. Miss.

2004) (regarding the placement of children in DCFS custody with available relatives).

Emergency Placement Safety Checklist.
The Emergency Placement Safety Checklist requires the family protection specialist or caseworker to:
conduct a local law enforcement background check;
conduct a MACWIS background check;
conduct a gun safety check (all weapons shall be safely stored away);
check that all utilities are working;
check that there is access to an operable telephone;
check that there is clear access to exits;
check that hazardous substances are safeguarded;
check that premises are free of rodents and insects;
check that the refrigerator, stove and oven are operable;
check that there is a functional sewage system; and
check that the interior plumbing has running warm and cold water.

For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "reasonable efforts" determination must be made no later than 60 days from the date the child is removed from the home. See 42 U.S.C. §§ 672(a)(2)(A), -671(a)(15) (2008); 45 C.F.R. § 1356.21(b)(1) (2008).
For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "contrary to the welfare" determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home. See 42 U.S.C. § 672(a)(2)(A) (2008); 45 C.F.R. § 1356.21(c) (2008).

§ 43–21–301

(1) No court other than the youth court shall issue an arrest warrant or custody order for a child in a matter in which the youth court has exclusive original jurisdiction but shall refer the matter to the youth court.
(2) Except as otherwise provided, no child in a matter in which the youth court has exclusive original jurisdiction shall be taken into custody by a law enforcement officer, the Department of Human Services, the Department of Child Protection Services, or any other person unless the judge or his designee has issued a custody order to take the child into custody.
(3) The judge or his designee may require a law enforcement officer, the Department of Human Services, the Department of Child Protection Services, or any suitable person to take a child into custody for a period not longer than forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays.
(a) Custody orders under this subsection may be issued if it appears that there is probable cause to believe that:
(i) The child is within the jurisdiction of the court;

(ii) Custody is necessary because of any of the following reasons: the child is endangered, any person would be endangered by the child, to ensure the child's attendance in court at such time as required, or a parent, guardian or custodian is not available to provide for the care and supervision of the child; and
(iii) There is no reasonable alternative to custody.
A finding of probable cause under this subsection (3)(a) shall not be based solely upon a positive drug test of a newborn or parent for marijuana; however, a finding of probable cause may be based upon an evidence-based finding of harm to the child or a parent's inability to provide for the care and supervision of the child due to the parent's use of marijuana. ***PROBABLE CAUSE FOR UNLAWFUL USE OF ANY CONTROLLED SUBSTANCE, EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (3)(a) FOR MARIJUANA, MAY BE BASED:***

1. upon a parent's positive drug test for unlawful use of a controlled substance only if the child is endangered or the parent is unable to provide proper care or supervision of the child because of the unlawful use and there is no reasonable alternative to custody; and

2. upon a newborn's positive drug screen for a controlled substance that was used unlawfully only if the child is endangered or the parent is unable to provide proper care or supervision of the child because of the unlawful use and there is no reasonable alternative to custody.

(b) Custody orders under this subsection shall be written. In emergency cases, a judge or his designee may issue an oral custody order, but the order shall be reduced to writing within forty-eight (48) hours of its issuance.
(c) Each youth court judge shall develop and make available to law enforcement a list of designees who are available after hours, on weekends and on holidays.
(4) The judge or his designee may order, orally or in writing, the immediate release of any child in the custody of any person or agency. Except as otherwise provided in subsection (3) of this section, custody orders as provided by this chapter and authorizations of temporary custody may be written or oral, but, if oral, reduced to writing within forty-eight (48) hours, excluding Saturdays, Sundays and statutory state holidays. The written order shall:
(a) Specify the name and address of the child, or, if unknown, designate him or her by any name or description by which he or she can be identified with reasonable certainty;
(b) Specify the age of the child, or, if unknown, that he or she is believed to be of an age subject to the jurisdiction of the youth court;
(c) Except in cases where the child is alleged to be a delinquent child or a child in need of supervision, state that the effect of the continuation of the child's residing within his or
her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interests of the child, and unless the

reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), also state that (i) reasonable efforts have been made to maintain the child within his or her own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or (ii) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody. If the court makes a finding in accordance with (ii) of this paragraph, the court shall order that reasonable efforts be made towards the reunification of the child with his or her family;

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

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

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

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

§ 43-21-307

The judge or his designee may authorize the temporary custody of a child taken into custody for a period of not longer than forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays if the judge or his designee finds there are grounds to issue a custody order as defined in Section 43-21-301 and such custody order complies with the detention requirements provided in Section 43-21-301(6).

See also:

In re E.K., 249 So. 3d 377, 388 (Miss. 2018) ("[The mother's] marijuana usage does not negate the requirement of a causal connection between the drug usage and the neglect. This is a familiar concept under the Youth Court Act in other contexts. For instance, a positive drug test for marijuana usage is insufficient on its own to establish probable cause for the issuance of a custody order.").

905 TAKING INTO CUSTODY WITHOUT A CUSTODY ORDER

U.R.Y.C.P. 12

Procedures for taking into custody without a custody order a child in a matter in which the youth court has exclusive original jurisdiction shall be pursuant to section 43-21-303 of the Mississippi Code. The custody of any child taken into custody shall comply with the detention requirements of sections 43-21-301(6) and 43-21-315 of the Mississippi Code.

Advisory Note to Rule 12

For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "reasonable efforts" determination must be made no later than 60 days from the date the child is removed from the home. See 42 U.S.C. §§ 672(a)(2)(A), -671(a)(15) (2008); 45 C.F.R. § 1356.21(b)(1) (2008). For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "contrary to the welfare" determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home. See 42 U.S.C. §§ 672(a)(2)(A) (2008); 45 C.F.R. § 1356.21(c) (2008).

§ 43-21-303

(1) No child in a matter in which the youth court has original exclusive jurisdiction shall be taken in custody by any person without a custody order except that:
(a) A law enforcement officer may take a child in custody if:
(i) Grounds exist for the arrest of an adult in identical circumstances; and
(ii) Such law enforcement officer has probable cause to believe that custody is necessary as defined in Section 43–21–301; and
(iii) Such law enforcement officer can find no reasonable alternative to custody; or
(b) A law enforcement officer or an agent of the Department of Child Protection Services or the Department of Human Services may take a child into immediate custody if:
(i) There is probable cause to believe that the child is in immediate danger of personal harm; however, probable cause shall not be based solely upon a positive drug test of a newborn or parent for marijuana, but a finding of probable cause may be based upon an evidence-based finding of harm to the child or a parent's inability to provide for the care and supervision of the child due to the parent's use of marijuana. Probable cause for unlawful use of any controlled substance, except as otherwise provided in this subparagraph (i) for marijuana, may be based: 1. upon a parent's positive drug test for unlawful use of a controlled substance only if the child is in danger of a significant risk of harm or the parent is unable to provide proper care or supervision of the child because of the unlawful use and

there is no reasonable alternative to custody; and 2. upon a newborn's positive drug screen for a controlled substance that was used unlawfully only if the child is endangered or the parent is unable to provide proper care or supervision of the child because of the unlawful use and there is no reasonable alternative to custody; and
(ii) There is probable cause to believe that immediate custody is necessary as set forth in Section 43–21–301(3); and
(iii) There is no reasonable alternative to custody; and
(c) Any other person may take a child into custody if grounds exist for the arrest of an adult in identical circumstances. Such other person shall immediately surrender custody of the child to the proper law enforcement officer who shall thereupon continue custody only as provided in subsection (1)(a) of this section.
(2) ***WHEN IT IS NECESSARY TO TAKE A CHILD INTO CUSTODY, THE LEAST RESTRICTIVE CUSTODY SHOULD BE SELECTED.***
(3) Unless the child is immediately released, the person taking the child into custody shall immediately notify the judge or his designee. A person taking a child into custody shall also make continuing reasonable efforts to notify the child's parent, guardian or custodian and invite the parent, guardian or custodian to be present during any questioning.
(4) A child taken into custody shall not be held in custody for a period longer than reasonably necessary, but not to exceed twenty-four (24) hours, and shall be released to his parent, guardian or custodian unless the judge or his designee authorizes temporary custody.

§ 43-21-311

(4) Except for the child's counsel, guardian ad litem and authorized personnel of the youth court, no person shall interview or interrogate a child held in a detention or shelter facility unless approval therefor has first been obtained from the judge or his designee. When a child in a detention or shelter facility is represented by counsel or has a guardian ad litem, no person may interview or interrogate the child concerning the violation of a state or federal law, or municipal or county ordinance by the child unless in the presence of his counsel or guardian ad litem or with their consent.

§ 43-21-315

(1) The youth court shall, by general order or rule of court, designate the available detention or shelter facilities to which children shall be delivered when taken into custody. Copies of the order or rule shall be made available to the Department of Human Services and all law enforcement agencies within the territorial jurisdiction of the youth court.
. . .
(4) After a child is ordered into custody, the youth court may arrange for the custody of the child with any private institution or agency caring for children, may

commit the child to the Department of Mental Health pursuant to Section 41-21-61 et seq., or may order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of such child. Provided, however, that the care, custody and maintenance of such child shall be within the statutory authorization and the budgetary means of such institution or facility.

See also:

Victor E. Flango, *Measuring Progress in Improving Court Processing of Child Abuse and Neglect Cases*, 39 Fam. Ct. Rev. 158, 161-62 (2001) ("Courts are charged by law to determine whether public agencies have made 'reasonable efforts' to preserve families and prevent the removal of children from their homes. They must also conduct frequent reviews to ensure that children are placed in the 'least restrictive' (most family-like) setting available and in close proximity to their parents' home.").

906 RELEASE FROM CUSTODY UPON CHANGE OF CIRCUMSTANCES

U.R.Y.C.P. 18

Procedures governing the release of a child from custody upon a change in circumstances shall be conducted pursuant to section 43-21-313 of the Mississippi Code.

§ 43-21-313

(1) A child held in custody under order of the youth court shall be released upon a finding that a change of circumstances makes continued custody unnecessary.
(2) A written request for the release of the child from custody, setting forth the changed circumstances, may be filed by the child; by the child's parent, guardian or custodian; by the child's counsel; ***OR BY THE CHILD'S GUARDIAN AD LITEM***, if any.
(3) Based upon the facts stated in the request, the judge may direct that a hearing be held at a date, time and place as fixed by the youth court. Reasonable notice of the hearing shall be given to the child; his parent, guardian or custodian; his counsel; and his guardian ad litem, if any, prior to the hearing. At the hearing, upon receiving evidence, the youth court may grant or deny the request.
(4) A child held in custody in violation of Section 43-21-301(6) shall be immediately transferred to a proper juvenile facility.

907 PREPARING FOR THE SHELTER HEARING

A guardian ad litem is appointed in child protection proceedings when custody is ordered or at the first judicial hearing regarding the case, whichever occurs first. When appointed, the court must continue any pending proceedings for a reasonable time to allow the guardian ad litem to become familiar with the matter, consult with counsel and prepare for the cause. *See* U.R.Y.C.P. 13. But, to hold the child in custody for longer than forty-eight (48) hours (excluding Saturdays, Sundays, and statutory state holidays) requires a shelter hearing–which is not a lot of time "to become familiar with the matter, consult with counsel and prepare for the cause." *See* Miss. Ann. § 43-21-307. However, there is a relief provision:

> "The child's guardian ad litem, and parent, guardian or custodian, and child may waive in writing the time of the shelter hearing or the shelter hearing itself. The child's consent is not required if the child has not reached ten (10) years of age."
>
> U.R.Y.C.P. 16.

Speak with the parent and the child as soon as possible. Inform them that your role is to act as an arm of the court in protecting the interest of the child, and not as the parties' attorney and that any statements made to you affecting the health, safety, or welfare of the child will be reported to the court. Explain to them that you want to make sure that:

- CPS procedures were properly followed;
- Grounds were proper for taking custody;
- Reasonable efforts, if required, were made to prevent the removal of the child from the home; and
- Least restrictive custody was selected.

Also, let them know that your recommendations to the court at the shelter hearing will largely depend upon the answers to these inquiries–including whether to recommend the appointment of counsel for the child and/or the parent.

Then ask them if they are agreeable to waiving the time of the shelter hearing (for a few days) so that you can more thoroughly investigate these matters.

THE CHILD'S INTERESTS ARE BEST SERVED WHEN THE CHILD'S AND THE PARENT'S DUE PROCESS RIGHTS ARE ZEALOUSLY PROTECTED.

If CPS procedures were not properly followed, or the grounds for taking custody are suspect, or least restrictive custody was not selected, or reasonable efforts were not made to maintain the child in the home despite no emergency circumstances excusing this requirement, then these irregularities should be brought to the attention of the court at the shelter hearing.

✓ Did CPS inform the parents of the specific complaints or allegations made against them?

✓ Did CPS inform the parents about community service programs that provide respite care, voluntary guardianship or other support services for families in crisis?

✓ Did CPS promptly report the findings and recommendations of its investigation to the youth court intake unit? Has CPS updated this report?

✓ Are the grounds for taking custody suspect?

See, e.g., Miss. Code Ann. § 43–21–301, which provides in part:

"***A FINDING OF PROBABLE CAUSE UNDER THIS SUBSECTION (3)(A) SHALL NOT BE BASED SOLELY UPON A POSITIVE DRUG TEST OF A NEWBORN OR PARENT FOR MARIJUANA***; however, a finding of probable cause may be based upon an evidence-based finding of harm to the child or a parent's inability to provide for the care and supervision of the child due to the parent's use of marijuana."

The guardian ad litem's role is to investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest. It is not to provide legal advice to the parent or child. On the other hand, if there are irregularities in the proceedings, then the guardian ad litem should consider whether to recommend the appointment of counsel for the parent.

✓ Did CPS make reasonable efforts *TO PREVENT* the unnecessary removal of the child from the home or provide other services related to meeting the needs of the child and the parents? Is CPS presently making reasonable efforts to reunite the child with the parent?

✓ Does the court's custody order state with specificity the reasons why "continuation of the child's residing within his or her own home would be contrary to the welfare of the child"?

✓ Was the *LEAST RESTRICTIVE CUSTODY* selected? That is, was the child placed in the most family-like setting available, such as with suitable relatives who are in close proximity to the parent's home?

See, e.g.:

"Placing children in relative care is a best practice, one that benefits the child in many ways. Relative placement minimizes trauma to the children since the children likely know the relatives. The relatives are more likely than foster parents to take large sibling groups, thus maintaining sibling contacts. Research has demonstrated that children placed with relatives fare better than those placed in foster care. They experience better stability, have fewer placement changes, fewer behavior problems, and not as many school changes. Living with a relative helps preserve a child's cultural identity and community connections and eliminates the unfortunate stigma that many foster children experience."

Judge Leonard Edwards, *Relative Placement: The Best Answer for Our Foster Care System*, The Juvenile Court Corner (Winter 2018).

http://judgeleonardedwards.com/docs/EdwardsCJAWinter2018.pdf

✓ Was the youth court intake unit's recommendation to the court consistent with CPS's findings and recommendation? Did the youth court intake unit specify why less severe alternatives–a warning or informal counseling, monitoring the home, or entering into an informal adjustment–were not recommended?

See, e.g., Advisory Note to Rule 9(b)(2), which states in part: "An instance where an informal adjustment process might be appropriate in child protection proceedings, *EVEN AFTER THE FILING OF THE PETITION*, is where the parent is temporarily unable to care for the child (e.g., inpatient drug and alcohol treatment), but a suitable relative is willing to do so for the short-term period."

✓ Is the child in need of emergency medical treatment?

✓ Has a referral been made to the youth court prosecutor for consideration of initiating formal proceedings?

✓ Has there been a change of circumstances that merits consideration?

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CHAPTER 10

SHELTER HEARINGS

1000 SHELTER HEARINGS

- **When a shelter hearing is required**
- **Reasonable notice of the hearing**
- **Opportunity to present evidence and cross-examine witnesses**
- **Probable cause determination**
- **Contrary to the welfare, best interests, and reasonable efforts determinations**
- **Factors for determining whether custody is necessary**
- **Federal time-line for making the initial reasonable efforts findings**
- **Scheduling the adjudication hearing**

1001 CUSTODY, CARE AND MAINTENANCE OF THE CHILD

- **Designated shelter facilities**
- **Court's authority when custody is ordered**

1002 RELEASE FROM CUSTODY UPON CHANGE OF CIRCUMSTANCES

1003 SHELTER HEARING CHECKLIST

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1000 SHELTER HEARINGS

➤ **When a shelter hearing is required**

U.R.Y.C.P. 16

> "(b) Child protection proceedings.
> A child who has been ordered or taken into custody may be held in custody for longer than temporary custody if:
> (1) A written report, complaint, or petition has been filed.. . ."

§ 43-21-307

> The judge or his designee may authorize *THE TEMPORARY CUSTODY OF A CHILD TAKEN INTO CUSTODY FOR A PERIOD OF NOT LONGER THAN FORTY-EIGHT (48) HOURS*, excluding Saturdays, Sundays, and statutory state holidays if the judge or his designee finds there are grounds to issue a custody order as defined in Section 43-21-301 and such custody order complies with the detention requirements provided in Section 43-21-301(6).

In other words–

IF THERE IS NO SHELTER HEARING, THEN A CHILD WHO HAS BEEN ORDERED OR TAKEN INTO TEMPORARY CUSTODY MUST BE RELEASED TO THE CUSTODY OF THE PARENT, GUARDIAN, OR CUSTODIAN.

Shelter hearings decisions are pivotal in how the caseproceeds*:*

> "Juvenile court experts assert that the most important hearing in the juvenile court process is the shelter care hearing. Both the Resource Guidelines and commentators conclude that after the child has been placed in foster care, family reunification becomes more difficult to achieve than prevention of placement in the first instance. Thus the shelter care hearing in the court process and the court's attention to the 'reasonable efforts to prevent removal' issue is a very critical point in the juvenile court process."
>
> Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* 43 (2014).
>
> http://judgeleonardedwards.com/docs/reasonableefforts.pdf

Pursuant to Rule 16(b)(5), if (after conducting the shelter hearing) the court orders custody, then it must also order "that a petition be filed if one has not been filed."

See also:

> U.R.Y.C.P. 20(c)(2) ("Time. The petition shall be filed within five (5) days from the date of a shelter hearing continuing custody. In noncustody cases, unless another period of time is authorized by the court, the petition shall be filed within ten (10) days of the court order authorizing the filing of a petition. The court may, in its discretion, dismiss the petition for failure to comply with the time schedule contained herein.").

➤ **Reasonable notice of the hearing**

Pursuant to Rule 16(b)(2), reasonable oral or written notice of the time, place and purpose of the hearing must be given to:

- the child;
- both of the child parents (not just the custodial parent), guardians or custodians;
- the child's guardian ad litem, if any; and
- the child's counsel.

Additionally, Miss. Code Ann. § 43-21-309 requires that notice be given to the child's Court-Appointed Special Advocate (CASA) volunteer, if any.

Under both Rule 16(b) and Miss. Code Ann. § 43-21-309, "[i]f the parent, guardian or custodian cannot be found, the youth court may hold the hearing in the absence of the child's parent, guardian or custodian." But, neither the rule nor the statute address the situation of the child's absence. Also, the phrase "cannot be found" is somewhat vague. Can the parent be contacted, then and there, by telephone or computer messaging? Is the reason for not appearing at the hearing due to the lack of reliable transportation or a medical emergency? This hearing is not a small claims action. Instead, especially for a natural or adoptive parent, it involves a fundamental liberty interest.

See also:

> Santosky v. Kramer, 455 U.S. 745, 745 (1982) ("The fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.").
>
> Miss. Code Ann. § 43-21-105(e) ("'Parent' means the father or mother to whom the child has been born, or the father or mother by whom the child has been legally adopted.").

IF THE COURT HOLDS THE HEARING IN THE ABSENCE OF THE NATURAL OR ADOPTIVE PARENT, THEN THE GUARDIAN AD LITEM SHOULD CONSIDER WHETHER A RECOMMENDATION FOR THE APPOINTMENT OF COUNSEL FOR THE PARENT IS IN THE CHILD'S BEST INTERESTS.

As previously stated, and certainly worth repeating:

THE CHILD'S INTERESTS ARE BEST SERVED WHEN THE CHILD'S AND THE PARENT'S DUE PROCESS RIGHTS ARE ZEALOUSLY PROTECTED.

Although the Rule 16(b) and Miss. Code Ann. § 43-21-309 are silent on whether the court may hold the hearing in the absence of the child, there seems to be support for it in certain circumstances:

> "If the child wants to be at a hearing and is not transported, the Model Act requires the court to postpone the hearing. The child's presence can only be excused by the lawyer after consulting with the child and ensuring the child wants his or her presence waived. The commentary provides the following factors to consider the manner in which the child will participate: '[W]hether the child wants to attend [the entire hearing], the child's age, the child's developmental ability, the child's emotional maturity, the purpose of the hearing and whether the child would be severely traumatized by such attendance.'"
>
> Andrea Khoury, *The True Voice of the Child: The Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings*, 36 Nova L. Rev. 313, 323 (2012).

➤ **Opportunity to present evidence and cross-examine witnesses**

Pursuant to Rule 16(b)(3), "[a]ll parties present are afforded the opportunity to present evidence and cross-examine witnesses produced by others."

The child is a party. Parents, guardians, and custodians are parties, too. But, do they really know the right questions to ask? Suppose a parent has limited English proficiency–but noone is aware of it? Or, is mentally deficient? Or, too shy to speak? Consider, also, that a parent may simply be intimidated or distressed by the courtroom surroundings. For that parent, it may all seem like a whirlwind of confusion. Yet, this hearing may separate the parent and child for a significant period of time–and, if things go awry in the reunification process, possibly forever. It's serious stuff.

IN CHANCERY COURT, a guardian ad litem (who is not a party) may be permitted to ask questions. But *that* guardian ad litem *is* an attorney. However, any questioning would be limited to acting "as an arm of the court in protecting the interest of the child, and not as the parties' attorney." U.R.Y.C.P. 13(c).

See also:

> Miss. Code Ann. § 93-11-65 ("[T]he chancery court shall appoint a guardian ad litem in such cases, as provided under Section 43-21-121 for youth court proceedings, who shall be an attorney.").

IN YOUTH COURT, a guardian ad litem who is not an attorney should not be presenting evidence or cross-examining witnesses. However, any guardian ad litem (whether an attorney or layman) may testify as a witness in accordance with the Uniform Rules of Youth Court Practice and the Mississippi Rules of Evidence.

See also:

> Miss. Code Ann. § 43-21-121(4) ("The court, including a county court serving as a youth court, may appoint either a suitable attorney or a suitable layman as guardian ad litem.");
>
> Miss. Code Ann. § 73-3-55 ("It shall be unlawful for any person to engage in the practice of law in this state who has not been licensed according to law.").
>
> U.R.Y.C.P. 16(b)(3) ("The youth court may receive any testimony and other evidence relevant to the necessity for the continued custody of the child without regard to the formal rules of evidence, including hearsay and opinion evidence. All testimony shall be made under oath and may be in narrative form.").
>
> MRE 1101(b)(4) ("Exceptions. These rules--except for those on privilege--do not apply to the following: (4) these miscellaneous proceedings: . . . probable cause hearings in . . . youth court cases;").

IS RECOMMENDING THE APPOINTMENT OF COUNSEL FOR THE PARENT IN THE CHILD'S BEST INTERESTS? IF NOT, THEN WHY NOT?

The traumatic effects of separation is a significant consideration in this assessment:

> "The court should evaluate both the current danger to the child, and what can be done to eliminate the danger. Harmful consequences of removal should also be considered. Removal is always a traumatic experience for a child. Once a child is removed it becomes logistically and practically more difficult to help a family resolve its problems."
>
> National Council of Juvenile and Family Court Judges, *Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 30 (1995).

In Mississippi, the parent is the preferred custodian and care-giver of the child. A youth court should only remove a child from the custody of the parent when it becomes necessary for securing proper care for the child:

> Removing a child from their parents' custody is an extreme measure, one that carries well-known benefits and risks. While removal to foster care can ensure the safety of some children, there are obvious risks of harm when they are legally and physically separated from their parents. ***CHILDREN SUFFER DEVELOPMENTALLY, EMOTIONALLY, AND SOCIALLY WHEN THEY ARE REMOVED FROM THEIR PARENTS' CUSTODY AND PLACED IN UNFAMILIAR ENVIRONMENTS, WITH UNFAMILIAR CARETAKERS.*** Accordingly, our child welfare framework involves legal safeguards to ensure that children are not unnecessarily removed from their parents' custody.
>
> Vivek S. Sankaran, Christopher Church, *Easy Come, Easy Go: The Plight of Children Who Spend Less Than Thirty Days in Foster Care*, 19 U. Pa. J.L. & Soc. Change 207, 237 (2016).

See also:

> U.R.Y.C.P. 3(c) ("These rules shall be interpreted and applied in keeping with the philosophy expressed in section 43-21-103 of the Mississippi Code.").
>
> Miss. Code Ann. § 43-21-103 ("It is the public policy of this state that the parents of each child shall be primarily responsible for the care, support, education and welfare of such children;").

➤ **Probable cause determination**

Pursuant to Rule 16(b)(4), the court must determine if:

- there is probable cause the child is within the jurisdiction of the court;
- there is probable cause that custody is necessary as described in Rule 16(a)(4)(ii) of these rules.

U.R.Y.C.P. 16(a)(4)(ii)

> Custody shall be deemed necessary:
> (1) when a child is endangered or any person would be endangered by the child; or to insure the child's attendance in court at such time as required; or when a parent, guardian or custodian is not available to provide for the care and supervision of the child; and
> (2) there is no reasonable alternative to custody.

UNLESS THERE IS SUBSTANTIAL COMPLIANCE WITH THESE PROCEDURES, THE COURT SHALL ORDER THE CHILD TO BE RELEASED TO THE CUSTODY OF THE CHILD'S PARENT, GUARDIAN, OR CUSTODIAN.
Any order placing a child into custody shall comply with the requirements provided in section 43-21-301 of the Mississippi Code.

IS DRUG USE BY THE PARENT GROUNDS FOR TAKING CUSTODY? It depends on whether there is a causal connection between the drug use and the neglect:

> "[The mother's] marijuana usage does not negate the requirement of a causal connection between the drug usage and the neglect. This is a familiar concept under the Youth Court Act in other contexts. For instance, a positive drug test for marijuana usage is insufficient on its own to establish probable cause for the issuance of a custody order."
>
> In re E.K., 249 So. 3d 377, 388 (Miss. 2018).

See also:

> Miss. Code Ann. § 43–21–301(3), which provides in part:
>
> "A finding of probable cause under this subsection (3)(a) shall not be based solely upon a positive drug test of a newborn or parent for marijuana; however, a finding of probable cause may be based upon an evidence-based finding of harm to the child or a parent's inability to provide for the care and supervision of the child due to the parent's use of marijuana. Probable cause for unlawful use of any controlled substance, except as otherwise provided in this subsection (3)(a) for marijuana, may be based:
>
> > 1. upon a parent's positive drug test for unlawful use of a controlled substance only if the child is endangered or the parent is unable to provide proper care or supervision of the child because of the unlawful use and there is no reasonable alternative to custody; and
> >
> > 2. upon a newborn's positive drug screen for a controlled substance that was used unlawfully only if the child is endangered or the parent is unable to provide proper care or supervision of the child because of the unlawful use and there is no reasonable alternative to custody."

➤ **Contrary to the welfare, best interests, and reasonable efforts determinations**

Pursuant to Rule 16(b)(4), the court must also find that:

- the effect of the continuation of the child's residing within the child's own home would be contrary to the welfare of the child;
- the placement of the child in foster care is in the best interest of the child; and
- unless the reasonable efforts requirement is bypassed under section 43-21-603(7)(c) of the Mississippi Code:

> (1) reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or
>
> (2) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and there is no reasonable alternative to custody.

Note that if (2) above is the finding, then "[t]he court shall order that reasonable efforts be made towards the reunification of the child with the child's family." U.R.Y.C.P. 16(b)(4)(iii).

UNLESS THERE IS SUBSTANTIAL COMPLIANCE WITH THESE PROCEDURES, THE COURT SHALL ORDER THE CHILD TO BE RELEASED TO THE CUSTODY OF THE CHILD'S PARENT, GUARDIAN, OR CUSTODIAN.

Why are these findings and orders so important? It's because:

> "Children entering foster care may experience grief at the separation from or loss of relationship with the parents and face emotional and psychological challenges as they try to adjust to new environments which often lack stability. Research has found for example, that within three months of placement, many children exhibit signs of depression, aggression, or withdrawal."
>
> National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 74 (2016).

Thus, the guardian ad litem should always consider what reasonable efforts will *PREVENT THE CHILD'S REMOVAL* from the home. But, if the child is removed, the guardian ad litem must then consider what reasonable efforts will *FACILITATE THE CHILD'S RETURN* to the home:

> "Whether or not a child is safe depends upon a *threat of danger*, the child's *vulnerability*, and a family's *protective capacity*. . . . Vulnerable children are safe when there are no threats of danger within the family *or* when the parents possess sufficient protective capacity to manage any threats. . . . Children are unsafe when threats of danger exist within the family[,] children are vulnerable to such threats, and parents have insufficient protective capacities to manage or control threats."
>
> Therese Roe Lund & Jennifer Renne, *Child Safety: A Guide for Judges and Attorneys*, A.B.A., 2 (2009).

➤ **Factors for determining whether custody is necessary**

Factors the court may consider in determining whether custody is necessary include:

- the child's family ties and relationships;
- prior reports of abuse or neglect against the child or other children within the home;
- the violent nature of the alleged abuse or neglect;
- the prior history of the parent, guardian, or custodian in committing acts that resulted in bodily injury to others;
- the character and mental condition of the parent, guardian, or custodian;
- the character and mental condition of the child;
- the court's ability to supervise the child if placed with the parent, guardian, or custodian or with a relative of the parent, guardian, or custodian;
- the ties to the community;
- the risk of nonappearance;
- the risk of danger to the child if released to the custody of the parent, guardian, or custodian or a relative of the parent, guardian, or custodian;
- the home conditions.

See Advisory Notes to Rule 16.

➤ **Federal time-line for making the initial reasonable efforts findings**

Federal Requirements to Rule 16

> *These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to detention/shelter hearings include:*
> *Reasonable efforts determination.*
> *45 C.F.R. § 1356.21 (2008) provides in part:*

*(b) **REASONABLE EFFORTS DETERMINATION**. ...*
(1) Judicial determination of reasonable efforts to prevent a child's removal from the home.
*(i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, **MUST BE MADE NO LATER THAN 60 DAYS FROM THE DATE THE CHILD IS REMOVED FROM THE HOME** pursuant to paragraph (k)(1)(ii) of this section.*
(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

See Advisory Notes to U.R.Y.C.P. 16.

➤ **Scheduling the adjudication hearing**

U.R.Y.C.P. 24

(b) Child protection proceedings.
(1) Time of hearing.
(i) If child is not in shelter. Unless continued upon a showing of good cause or the person who is a subject to the cause has admitted the allegations of the petition, the adjudicatory hearing of a child who is not in shelter shall be held within ninety (90) days after the filing of the petition to determine whether there is legally sufficient evidence to find that the child is a neglected or an abused child. If the adjudicatory hearing is not held within the ninety (90) days, the petition shall be dismissed with prejudice.
(ii) If child is in shelter. The adjudicatory hearing of a child who is in shelter shall be held as soon as possible but not later than thirty (30) days after the child is first taken into custody unless the hearing is postponed: upon motion of the child; where process cannot be completed; or upon a judicial finding that a material witness is not presently available. If the adjudicatory hearing is not held or postponed for the aforesaid reasons, the child may be released from shelter.

CASE FLOW MANAGEMENT IS AN IMPORTANT ASPECT IN ATTAINING A DESIRABLE PERMANENCY OUTCOME.

Another way to keep hearings on schedule is to set future hearing dates in open court with parties and advocates present, and provide all parties with a written court order specifying the date and time of the next hearing. . . .The order should be written in easily understandable language so that all parents and other non-lawyers understand clearly what actions are required before the next hearing. Orders should be translated to the family's

primary language if they do not speak English.

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 38 (2016).

If possible, the court should schedule the adjudication hearing at the close of the shelter hearing. Remember, at the time of the shelter hearing, there has only been unproven allegations of abuse or neglect. While a case is still in an adversarial phase, some parents, guardians, or custodians may naturally "clam up" on matters pertaining to the family dynamics or lifestyle issues–possibly stifling an open dialogue for needed services:

"After the shelter care hearing the court should schedule an adjudication hearing in a reasonable time and in no case later than 60 days. . . . Early adjudication establishes judicial authority over the child, gives the parents an opportunity to challenge the allegations in the petition, clarifies what services best serve the parents, and moves the case from an adversarial to a rehabilitative posture."

Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* 99 (2014).

http://judgeleonardedwards.com/docs/reasonableefforts.pdf

1001 CUSTODY, CARE AND MAINTENANCE OF THE CHILD

➤ **Designated shelter facilities**

U.R.Y.C.P. 19

(a) Designating detention or shelter facilities.
The youth court shall, by general order or rule of court, designate the available detention or shelter facilities to which children shall be delivered when taken into custody. Copies of the order or rule shall be made available to the Department of Human Services and all law enforcement agencies within the territorial jurisdiction of the youth court.
(b) Detention prohibitions.
Except as otherwise provided in the Mississippi Youth Court Law, unless jurisdiction is transferred, no child shall be placed in any adult jail or place of detention of adults by any person or court. This rules provision shall not be construed to apply to commitments to the training school under section 43-21-605(1)(g)(iii) of the Mississippi Code.

Federal requirements to Rule 19

> *Alleged dependent, neglected, or abused children shall not be placed in secure detention*
> *42 U.S.C. § 5633 (2008) provides in part:*
> *[A State plan to receive formula grants] . . .*
> *(11) shall, in accordance with rules issued by the Administrator, provide that– . . .*
> *(B) juveniles--*
> *(i) who are not charged with any offense; and*
> *(ii) who are--*
> *(I) aliens; or*
> *(II) alleged to be dependent, neglected, or abused;*
> *shall not be placed in secure detention facilities or secure correctional facilities;*

If there is a violation of this rule, then the guardian ad litem needs to ***IMMEDIATELY*** inform the court for corrective action. Placing an abused or neglected child in a secure detention facility or a secure correctional facility, even temporarily, is an abhorrent practice without excuse.

➤ **Court's authority when custody is ordered**

U.R.Y.C.P. 19

> (d) Arranging for the custody, care and maintenance of a child ordered into custody.
> After a child is ordered into custody, the court may:
> (i) arrange for the custody of the child with any private institution or agency caring for children;
> (ii) commit the child to the Department of Mental Health pursuant to Section 41-21-61 et seq.; or
> (iii) order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of the child.

To make an informed decision, the court should be apprised of any available information deemed essential for ensuring the well-being of the child's health, safety, and education.

> *See also:*
>
> Miss. Const. art. IV, § 86 ("It shall be the duty of the legislature to provide by law for the treatment and care of the insane; and the legislature may provide for the care of the indigent sick in the hospitals in the state.").
>
> Miss. Code. Ann. § 43-21-315(4) ("After a child is ordered into custody, the youth court may arrange for the custody of the child with any private institution or agency caring for children, may commit the child to the Department of Mental

Health pursuant to Section 41-21-61 et seq., or may order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of such child. Provided, however, that the care, custody and maintenance of such child shall be within the statutory authorization and the budgetary means of such institution or facility.").

De Shaney v. Winnebago County Department of Social Services, 489 U.S. 189, 200 (1989) ("[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs— e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.").

In re B.C.M., 744 So. 2d 299, 303 (Miss. 1999) ("The Constitution requires that the State assume responsibility for [the child], and reasonable statutory interpretation requires the director to provide temporary housing, treatment and care, which should become permanent when adequate "services and facilities are available" in the facility.").

1002 RELEASE FROM CUSTODY UPON CHANGE OF CIRCUMSTANCES

U.R.Y.C.P. 18

Procedures governing the release of a child from custody upon a change in circumstances shall be conducted pursuant to section 43-21-313 of the Mississippi Code.

§ 43-21-313

(1) A child held in custody under order of the youth court shall be released upon a finding that a change of circumstances makes continued custody unnecessary.
(2) A written request for the release of the child from custody, setting forth the changed circumstances, may be filed by the child; by the child's parent, guardian or custodian; by the child's counsel; or by the child's guardian ad litem, if any.
(3) Based upon the facts stated in the request, the judge may direct that a hearing be held at a date, time and place as fixed by the youth court. Reasonable notice of the hearing shall be given to the child; his parent, guardian or custodian; his counsel; and his guardian ad litem, if any, prior to the hearing. At the hearing, upon receiving evidence, the youth court may grant or deny the request.
(4) A child held in custody in violation of Section 43-21-301(6) shall be immediately transferred to a proper juvenile facility.

CPS HAS A CONTINUING DUTY TO UPDATE ITS REPORTS TO THE COURT "AS INFORMATION BECOMES AVAILABLE." *See* Miss. Code Ann. § 43-21-353. If the circumstances have changed, or CPS is not making reasonable efforts towards reunification as ordered, then the guardian ad litem should bring these matters to the court's attention for deciding whether the changes of circumstances makes continued custody unnecessary or, even possibly, detrimental.

REVIEWING THE PROGRESS OF REASONABLE EFFORTS IS AN ESSENTIAL ASPECT OF BEST PRACTICES:

> "The court must also review the services that the agency has provided to assist the parents address the issues that brought their child to the attention of the court. At hearings throughout the remainder of the case, including at any hearing to terminate parental rights, the court should review what services the agency has provided to assist the parents reunify with their child. In other words, has the agency provided timely, relevant, and effective services to the parents? Failure to do so can and often should result in a judicial 'no reasonable efforts' finding.**"**
>
> Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* 99 (2014).
>
> http://judgeleonardedwards.com/docs/reasonableefforts.pdf

Long-term foster care is most definitely *NOT* a preferred placement:

> "Children entering foster care may experience grief at the separation from or loss of relationship with the parents and face emotional and psychological challenges as they try to adjust to new environments which often lack stability. Research has found for example, that within three month of placement, many children exhibit signs of depression, aggression, or withdrawal."
>
> National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 74 (2016).

1003 SHELTER HEARING CHECKLIST

✓ *See also* Chapter 6 "*REPORTS AND RECOMMENDATIONS CHECKLIST*"

✓ Does the child or parent desire legal counsel?

See also National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 43 (2016) ("Because fundamental rights of the child–as well as the parents–are at stake in these proceedings, best practice calls for the appointment of an attorney who will advocate the child's position from the very beginning of the case.").

✓ Is there a need for an interpreter?

If a foreign language interpreter has been appointed, then all notices and orders of the court should be translated to the primary language for whom the appointment was made.

See also:

Mississippi Rules on Standards for Court Interpreters at: https://courts.ms.gov/aoc/courtinterpreter/resources.php

Miss. Code Ann. § 13-1-301et seq. (Interpreter for the deaf or hearing impaired).

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 113 (2016) ("Certified court interpreters should be used where available if a family is non-English speaking. Under no circumstances should a family member, party to the case, or other hearing participant interpret the proceedings for another person in attendance.").

✓ Does the Indian Child Welfare Act apply?

If it does, then failure to apply those standards could nullify the youth court proceedings.

✓ If the court committed the child to the Department of Mental Health pursuant to section 41-21-61 et seq., then were the statutory procedures followed?

✓ If the court ordered CPS to provide for the custody, care and maintenance of the child:

- Then was the foster care placement with a licensed foster care setting or one approved as meeting the licensure standards? If not, then specify the non-compliance.

- Then does the relative placement meet the emergency process and full licensing process required by federal and state laws? If not, then specify the non-compliance.

✓ If the child was removed, even temporarily, from the custody of the parent, guardian, of custodian, then did the court make a contrary to the welfare determination?

This finding is required for purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act.

✓ If the child was removed, even temporarily, from the custody of the parent, guardian, of custodian, then did the court make a reasonable efforts finding?

This finding is required *NO LATER THAN EITHER SIXTY (60) DAYS OF THE CHILD'S REMOVAL FROM THE HOME OR SIXTY (60) DAYS AFTER RELATIVE PLACEMENT* for purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act.

See also:

"The judge should discuss the reasonable efforts issue at the shelter care hearing. If the attorneys fail to address the issue, the judge should review the actions taken by the agency to prevent removal of the child including issues such as whether there have been changes that would permit the child safely to return home, whether another parent is available for custody, whether a relative is willing and able to care for the child, and whether the addition of services would make any of these alternatives possible."

Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective 98* (2014).

http://judgeleonardedwards.com/docs/reasonableefforts.pdf

✓ Was the least restrictive custody selected?

Was the child placed in the most family-like setting available, such as with suitable relatives who are in close proximity to the parent's home? If not, then why not?

✓ Is there a safety plan for returning the child to the home?

What are the risks in returning the child to the custody of the parent, including the threats of danger, the child's vulnerability, and the family's protective capacity?

See, e.g.:

"If the judge determines the child is unsafe, a safety plan is needed to ensure safety while working with the family. This plan is distinct from a case plan–it must have an immediate effect on controlling threats to the child's safety. Under ASFA, the court must consider if the agency made reasonable efforts to prevent removal. The judge initially must decide on a sufficient, feasible, and sustainable safety plan. The goal is to control threats in the least intrusive way."

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 56 (2016).

But see:

42 U.S.C.A. § 671(a)(15)(A) ("[I]n determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;).

✓ Are the premises safe for returning the child to the home?

- If not, then what reasonable remedy or accommodation would make the premises safe? *See also* Comment to U.R.Y.C.P. 11(b)(2), which includes the "Emergency Placement Safety Checklist" for family protection specialists and caseworkers.

- Are the parent(s) agreeable and willing to carry out the suggested measures for making the premises safe?

✓ Is the parent able and willing to provide the child with the basic necessities of food, shelter, clothing?

If the parent is willing but unable to do so because of poverty, a disability, or other legitimate reason, then how might the deficiency be reasonably remedied or accommodated?

✓ If the child is not in the custody of the parent, then is there a reasonable visitation schedule?

✓ Does the parent and/or child have mental or physical health issues?

If so, then is emergency care needed? Should the parent and/or child be immediately referred to a qualified health professional or mental health professional for medical or psychiatric care?

✓ Are there prior or pending cases in other courts relevant to the proceedings?

If so, then what are those cases and what is their relevancy in the matter before the court (e.g., domestic violence charges, protection from domestic abuse orders, or divorce decrees)?

See also:

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 41 (2016) ("It is not unusual that a child abuse and neglect case may have related and concurrently pending cases in other courts or before other judges. The court should take steps to consolidate all related cases before one judge, or if not possible, to coordinate with other judicial officers to facilitate orders that do not conflict and can be complied with by all parties.").

Id. at 57 ("The NCJFCJ views battered parents as partners in the protection of their children. . . . Cases that are filed naming the battered parent as a perpetrator of abuse and neglect because a child was exposed to domestic violence further traumatizes the battered parent.").

✓ Are there aggravated circumstances (e.g., abandonment, torture, chronic abuse, and/or sexual abuse)?

If so, then is there a compelling reason for attempting "reasonable efforts" at reunification?

✓ Are there indications of an alcohol problem or a drug addiction? If so, then what is the basis for that assessment?

See, e.g.:

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 89 (2016) ("Parental alcohol and substance misuse is a formidable social problem and a major risk factor for child maltreatment and neglect. . . . Parents battling substance abuse often put the needs created by their alcohol or drug dependency ahead of the welfare of their families. At the same time, they – and their children – often have complicating physical or mental health problems. Unable to maintain employment or provide a stable and nurturing home environment, they are unable to care for their children.").

✓ Have diligent efforts been made to locate all persons related to the child by the third degree? If not, then what relatives have not been contacted? What additional efforts might prove successful in locating these persons?

See, e.g.:

"Placing children in relative care is a best practice, one that benefits the child in many ways. Relative placement minimizes trauma to the children since the children likely know the relatives. The relatives are more likely than foster parents to take large sibling groups, thus maintaining sibling contacts. Research has demonstrated that children placed with relatives fare better than those placed in foster care. They experience better stability, have fewer placement changes, fewer behavior problems, and not as many school changes. Living with a relative helps preserve a child's cultural identity and community connections and eliminates the unfortunate stigma that many foster children experience."

Judge Leonard Edwards, *Relative Placement: The Best Answer for Our Foster Care System*, The Juvenile Court Corner (Winter 2018).

http://judgeleonardedwards.com/docs/EdwardsCJAWinter2018.pdf

✓ Are there ethnic, cultural, or religious considerations?

A guardian ad litem is required to interview the child and to investigate the home situation–which of necessity may require interviewing the parents, guardians, or custodians and other significant people in the child's life. A child's (or parent's) perceptions or statements that are "lost in the ravines" of ethnic, cultural, or religious differences could prove devastating toward achieving reunification or other desirable permanency outcome.

See, e.g.:

"Children's perceptions of the world around them, their appreciation for the truth, their attention span, their susceptibility to offering the answer they assume is expected, and other factors can heavily influence the quality and extent of information they offer to an interviewer, . . . [furthermore], children at different stages of development process their experiences differently.
The Lutheran Immigration and Refugee Service, based on its extensive experience working with refugee children, identifies the following factors as influencing a child's developmental stage: (1) chronological age; (2) physical and emotional health; (3) physical, psychological, and emotional development; (4) societal status; (5) cultural background; (6) cognitive processes; (7) education; (8) language capability; and (9) experiential and historical background.
. . .
Culture, gender, trauma, the absence of a caregiver, malnutrition, and physical and mental disabilities are just some of the factors that may affect a child's development. His or her developmental stage, in turn, can have a significant impact on the nature of the testimony."

Jacqueline Bhabha and Wendy A. Young, *Through a Child's Eyes: Protecting the Most Vulnerable Asylum Seekers*, 75 NO. 21 Interpreter Releases 757, 771 (1998).

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CHAPTER 11

ADJUDICATION HEARINGS

1100 PETITION

1101 SUMMONS

1102 PREHEARING PROCEDURES

- **Discovery**
- **Motion practice**
- **Prehearing conference**

1103 ADJUDICATION HEARING

- **Time of hearing**
- **Where parties do not contest the allegations in the petition**
- **Conduct of hearing**
- **Explaining procedures and rights**
- **Evidence and standard of proof**

1104 CHILD TESTIFYING

1105 GUARDIAN AD LITEM TESTIFYING

- **Governing evidentiary laws**
- **Evidentiary rules of particular importance**
- **Criteria for the admissibility of the GAL's testimony**

1106 ADJUDICATION ORDERS

1107 ADJUDICATION HEARINGS CHECKLIST

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1100 PETITION

U.R.Y.C.P. 20

(c) Child protection proceedings.
(1) Filing. All proceedings seeking an adjudication that a child is a neglected child or an abused child shall be initiated by the filing of a petition. Upon authorization of the youth court, the petition shall be drafted and filed by the youth court prosecutor unless the youth court has designated some other person to draft and file the petition.
(2) Time. The petition shall be filed within five (5) days from the date of a shelter hearing continuing custody. In noncustody cases, unless another period of time is authorized by the court, the petition shall be filed within ten (10) days of the court order authorizing the filing of a petition. The court may, in its discretion, dismiss the petition for failure to comply with the time schedule contained herein.
(3) Form. The petition shall be entitled "IN THE INTEREST OF _____."
(4) Contents. The petition shall set forth plainly and concisely with particularity:
(i) identification of the child, including the child's full name, birth date, age, sex and residence;
(ii) identification of the parent, guardian or custodian including the name and residence of the child's parents, the name and residence of the child's legal guardian, if there be one, any person or agency in whose custody the child may be and the child's nearest relative if no parent or guardian be known;
(iii) a statement of the facts, including the facts which bring the child within the jurisdiction of the youth court and which show the child is a neglected child or an abused child;
(iv) a prayer for the type of adjudicatory relief sought; and
(v) if any of the facts herein required are not known by the petitioner.

On each petition alleging an abused or neglected child, the following notice shall be placed in capital letters at the bottom of the petition:

A PARENT, GUARDIAN, OR CUSTODIAN OF A CHILD SHALL BE A PARTY TO THIS CASE PURSUANT TO THE MISSISSIPPI YOUTH COURT LAW. A PERSON MADE A PARTY TO THIS CASE MAY BE REQUIRED: TO PAY FOR THE SUPPORT OF THE CHILD PLACED IN CUSTODY OF ANY PERSON OR AGENCY INCLUDING ANY NECESSARY MEDICAL TREATMENT PURSUANT TO SECTION 43-21-615 OF THE MISSISSIPPI CODE; TO PAY FOR COURT ORDERED MEDICAL AND OTHER EXAMINATIONS AND TREATMENT OF A CHILD, FOR REASONABLE ATTORNEY'S FEES AND COURT COSTS, AND FOR OTHER EXPENSES FOUND NECESSARY OR APPROPRIATE IN THE BEST INTEREST OF THE CHILD PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO PAY DAMAGES OR RESTITUTION AND TO PARTICIPATE IN A COUNSELING PROGRAM OR OTHER SUITABLE FAMILY TREATMENT

PROGRAM PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO RECEIVE COUNSELING AND PARENTING CLASSES PURSUANT TO SECTION 43-21-605 OF THE MISSISSIPPI CODE; TO DO OR OMIT TO DO ANY ACT DEEMED REASONABLE AND NECESSARY FOR THE WELFARE OF THE CHILD PURSUANT TO SECTION 43-21-617 OF THE MISSISSIPPI CODE.

(5) Two or more children subject of the same petition. Two (2) or more children may be the subject of the same petition if: (i) they are siblings and (ii) they are alleged to be neglected or abused from a common source of mistreatment or neglect. On each charge of abuse and neglect in the same petition admitted or proved in accordance with these rules, the court shall enter a separate adjudication on that charge within its adjudicatory order and, after the disposition hearing, a separate disposition on that charge in its disposition order.
(6) Amendments. A petition may be amended at any time on order of the youth court for good cause shown so long as there is no prejudice to the parties.
(7) Responsive pleadings not required. No party shall be required to file a responsive pleading.

THE GUARDIAN AD LITEM SHOULD REVIEW THE PETITION:

- *TO ENSURE THAT THE PROCEDURES GOVERNING THE FILING, TIME, FORM, AND CONTENTS ARE BEING FOLLOWED.*

  For example:

  Rule 20(c)(2) requires "[t]he petition shall be filed within five (5) days from the date of a shelter hearing continuing custody." Failure to comply with this rules provision might possibly impair a parent's right to due process. It might also detrimentally affect the child's emotional well-being by prolonging his or her separation from the parent.

  If rules procedures are not being followed, then the guardian ad litem should consider making a recommendation for the appointment of parental representation.

- *TO OBTAIN INFORMATION REGARDING THE CASE.*

  For example:

  - The petition is to identify "the name and residence of the child's parents . . ." *Parents* is plural. It must also identify "the child's nearest relative if no parent or guardian be known."

- The petition "shall set forth plainly and concisely with particularity: . . . a statement of the facts, including the facts which bring the child within the jurisdiction of the youth court and which show the child is a neglected child or an abused child;" This information is important when making recommendations for attaining reunification or other desirable permanency outcome

- "The petition shall set forth plainly and concisely with particularity: . . . if any of the facts herein required are not known by the petitioner." Sometimes these unknown facts are "the hinges" to a promising resolution.

- "Two (2) or more children may be the subject of the same petition if: (i) they are siblings and (ii) they are alleged to be neglected or abused from a common source of mistreatment or neglect."

1101 SUMMONS

U.R.Y.C.P. 22

(a) Adjudication hearings.
(1) Persons summoned. When a petition has been filed and the date of hearing has been set by the youth court, the judge or the judge's designee shall order the clerk of the youth court to issue a summons to the following to appear personally at such hearing: the child named in the petition; the person or persons who have custody or control of the child; the parent or guardian of the child if such parent or guardian does not have custody of the child; and any other person whom the court deems necessary. The clerk does not need to issue summons to:
(i) any person who has already been served with process or who has already appeared in court proceedings in the cause; and
(ii) who has received sufficient notice of the time, date, place and purpose of the adjudication hearing.
(2) Form. The form of the summons shall be pursuant to section 43-21-503 of the Mississippi Code.
Additionally, the following notice shall be placed in capital letters at the bottom of the summons:

A PARENT, GUARDIAN, OR CUSTODIAN OF A CHILD SHALL BE A PARTY TO THIS CASE PURSUANT TO THE MISSISSIPPI YOUTH COURT LAW. A PERSON MADE A PARTY TO THIS CASE MAY BE REQUIRED: TO PAY FOR THE SUPPORT OF THE CHILD PLACED IN CUSTODY OF ANY PERSON OR AGENCY INCLUDING ANY NECESSARY MEDICAL TREATMENT PURSUANT TO SECTION 43-21-615 OF THE MISSISSIPPI

CODE; TO PAY FOR COURT ORDERED MEDICAL AND OTHER EXAMINATIONS AND TREATMENT OF A CHILD, FOR REASONABLE ATTORNEY'S FEES AND COURT COSTS, AND FOR OTHER EXPENSES FOUND NECESSARY OR APPROPRIATE IN THE BEST INTEREST OF THE CHILD PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO PAY DAMAGES OR RESTITUTION AND TO PARTICIPATE IN A COUNSELING PROGRAM OR OTHER SUITABLE FAMILY TREATMENT PROGRAM PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO RECEIVE COUNSELING AND PARENTING CLASSES PURSUANT TO SECTION 43-21-605 OF THE MISSISSIPPI CODE; TO DO OR OMIT TO DO ANY ACT DEEMED REASONABLE AND NECESSARY FOR THE WELFARE OF THE CHILD PURSUANT TO SECTION 43-21-617 OF THE MISSISSIPPI CODE.

(3) Manner of service.

(i) Who may serve summons. Service of summons shall be made by a sheriff, deputy sheriff, or any other person appointed by the youth court judge. Any person appointed to serve summons shall, for such purpose, be an officer of the youth court.

(ii) Notice of time, date, and place. Notice of the time, date, place and purpose of any hearing other than adjudicatory and transfer hearings shall be given to all parties in person in court or by mail, or in any other manner as the youth court may direct.

(iii) If parent, guardian, or custodian exercising parental responsibilities resides and can be located within the state. Service of summons shall be made personally by delivery of a copy of the summons with a copy of the petition in a sealed envelope attached to the summons. A child may be served in the same manner as an adult. Service of the summons and petition, motions, notices and all other papers upon a child who has not reached his fourteenth birthday shall be effectuated by making service upon the child's parent, guardian or custodian and guardian ad litem, if any.

(iv) If parent, guardian, or custodian exercising parental responsibilities does not reside or cannot be located within the state. If the parent, guardian, or custodian exercising parental responsibilities does not reside within the state or cannot be located therein, the clerk shall issue summons to the guardian ad litem. If the name and post office address of the parent or guardian who does not reside within the state or cannot be located therein can be ascertained, the clerk shall mail by "certified mail" ten (10) days before the date set for the hearing a copy of the summons with a copy of the petition attached to the summons to such parent or guardian. The clerk shall note the fact of such mailing upon the court docket. Ten (10) days after the summons has been mailed, the court may take jurisdiction as if summons had been personally served as herein provided.

(4) Time. Summons shall be served not less than three (3) days before the date set for the adjudicatory hearing of proceedings concerning the child, excluding Saturdays, Sundays, and statutory state holidays.

(5) Waiver of summons by a party other than the child. Service of summons on a party other than the child may be waived by that party by written stipulation or by voluntary appearance at the hearing. In the case of written stipulation or voluntary appearance, the youth court may, in its discretion, proceed to a hearing regardless of the date set for the hearing if all other parties are properly before the youth court. At the time of the waiver, a copy of the petition shall be given to the party.

(6) Waiver of three (3) days' time before hearing by a child served with process. If a child is served with process, the child may waive the three (3) days' time before the hearing, and the youth court may, in its discretion, proceed to a hearing regardless of the date set for the hearing if another parties are properly before the youth court and the youth court finds all of the following: the child fully understands his/her rights and fully understands the potential consequences of the hearing; the child voluntarily, intelligently, and knowingly waives his rights to three (3) days' time before the hearing; the child is effectively represented by counsel; and the child has had in fact sufficient time to prepare.

(7) Enforcement. Any person summoned who fails to appear without reasonable cause may be proceeded against for contempt of court. In case the summons cannot be served or the parties served with summons fail to obey the same, or in any case when it shall be made to appear to the youth court that the service of summons will be ineffectual or the welfare of a child requires that the child be brought forthwith into the custody of the youth court, a warrant or custody order may be issued against the parent, parents, guardian or custodian or against the child.

. . .

IN ZEALOUSLY PROTECTING THE CHILD'S BEST INTERESTS, THE GUARDIAN AD LITEM SHOULD BRING TO THE COURT'S ATTENTION

- *ANY NONCOMPLIANCE OF THE SUMMONS PROCEDURES.*

  For example:

  Was summons issued for "the child named in the petition; the person or persons who have custody or control of the child; the parent or guardian of the child if such parent or guardian does not have custody of the child; and any other person whom the court deems necessary"?

  If the child is under 14 years of age, was service made upon "the child's parent, guardian or custodian and guardian ad litem, if any"?

  Was there a valid waiver of summons "on a party other than the child" by written stipulation or by voluntary appearance? Or, a valid waiver by the child pursuant to the rule–which requires, among other criteria, that "the child is effectively represented by counsel"?

- *ANY CONCERNS THAT MIGHT ADVERSELY AFFECT THE CHILD'S OR A PARENT'S DUE PROCESS RIGHTS.*

  For example:

  If your investigation reveals a witness with exculpatory evidence on the abuse or neglect allegations, then that person should be there.

  See also:

  Advisory Note to Rule 22(a)(1) ("Persons who should always be present at the adjudication hearing in abuse and neglect cases include: 'judge or judicial officer; parents whose rights have not been terminated, including putative fathers; relatives with legal standing or other custodial adults; assigned caseworker; agency attorney; attorney for parents (separate attorney if conflict warrants); legal advocate for the child and/or GAL/CASA; court reporter or suitable technology; and security personnel.' NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 52 (1995)").

  Application of Gault, 387 U.S. 1, 33-34 (1967) ("[Due process of law] does not allow a hearing to be held in which a youth's freedom and ***HIS PARENTS' RIGHT TO HIS CUSTODY ARE AT STAKE*** without giving them timely notice, in advance of the hearing, of the specific issues that they must meet.").

  > Note: *Application of Gault* held that the Due Process Clause of the Fourteenth Amendment afforded a child charged with a delinquent act certain minimum procedural protections, including notice of charges, the right to counsel, the rights of confrontation and examination, and the privilege against self-incrimination. It also reaffirmed the parents' liberty interest in the custody of their child.

  In re Edwards, 298 So. 2d 703, 704 (Miss. 1974) ("The notice to the parents may be waived by them, but not process on the minor.").

  Hopkins v. Youth Court, 227 So. 2d 282, 284 (Miss. 1969) ("The youth court is without jurisdiction unless the parents or guardian if available, be summoned as required by statute.")

➤ **Discovery**

U.R.Y.C.P. 15

(a) Discovery.
(1) Request for discovery. ***THE CHILD OR OTHER PARTY TO AN ADJUDICATORY HEARING***, or any proceeding thereafter, may make a written request for discovery to any other party consistent with the United States Constitution and the Mississippi Constitution and to the extent that such does not require the disclosure of confidential or privileged information prohibited from disclosure pursuant to Rule 5 of these rules or otherwise by law. A written request for discovery shall be made, if possible, no later than seven (7) days preceding the date set for the adjudicatory hearing or other applicable proceeding. The child or other party making a written request for discovery shall promptly provide reciprocal discovery to the party upon whom the discovery request was made. Recipients
of discovery who disclose or encourage the disclosure of any records involving children or the contents thereof, except as authorized under the Mississippi Youth Court Law, shall be subject to the sanctions set forth in section 43-21-267 of the Mississippi Code.
No request for discovery shall be made until after a petition has been filed.
(2) Application for a discovery order. If a request for discovery is refused, application may be made to the court for a written order granting the discovery. Motions for discovery shall certify that a request for discovery has been made and refused. An order granting discovery may make such discovery reciprocal for all parties to the proceeding, including the party requesting discovery. The court may deny, in whole or part, or otherwise limit or set conditions for discovery, upon its own motion, or upon a showing by a party upon whom a request for discovery is made that granting discovery may jeopardize the safety of a party, witness, or confidential informant, result in the production of perjured testimony or evidence, endanger the existence of physical evidence, violate a privileged communication, disclose confidential information, or impede the criminal prosecution of a minor as an adult or of an adult charged with an offense arising from the same transaction or occurrence. An application for a discovery order shall be made, if possible, no later than seven (7) days preceding the date set for the adjudicatory hearing or other applicable proceeding. Any hearing on an application for a discovery order shall be conducted in a way that protects the best interests of the child and the interest of justice.
(3) Depositions. Depositions may only be taken as authorized by the court.
(4) Failure to comply. If at any time prior to the adjudicatory hearing, or other applicable proceeding, it is brought to the attention of the court that a person has failed to comply with a discovery order issued pursuant to this rule, the court may grant a continuance, prohibit the person from introducing in evidence the material

not disclosed, or enter such other order as it deems just under the circumstances. In no event shall a continuance be granted pursuant to this rules provision if the child or other party has failed to make an application to the court for a discovery order.

A GUARDIAN AD LITEM IS NOT A PARTY TO THE ACTION–and therefore is not authorized to make a request for discovery under this rule. On the other hand "any hearing on an application for a discovery order shall be conducted in a way that protects the best interests of the child and the interest of justice."

PROTECTING THE BEST INTERESTS OF THE CHILD IS THE CORE FUNCTION OF A GUARDIAN AD LITEM.

Sometimes a request for discovery may overreach:

> "The court may deny, in whole or part, or otherwise limit or set conditions for discovery, *UPON ITS OWN MOTION*, or upon a showing by a party upon whom a request for discovery is made that granting discovery may
>
> - jeopardize the safety of a party, witness, or confidential informant,
> - result in the production of perjured testimony or evidence,
> - endanger the existence of physical evidence,
> - violate a privileged communication,
> - disclose confidential information, or
> - impede the criminal prosecution of a minor as an adult or of an adult charged with an offense arising from the same transaction or occurrence."
>
> U.R.Y.C.P. 15(a)(2).

IF A REQUEST FOR DISCOVERY IS LIKELY TO JEOPARDIZE THE BEST INTERESTS OF THE CHILD, THEN THE GUARDIAN AD LITEM (AS AN ARM OF THE COURT) SHOULD REPORT THAT CONCERN TO THE COURT.

Particularly troublesome are requests for discovery of information that has been obtained by the guardian ad litem in the course of investigating the case:

> "As part of tendering a comprehensive report, GALs commonly access and rely on information held by third parties such as school records, psychological or educational testing, medical records, criminal records, social services records, and court documents. These records, if relied upon by the GAL, may be susceptible to discovery by the parties despite containing sensitive information that would otherwise not be available to those parties.
> Whether the parties should have access to third party records in the GAL's

> possession is a difficult issue. On the one hand, without the ability to inspect the records on which the GAL relied on in making recommendations, the parties (and their counsel) would be severely disadvantaged in cross-examining or challenging the GAL's findings, thus impinging due process rights. On the other hand, a party may be entitled to privacy of those records and even when integral to the GAL investigation, may become a potential source of unfair or inappropriate leverage against a party who seeks to prevent disclosure of the records. Thus, a state's rules governing access to third parties records in the possession of the GAL become a critical inquiry.
> . . .
> Psychological harm can also result from incorporating children's statements concerning their parents into the GAL report. GALs sometimes disclose not only a child's stated preference in matters of custody, but may also reveal other family secrets such as a parent's substance abuse or domestic violence. Even reporting on interactions between a parent and a child during an observed visit may have consequences for the child. Upon reading the GAL report, parents may become angry with the child, blame the child for the consequences of the interaction, or act out against the child in other ways--all of which are documented to result in long-term psychological damage to the child."
>
> Marcia M. Boumil, Cristina F. Freitas, Debbie F. Freitas, *Legal and Ethical Issues Confronting Guardian Ad Litem Practice*, 13 J. L. & Fam. Stud. 43, 71-76 (2011).

For the most part, the guardian ad litem is investigating the case to report and make recommendations to the court on the present (and future) health, safety, and welfare of the child, and not to gather evidence to prove the allegations of abuse or neglect.

IS THE REQUEST FOR DISCOVERY RELEVANT TO THE ADJUDICATION HEARING? IS IT DISCOVERABLE? IF SO, THEN WHAT REASONABLE LIMITS OR CONDITIONS WOULD ENSURE DUE PROCESS WITHOUT COMPROMISING CONFIDENTIALITY?

See, e.g.:

MRE 503 (Privilege between Patient and Physician or Psychotherapist)

> (d) Exceptions. The privilege does not apply:
> (1) Hospitalization Proceedings. In proceedings to hospitalize the patient for mental illness, if the physician or psychotherapist has determined in the course of diagnosis or treatment that the patient needs to be hospitalized;
> (2) Court-Ordered Examination. To any communication related to the purpose of a court order directing an examination of the physical, mental,

or emotional condition of a patient who is a party or witness, unless the order states that the privilege applies;
(3) Breach of Duty. To an issue of breach of duty by the physician or psychotherapist to the patient or by the patient to the physician or psychotherapist; or
(4) Children and Parents; Seal or Release Records. To communications – including records – regarding a party's physical, mental, or emotional health or drug or alcohol condition when relevant to child custody, visitation, adoption, or termination of parental rights.

LASTLY, A COMMENT ON DEPOSITIONS: "Depositions may only be taken as authorized by the court." U.R.Y.C.P. 15(a)(2). If the youth court prosecutor requests the deposition of a parent, then the guardian ad litem should immediately recommend the appointment of counsel for that parent. Child abuse and neglect are also crimes. *See* Miss. Code Ann. § 97-5-39 (child abuse, neglect, and endangerment). Any incriminating statement by the parent at the deposition could be used as evidence in a criminal prosecution.

➤ **Motion practice**

U.R.Y.C.P. 15

(c) Motion practice.
The following provisions shall apply to all written motions in proceedings subject to these rules.
(1) Filing. The original of each motion, and all affidavits and other supporting evidentiary documents, shall be filed within five (5) days of the applicable judicial hearing with the clerk of the youth court in the county where the action is docketed. ***THE MOVING PARTY*** at the same time shall serve a copy of the motion(s) upon each of the parties, with proof of service being upon certificate of the person executing the same, and mail a copy thereof to the youth court judge or referee at the judge's or referee's mailing address. Responses and supporting evidentiary documents shall be filed in the same manner.
(2) Memoranda and briefs. Accompanying memoranda or briefs in support of motions are encouraged but not required. Where the movant has served a memorandum or brief, respondent may serve a reply within five (5) days after service of the movant's memorandum or brief. A rebuttal memorandum or brief may be served within five (5) days of service of the reply memorandum. No memorandum or brief required or permitted herein shall be filed with the clerk. Memoranda or briefs shall not exceed twenty-five (25) pages in length.

RULE 15(c) ON MOTION PRACTICE APPLIES TO PARTIES. A GUARDIAN AD LITEM APPOINTED BY THE COURT TO PROTECT THE BEST INTERESTS OF THE CHILD IS NOT A PARTY TO THE ACTION.

However, there may be occasions where a *CHANCERY COURT JUDGE* appoints a guardian ad litem as counsel for the child:

> "In Mississippi jurisprudence, the role of a guardian ad litem historically has not been limited to a particular set of responsibilities. In some cases, a guardian ad litem is appointed as counsel for minor children or incompetents, in which case an attorney-client relationship exists and all the rights and responsibilities of such relationship arise. In others, a guardian ad litem may serve as an arm of the court—to investigate, find facts, and make an independent report to the court. The guardian ad litem may serve in a very limited purpose if the court finds such service necessary in the interest of justice.
> . . .
> We find no fault with any of these diverse duties and responsibilities a ***CHANCELLOR*** might assign to a guardian ad litem in a particular case."
>
> S.G. v. D.C., 13 So. 3d 269, 280-81 (Miss. 2009).

If that's the case, then the chancery court judge needs to specify the guardian ad litem's role as counsel for the child in its order of appointment:

> When making an appointment, we encourage chancellors to define clearly the role and responsibility of the guardian ad litem. Chancellors should not (as happened in this case) appoint a guardian ad litem to serve in the dual role of advisor to the court and lawyer for the child."
>
> S.G. v. D.C., 13 So. 3d 269, 282 (Miss. 2009).

TO AVOID THIS CONFUSION, THE CHANCERY COURT JUDGE SHOULD CONSIDER APPOINTING BOTH A GUARDIAN AD LITEM AND AN ATTORNEY FOR THE CHILD.

Pursuant to Rule 24, the court (whether chancery court or youth court) *MUST* appoint an attorney for the child. Why not do it on the front end at the shelter hearing? *See* U.R.Y.C.P. 24(b)(4) ("If an indigent child does not have counsel, the court shall appoint counsel to represent the child and shall continue the hearing for a reasonable time to allow the child to consult with the appointed counsel.").

➤ **Prehearing conference**

U.R.Y.C.P. 15

> (d) Prehearing conference.
> At any time after the filing of the petition, the court may, on its own motion or the motion of any party, ***DIRECT THE ATTORNEYS FOR THE PARTIES*** to appear before it for a prehearing conference to consider and determine:
> (1) the simplification of issues;
> (2) the necessity or desirability of amendments to the petition;
> (3) the amount of time necessary to complete discovery;
> (4) whether the child intends to raise an alibi or insanity defense;
> (5) the limitation of the number of expert witnesses;
> (6) the exchange of reports of expert witnesses expected to be called by each party, but only to the extent that such does not require the disclosure of confidential or privileged information prohibited from disclosure pursuant to Rule 5 of these rules or otherwise by law;
> (7) the possibility of obtaining admissions of facts and of documents and other exhibits which will avoid unnecessary proof;
> (8) the imposition of sanctions as authorized by these rules;
> (9) such other matters as may aid in the disposition of the action.
> The court may enter an order reciting the action taken at the conference, the amendments allowed to the petition, and the agreements made by the parties as to any other matters considered, and limiting issues for the hearing to those not disposed of by admissions or agreements of counsel; and such order shall control the subsequent course of the proceedings, unless modified at the hearing to prevent manifest injustice.

Prehearing conferences are not restricted to delinquency proceedings. Except for (d)(4) ("whether the child intends to raise an alibi or insanity defense;"), the other aspects for convening a prehearing conference are equally applicable to delinquency, children in need of supervision and 'abuse and neglect' proceedings. But, a prehearing conference is somewhat arcane if only one side (the youth court prosecutor) is present.

ALTHOUGH NEITHER A PARTY TO THE ACTION NOR COUNSEL TO THE PARENT OR CHILD, THE GUARDIAN AD LITEM SHOULD ATTEND THE PREHEARING CONFERENCE TO PROTECT THE BEST INTERESTS OF THE CHILD.

1103 ADJUDICATION HEARING

➤ **Time of hearing**

U.R.Y.C.P. 24

> **(b) Child protection proceedings.**
> **(1) Time of hearing.**
> (i) If child is not in shelter. Unless continued upon a showing of good cause or the person who is a subject to the cause has admitted the allegations of the petition, the adjudicatory hearing of a child who is not in shelter shall be held within ninety (90) days after the filing of the petition to determine whether there is legally sufficient evidence to find that the child is a neglected or an abused child. If the adjudicatory hearing is not held within the ninety (90) days, the petition shall be dismissed with prejudice.
> (ii) If child is in shelter. The adjudicatory hearing of a child who is in shelter shall be held as ***SOON AS POSSIBLE*** but not later than thirty (30) days after the child is first taken into custody unless the hearing is postponed: upon motion of the child; where process cannot be completed; or upon a judicial finding that a material witness is not presently available. If the adjudicatory hearing is not held or postponed for the aforesaid reasons, the child may be released from shelter.

DELAYS AND CONTINUANCES IN THE PROCEEDINGS MAY ADVERSELY AFFECT THE CHILD'S BEST INTERESTS, AND SHOULD ONLY BE GRANTED UPON A FINDING OF GOOD CAUSE.

> "Court dates should be regarded as firm, and the courts must enforce this principle in order for the dates to have credibility. Continuances should only be granted on a showing of good cause."
>
> Jessica K. Heldman, *Court Delay and the Waiting Child*, 40 San Diego L. Rev. 1001, 1027 (2003).

This is especially true for younger children who have been removed from parental custody:

> "[D]amage to children and their bond with parents is exacerbated with younger children because 'long delays in permanency cause children to [lose hope].' [I]f too much time is spent in foster care during early formative years, a child can suffer lifelong psychological consequences."
>
> Miriam C. Meyer-Thompson, *Wanted: Forever Home Achieving Permanent Outcomes for Nevada's Foster Children*, 14 Nev. L.J. 268, 289 (2013).

➤ **Where parties do not contest the allegations in the petition**

U.R.Y.C.P. 24

> **(2) Where parties do not contest the allegations in the petition.** At any time after the petition has been filed, all parties to the cause may appear before the judge and voluntarily choose not to contest the allegations in the petition. In such instances, the court may adjudicate the child as a neglected child or an abused child or a sexually abused child or a dependent child, as applicable, if there is a sufficient factual basis to sustain the charge(s) ***AND THE COURT HAS VERIFIED THE INFORMATION AND EXPLAINED THE RIGHTS AND PROCEDURES REQUIRED PURSUANT TO RULE 24(B)(4) OF THIS RULE***.

A guardian ad litem's role is to zealously protect the best interests of the child. *IF THE PROCEDURAL RULES ARE NOT BEING FOLLOWED*, then the guardian ad litem should recommend the appointment of counsel for the parent to safeguard the fairness of the proceedings.

➤ **Conduct of hearing**

U.R.Y.C.P. 24

> **(3) Conduct of hearing.** All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults. Adjudication hearings shall be conducted:
> (i) without a jury and may be recessed from time to time;
> (ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;
> (iii) by excluding the general public and admitting only those persons found by the court to have a direct interest in the cause or work of the court; and
> (iv) with a complete record of all evidence taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

➤ **Explaining procedures and rights**

U.R.Y.C.P. 24

> **(4) Verifying information and explaining procedures and rights**. At the beginning of each adjudicatory hearing, the court shall: verify the name, age and residence of the child who is the subject of the cause and ascertain the relationship of the parties, each to the other; ascertain whether all necessary parties are present and identify all persons participating in the hearing; ascertain whether the notice requirements have been complied with and, if not, whether the affected parties intelligently waived compliance of the notice requirements in accordance with

section 43-21-507 of the Mississippi Code; explain to the parties the purpose of the hearing and the possible dispositional alternatives thereof; and explain to the parties:
(i) the right to counsel;
(ii) the right to remain silent;
(iii) the right to subpoena witnesses;
(iv) the right to confront and cross-examine witnesses; and
(v) the right to appeal, including the right to a transcript of the proceedings.

The court should then ascertain whether the parties before the court are represented by counsel. If the party wishes to retain counsel, the court shall continue the hearing for a reasonable time to allow the party to obtain and consult with counsel of the party's own choosing. ***IF AN INDIGENT CHILD DOES NOT HAVE COUNSEL, THE COURT SHALL APPOINT COUNSEL TO REPRESENT THE CHILD AND SHALL CONTINUE THE HEARING FOR A REASONABLE TIME TO ALLOW THE CHILD TO CONSULT WITH THE APPOINTED COUNSEL.***

Any person found by the youth court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel, which shall include the foster parent(s) and the residential child caring agency providing care for the child. The court may exclude the attendance of a child from an adjudication hearing in neglect and abuse cases with consent of the child's guardian ad litem or legal counsel.

These procedures, which apply even if the allegations in the petition are not contested, ensure due process for the parents and the child. A court's failure to comply with them compromises the best interests of the child.

IT'S ABOUT PROTECTING THE FAMILY INTEGRITY, A LIBERTY INTEREST THAT EXTENDS TO BOTH THE PARENTS AND THE CHILD:

"The importance of the constitutional right to family integrity is well-settled. In 2000, when it most recently addressed the constitutional rights of parents in detail, the Supreme Court wrote that '[t]he liberty interest at issue in this case-the interest of parents in the care, custody, and control of their children-is perhaps the oldest of the fundamental liberty interests recognized by this Court.' For nearly a century, parental rights have formed core elements of the Supreme Court's substantive due process jurisprudence and have been repeatedly reaffirmed, being described as a matter of 'intrinsic human rights.' Reviewing these cases, the Court concluded, '[i]n light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.' Although they are less well

established than parents' rights to the custody of their children, some courts have recognized a reciprocal right of children to live with their parents."

Josh Gupta-Kagan, *Filling the Due Process Donut Hole: Abuse and Neglect Cases Between Disposition and Permanency*, 10 Conn. Pub. Int. L.J. 13, 34-35 (2010).

See also:

In re J.N., 915 So. 2d 1076, 1079-80 (Miss. Ct. App. 2005) ("A child in youth court proceedings is entitled to certain due process rights that cannot be ignored. At the beginning of an adjudicatory hearing, the youth court must explain to the parties the purpose of the hearing, the possible disposition alternatives, the right to counsel, the right to remain silent, the right to subpoena witnesses, the right to cross-examine witnesses testifying against him, and the right to appeal.").

Miriam C. Meyer-Thompson, *Wanted: Forever Home Achieving Permanent Outcomes for Nevada's Foster Children*, 14 Nev. L.J. 268, 300 (2013) ("Zealous representation of parents is essential for a well-functioning child welfare system.").

Pursuant to Rule 24(b)(4), the court *MUST* appoint counsel for the child. But, that rules provision does not require the court to appoint counsel for the parent(s). That determination is made on a case-by-case basis consistent with constitutional law.

See, e.g.:

Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N.C., 452 U.S. 18, 27 (1981) (quoting Stanley v. Illinois, 405 U.S. 645, 651 (1972) ("[A] parent's desire for and right to 'the companionship, care, custody[,] and management of his or her children' is an important interest that 'undeniably warrants deference and, absent a powerful countervailing interest, protection.'").

Pritchett v. Pritchett, 161 So. 3d 1106, 1110-11 (Miss. Ct. App. 2015) ("[The Supreme Court in *Lassiter*] stated that '[i]nformed opinion has clearly come to hold that an indigent parent is entitled to the assistance of appointed counsel[,] not only in parental termination proceedings, but also in dependency and neglect proceedings [.]' But [it] ultimately left the decision on whether to appoint counsel to be decided on a case-by-case basis by the state.").

A GUARDIAN AD LITEM'S ROLE IT IS TO ZEALOUSLY PROTECT THE BEST INTERESTS OF THE CHILD. ADVOCATING FOR THE APPOINTMENT OF COUNSEL FOR THE PARENTS IS CONSISTENT WITH THAT ROLE:

"Effective advocacy can speed the process toward reunification with parents or toward another permanency option in a safe and loving home."

Miriam C. Meyer-Thompson, *Wanted: Forever Home Achieving Permanent Outcomes for Nevada's Foster Children*, 14 Nev. L.J. 268, 290 (2013).

➤ **Evidence and standard of proof**

U.R.Y.C.P. 24

(3) Conduct of hearing. All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults. Adjudication hearings shall be conducted:
(i) without a jury and may be recessed from time to time;
(ii) ***UNDER THE RULES OF EVIDENCE AND RULES OF COURT AS MAY COMPLY WITH APPLICABLE CONSTITUTIONAL STANDARDS;***
(iii) by excluding the general public and admitting only those persons found by the court to have a direct interest in the cause or work of the court; and
(iv) with a complete record of all evidence taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.
. . .
(5) Evidence. In arriving at its adjudicatory decision, the court shall consider only evidence which has been formally admitted at the adjudicatory hearing. The following evidentiary procedures apply to these hearings:
(i) All testimony shall be under oath and may be in narrative form.
(ii) ***THE COURT SHALL ADMIT ANY EVIDENCE THAT WOULD BE ADMISSIBLE IN A CIVIL PROCEEDING.***
(iii) Members of the youth court staff may appear as witnesses except that no admission or confession made to a member of the youth court staff may be testified to at a youth court hearing.
(iv) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence to subpoena, confront and examine the person who prepared or furnished data for the report and to introduce evidence controverting the contents of the report.
(6) Opportunity to present closing argument. At the conclusion of the evidence, the court shall give the parties an opportunity to present closing argument.
(7) Standard of proof. If the court finds from a ***PREPONDERANCE OF THE EVIDENCE*** that the child is a neglected child or an abused child, the youth court shall enter an order adjudicating the child to be a neglected child or an abused child.
(8) Terminating proceedings. The court may at any time terminate the proceedings and dismiss the petition if the court finds such action to be conducive to the welfare of the child and in the best interests of the state.

MRE 101

> These rules govern proceedings in the courts of the State of Mississippi to the extent and with the exceptions stated in rule 1101.

MRE 1101

> Rules Inapplicable. Except for the rules pertaining to privileges, these rules do not apply in the following situations:
> (1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a). . . .
> (3) Miscellaneous Proceedings . . . probable cause hearings in . . . youth court cases; ... disposition hearings; granting or revoking probation; issuance of warrants for arrest, . . . and search warrants; and proceedings with respect to release on bail or otherwise.

See also:

> In re J.T., 188 So. 3d 1192, 1202 (Miss. 2016) ("We also affirm that, except where specifically superseded by a youth-court-specific rule, the Mississippi Rules of Evidence apply with full force and effect to youth-court adjudications.").

> In re S., 47 So. 3d 715, 720 (Miss. Ct. App. 2010) ("We find that considering the evidence in a light most favorable to the State, a reasonable person could have found, by a preponderance of the evidence, both children were neglected. Furthermore, we defer to the youth court judge's observation of the temperament, maturity, and demeanor of the children and parents.").

1104 CHILD TESTIFYING

A child, especially one who has been abused or neglected, may find the prospect of testifying heart-wrenching or, even worse, sickening terror:

> "Many child abuse victims are the most psychologically fragile witnesses in the legal system. A very high percentage of these child victims suffer "fear, anxiety, posttraumatic stress symptoms, depression, sexual difficulties, poor self-esteem, stigmatization, [and] difficulty with trust."
>
> William Wesley Patton, *Viewing Child Witnesses Through A Child and Adolescent Psychiatric Lens: How Attorneys' Ethical Duties Exacerbate Children's Psychopathology*, 16 Widener L. Rev. 369 (2010).

There is also the concern that it may harm the child's recovery:

> "Victims Advocates have long worried that sexually abused children are re-traumatized when they testify in court, although the empirical support for this position is mixed. . . . [But some] commentators also emphasize that children affirmatively want to participate in judicial proceedings not only to obtain a voice in decisions that affect them, but also to be provided with 'accurate information about the proceedings and their outcomes.'"
>
> Myrna S. Raeder, *Distrusting Young Children Who Allege Sexual Abuse: Why Stereotypes Don't Die and Ways to Facilitate Child Testimony*, 16 Widener L. Rev. 239, 258–59 (2010).

See also:

> Williams v. State, 859 So. 2d 1046, 1049 (Miss. Ct. App. 2003) ("A child is competent to testify if the court ascertains that the child possesses 'the ability to perceive and remember events, to understand and answer questions intelligently and to comprehend and accept the importance of truthfulness.'").

A GUARDIAN AD LITEM SHOULD BE MINDFUL OF A CHILD'S ANXIETIES IN TESTIFYING, AND MAKE RECOMMENDATIONS THAT WILL ALLEVIATE THAT STRESS.

- *ARE THE PROCEEDINGS SEPARATE FROM THE TRIAL OF CASES INVOLVING ADULTS?*

  See Advisory Note to Rule 24(b)(2) ("All cases involving children must be heard separately from the trial of cases involving adults. This is consistent with the confidential and rehabilitative nature of youth court proceedings. An effective method to assure compliance is for the court to schedule its adult cases and youth court proceedings on separate days.").

- *ARE THERE COMMON SENSE PROTECTIONS THAT WILL EASE THE TESTIFYING EXPERIENCE?*

  § 99-43-101 (Child witness standards of protection)

  > (1) The following terms have the meanings ascribed:
  > (a) "Child" means any individual under the age of eighteen (18) years of age who must testify in any legal or criminal proceeding.
  > (b) "Proceeding," "criminal proceeding" or "legal proceeding" means:
  > (i) Any criminal hearing, criminal trial or other criminal proceeding in the circuit or county court in which a child testifies as a victim of a crime or as a witness as to a material issue; or

(ii) A youth court proceeding in which a child testifies as a victim of a crime or delinquent act or as a witness to a crime or delinquent act.

CURIOUSLY, these standards of protection do not apply to abuse and neglect proceedings except, perhaps, if the parent is charged with criminal abuse or neglect.

NEVERTHELESS, THE GUARDIAN AD LITEM SHOULD RECOMMEND THAT THE COURT APPLY THESE STANDARDS AS DEEMED APPROPRIATE IN THE BEST INTERESTS OF THE CHILD.

For example,

- To be asked questions in a manner a child of that age can reasonably understand, including, but not limited to, a child-friendly oath.
- To be free of nuisance, vexatious or harassment tactics in the proceeding.
- To have present in the courtroom and in a position clearly visible in close proximity to the child, a support person, if the support person is not a witness in the proceeding.
- To have the courtroom or the hearing room adjusted to ensure the comfort and protection of the child.
- To have the relaxation of the formalities of the proceedings in an effort to ensure the comfort of the child.
- To permit a properly trained facility animal or comfort item or both to be present inside the courtroom or hearing room.
- To permit the use of a properly constructed screen that would permit the judge and jury in the courtroom or hearing room to see the child but would obscure the child's view of the defendant or the public or both.
- To have a secure and child-friendly waiting area provided for the child during court proceedings and to have a support person stay with the child while waiting.
- To have an advocate or support person inform the court about the child's ability to understand the nature of the proceedings, special accommodations that may be needed for the child's testimony, and any other testimony relevant to any of the rights set forth in this section.

Miss. Code Ann. § 99-43-101(2); *see also* Miss. Code Ann. § 13-1-407 (Use of child's videotaped testimony) and Miss. Code Ann. § 43-15-51 (Multidisciplinary child protection team).

1105 GUARDIAN AD LITEM TESTIFYING

➤ Governing evidentiary laws

The Mississippi Rules of Evidence apply with "full force and effect" in adjudication hearings:

> "We also affirm that, except where specifically superseded by a youth-court-specific rule, the Mississippi Rules of Evidence apply with full force and effect to youth-court adjudications."
>
> In re J.T., 188 So. 3d 1192, 1202 (Miss. 2016).

See also:

> U.R.Y.C.P. 24(b)(3) ("Adjudication hearings shall be conducted: . . . (ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;").
>
> U.R.Y.C.P. 24(b)(5) ("(ii) the court shall admit any evidence that would be admissible in a civil proceeding.").
>
> M.R.E. 101 ("These rules govern proceedings in the courts of the State of Mississippi to the extent and with the exceptions stated in rule 1101.").
>
> M.R.E. 1101 (Rules Inapplicable). Note: Adjudication hearings are not excluded.

➤ Evidentiary rules of particular importance

MRE 401. Test for Relevant Evidence

> Evidence is relevant if:
> (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
> (b) the fact is of consequence in determining the case.

MRE 402. General Admissibility of Relevant Evidence

> Relevant evidence is admissible unless any of the following provides otherwise:
> - the United States Constitution;
> - the Mississippi Constitution; or
> - these rules.
>
> Irrelevant evidence is not admissible.

MRE 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

MRE 404. Character Evidence; Crimes or Other Acts

(a) Character Evidence.
(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.
(2) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case: (A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it; (B) a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it; and (C) the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.
(3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608, and 609.
(b) Crimes, Wrongs, or Other Acts.
(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
(2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

MRE 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

See also Advisory Note to Rule 602 ("***A PERSON MUST HAVE PERSONAL KNOWLEDGE OF THE MATTER AS OPPOSED TO A MERE OPINION, IN ORDER TO TESTIFY***. . . . Rule 602 does not prevent, however, the witness from testifying about hearsay statements. He need only show that he has personal knowledge regarding the making of the statements. He cannot testify about the subject matter contained in the hearsay statement. When he is testifying with

regard to hearsay statements, Rules 801 and 805 are applicable.").

MRE 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
(a) rationally based on the witness's perception;
(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

See also Advisory Note to Rule 701 ("[Rule 701] favors the admission of lay opinions when two considerations are met. The first consideration is the familiar requirement of first-hand knowledge or observation. The second consideration is that the witness's opinion must be helpful in resolving the issues.").

MRE 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
(b) the testimony is based on sufficient facts or data;
(c) the testimony is the product of reliable principles and methods; and
(d) the expert has reliably applied the principles and methods to the facts of the case.

See also Advisory Note to Rule 702 ("As has long been the practice in Mississippi, Rule 702 recognizes that one may qualify as an expert in many fields in addition to science or medicine, such as real estate, cotton brokering, auto mechanics or plumbing.").

MRE 801. Definitions That Apply to This Article; Exclusions from Hearsay

(a) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
(b) Declarant. "Declarant" means the person who made the statement.
(c) Hearsay. "Hearsay" means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.
(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay: (1) A Declarant-Witness's Prior Statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement: (A) is inconsistent with the declarant's testimony and was given

under penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (B) is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or (C) identifies a person as someone the declarant perceived earlier. (2) An Opposing Party's Statement. The statement is offered against an opposing party and: (A) was made by the party in an individual or representative capacity; (B) is one the party manifested that it adopted or believed to be true; (C) was made by a person whom the party authorized to make a statement on the subject; (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or (E) was made by the party's coconspirator during and in furtherance of the conspiracy. The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

MRE 802. The Rule Against Hearsay

Hearsay is not admissible except as provided by law. The words "as provided by law" include other rules prescribed by the Mississippi Supreme Court."

MRE 803. Exceptions to the Rule Against Hearsay – Regardless of Whether the Declarant Is Available as a Witness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) Present Sense Impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) Then-Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

. . .

(24) Other Exceptions. A statement not specifically covered by this Rule if: (A) the statement has equivalent circumstantial guarantees of trustworthiness; (B) it is offered as evidence of a material fact; (C) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; (D) admitting it will best serve the purposes of these rules and the interests of justice; and (E) before the trial or hearing, the proponent gives an

adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.

(25) Tender Years Exception. A statement by a child of tender years describing any act of sexual contact with or by another is admissible if: (A) the court – after a hearing outside the jury's presence – determines that the statement's time, content, and circumstances provide substantial indicia of reliability; and (B) the child either: (i) testifies; or (ii) is unavailable as a witness, and other evidence corroborates the act.

THERE ARE TWENTY FIVE EXCEPTIONS. Listed above are five of them.

➤ **Criteria for the admissibility of the GAL's testimony**

AT THE ADJUDICATION HEARING, A GUARDIAN AD LITEM'S TESTIMONY IS GENERALLY ADMISSIBLE IF:

- *RELEVANT, AND NOT UNFAIRLY PREJUDICIAL OR MISLEADING;*

  Relevant to what? An adjudication hearing is an evidentiary hearing on the allegations of abuse or neglect as set forth in the petition. The guardian ad litem was not present when the alleged abuse or neglect occurred. Albeit, the guardian may have personally observed conduct or heard a statement that is relevant under Rule 401.

- *THERE IS PERSONAL KNOWLEDGE OF THE MATTER; AND*

  Remember, "Rule 602 does not prevent . . . the witness from testifying about hearsay statements" if that witness 'has personal knowledge regarding the making of the statements." But, the witness "cannot testify about the subject matter contained in the hearsay statement."

- *THE TESTIMONY IS OTHERWISE ADMISSIBLE UNDER THE RULES.*

  For instance, hearsay is not admissible except as provided by law. Rule 803 lists twenty-five exceptions for the rule against hearsay.

ADDITIONALLY, a guardian ad litem *MAY NOT TESTIFY AS AN EXPERT WITNESS* unless meeting the criteria set forth in MRE 702. Nor is the entirety of the GAL report admissible as evidence. Portions of the GAL report may be admissible, but only as allowed by the Mississippi Rules of Evidence.

ON THE OTHER HAND, the Mississippi Rules of Evidence do not apply to disposition hearings. *See* MRE 1101 ("Except for the rules pertaining to privileges, these rules do not apply in the following situations: . . . (3) Miscellaneous Proceedings . . . probable cause hearings in . . . youth court cases; . . . ***DISPOSITION HEARINGS***; . . ."). At the disposition hearing, the guardian ad litem may testify on the present health, education, estate and general welfare of the child with a great deal more leeway.

See also:

M.J.S.H.S. v. Yalobusha County Dep't of Human Servs., 782 So. 2d 737, 741 (Miss. 2001) ("[The guardian ad litem] should have been prepared to testify as to the present health, education, estate and general welfare of the children. This of necessity would require [interviewing] the minor children, their current custodians, and prospective adoptive parents, if any. Additional record reviews, such as school grades and current medical and or psychological records, in addition to [other relevant records], . . . would be helpful.").

1106 ADJUDICATION ORDERS

U.R.Y.C.P. 25

(b) Child protection proceedings.
(1) Content. An adjudication order shall recite that the child has been adjudicated a neglected child or an abused child or a sexually abused child or a dependent child, as applicable, but in no event shall it recite that the child has been found guilty. Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the adjudication that the child is a neglected child or an abused child or a sexually abused child or a dependent child. Any order of adjudication shall be confidential as provided by section 43-21-561(5) of the Mississippi Code and as otherwise provided by law.
(2) Two or more children subject of the same petition. On each charge of abuse and neglect in the same petition admitted or proved in accordance with these rules, the court shall enter ***A SEPARATE ADJUDICATION*** on that charge within its adjudicatory order.

1107 ADJUDICATION HEARINGS CHECKLIST

✓ Did the court follow the procedures governing the filing, time, form and contents of the petition? *See* U.R.Y.C.P. 20.

✓ Did the court follow the procedures governing the issuance of summons? Were all necessary parties summoned to appear? *See* U.R.Y.C.P. 22.

✓ If a party requested discovery, was it relevant to the adjudication hearing? Did it overreach? If so, then what reasonable limits or conditions would ensure due process without compromising confidentiality? *See* U.R.Y.C.P. 15.

✓ Did the court direct the attorneys for the parties to appear for a prehearing conference? Are there any concerns that should be brought to the attention of the court that may aid in the disposition of the action. *See* U.R.Y.C.P. 15.

✓ If a continuance was granted, did the court make a finding of good cause? *See* U.R.Y.C.P. 24.

✓ Did the court verify the information and explain the rights and procedures to the parties as required pursuant to Rule 24(b)(4)? If not, did that failure compromise the best interests of the child?

✓ Are there circumstances that urge a recommendation for the appointment of counsel for the parent(s)?

See, e.g.:

> "Effective advocacy can speed the process toward reunification with parents or toward another permanency option in a safe and loving home."
>
> Miriam C. Meyer-Thompson, *Wanted: Forever Home Achieving Permanent Outcomes for Nevada's Foster Children*, 14 Nev. L.J. 268, 290 (2013).

✓ Will the child be testifying? Are there practical safeguards that will make it easier for the child to do so? *See, e.g.,* Miss. § 99-43-101 (Child witness standards of protection).

✓ Will either party be calling you (the guardian ad litem) to testify? Are you familiar with the Mississippi Rules of Evidence? Is there any matter for which you would qualify to testify as an expert?

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CHAPTER 12

DISPOSITION HEARINGS

1200 SUMMONS TO APPEAR AT DISPOSITION HEARING

1201 DISPOSITION HEARINGS

- **Time of hearing**
- **Conduct of hearing**
- **Evidence and explaining the purpose of the hearing**
- **Factors to be considered**

1202 DISPOSITION ORDERS

1203 MODIFICATION OF DISPOSITION ORDERS

1204 DISPOSITION HEARINGS CHECKLIST

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1200 SUMMONS TO APPEAR AT DISPOSITION HEARING

U.R.Y.C.P. 22

> **(b) Disposition hearings.** Service of summons for disposition hearings shall be made pursuant to Rule 22(a) of these rules. The clerk does not need to issue summons to:
> (i) any person who has already been served with process or who has already appeared in court proceedings in the cause; and
> (ii) who has received sufficient notice of the time, date, place and purpose of the disposition hearing.

IN ZEALOUSLY PROTECTING THE CHILD'S BEST INTERESTS, THE GUARDIAN AD LITEM SHOULD BRING TO THE COURT'S ATTENTION

- any noncompliance of the summons procedures.
- any witness not summoned whose input or presence is necessary for implementing the service plan.

Someone whose testimony was not needed for the adjudication hearing may play a critical role for the successful completion of the service plan or in attaining a desirable permanency outcome.

> *See also:*
>
> Advisory Note to Rule 22(a)(1) ("Persons who should always be present at the disposition hearing of a child adjudicated abused or neglected include: "judge or judicial officer; parents whose rights have not been terminated, including putative fathers; relatives with legal standing or other custodial adults; assigned caseworker; agency attorney; attorney for parents (separate attorney if conflict warrants); legal advocate for the child and/or GAL/CASA; court reporter or suitable technology; and security personnel." NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 63 (1995). Other persons whose presence may be needed at the disposition hearing include: 'age-appropriate children; extended family members; adoptive parents; judicial case management staff; service providers; adult or juvenile probation or parole officer; other witnesses.' Id.").

1201 DISPOSITION HEARINGS

➤ **Time of hearing**

U.R.Y.C.P. 26

> **(c) Child protection proceedings.**
> **(1) Time of hearing.** If the child has been adjudicated a neglected child or an abused child, the youth court shall immediately set a time and place for a disposition hearing which shall be separate, distinct and subsequent to the adjudicatory hearing. The disposition hearing may be held immediately following the adjudicatory hearing unless a continuance is necessary to allow the parties to prepare for their participation in the proceedings. If the child has been taken into custody, a disposition hearing shall be held within fourteen (14) days after the adjudicatory hearing unless good cause be shown for postponement.

Advisory Note to Rule 26(c)(1)

> *The disposition hearing is **SEPARATE, DISTINCT AND SUBSEQUENT** to the adjudicatory hearing. See In re J.E.J., 419 So. 2d 1032, 1034 (Miss. 1982) ("Here, the court could have adjourned for fifteen (15) minutes, the entire record could have been offered in evidence and he could then have entered a disposition order."). However, unless a continuance is necessary, the court may conduct the disposition hearing immediately after the adjudicatory hearing. See In re L.C.A., 938 So. 2d 300, 306 (Miss. Ct. App. 2006) ("L.C.A. neither requested a continuance nor argued that a continuance was necessary. Accordingly, we find no merit to the issue [that the youth court failed to comply with section 43-21-601].").*

See also:

> In re C.R., 604 So. 2d 1079, 1081 (Miss. 1992) ("Under the mandates of the Mississippi Youth Court Act, before a child can be declared 'abused' or 'neglected', separate and distinct adjudicatory and disposition hearings must be held.").

Note that "unless a continuance is necessary, the court may conduct the disposition hearing immediately after the adjudicatory hearing." But, even in that circumstance, the disposition hearing is separate, distinct, and subsequent to the adjudication hearing–e.g., an adjournment between the two hearings.

A GUARDIAN AD LITEM SHOULD CONSIDER RECOMMENDING A POSTPONEMENT IF THERE IS GOOD CAUSE IN THE BEST INTERESTS OF THE CHILD OR IN THE INTERESTS OF JUSTICE.

HOWEVER, since most disposition hearings are heard on the same day as the adjudication hearing, it is important for the guardian ad litem to be prepared to testify on that day on the present health, education, estate and general welfare of the child.

IN OTHER WORDS, THE GUARDIAN AD LITEM SHOULD HAVE ALREADY INTERVIEWED ANY PERSONS WHO ARE LIKELY TO HAVE RELEVANT INFORMATION REGARDING THE DISPOSITION, INCLUDING:

- the child,
- the parents, guardians and custodians,
- the grandparents,
- representatives of any private care agency that has cared for the child,
- the family protection worker or family protection specialist assigned to the case,
- school officials and teachers,
- qualified health professionals and mental health professionals,
- relatives, neighbors and friends,
- prospective adoptive parents, and
- any other persons with relevant information pertaining to the case.

See also:

> U.R.Y.C.P. 26(c)(6); Miss. Code Ann. 43-15-13(11) (providing rights to be extended to foster parents); M.J.S.H.S. v. Yalobusha County Dep't of Human Servs., 782 So. 2d 737, 741 (Miss. 2001).

REMEMBER, TOO, THAT HEARSAY IS ADMISSIBLE AT THE DISPOSITION HEARING PROVIDED IT IS MATERIAL AND RELEVANT.

LASTLY, sometimes a parent may be *RELUCTANT TO DISCUSS ANYTHING* prior to the adjudication hearing. But, that resistance could very well change upon the court finding by a preponderance of the evidence that the child was abused or neglected. If a guardian ad litem's report is incomplete because the parent was not forthcoming early in the proceedings, then it might be prudent to request a *POSTPONEMENT* of the disposition hearing in the chance that the parent is now ready to cooperate.

➤ **Conduct of hearing**

U.R.Y.C.P. 26

> **(2) Conduct of hearing.** All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults. Disposition hearings shall be conducted:
> (i) without a jury and may be recessed from time to time;
> (ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;

(iii) by excluding the general public and admitting only those persons found by the court to have a direct interest in the cause or work of the court; and
(iv) with a complete record of all the evidence taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.
ANY PERSON FOUND BY THE COURT TO HAVE A DIRECT INTEREST IN THE CAUSE SHALL HAVE THE RIGHT TO APPEAR AND BE REPRESENTED BY LEGAL COUNSEL, which shall include the foster parent(s) and the residential child caring agency providing care for the child.

➤ **Evidence and explaining the purpose of the hearing**

U.R.Y.C.P. 26

(3) Evidence. In arriving at its dispositional decision, the court shall consider only evidence presented at the disposition hearing. The following evidentiary procedures apply to these disposition hearings:
(i) All testimony shall be under oath unless waived by all parties and may be in narrative form.
(ii) ***THE COURT MAY CONSIDER ANY EVIDENCE THAT IS MATERIAL AND RELEVANT TO THE DISPOSITION OF THE CAUSE, INCLUDING HEARSAY AND OPINION EVIDENCE.***
(iii) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence to subpoena, confront and examine the person who prepared or furnished data for the report and to introduce evidence controverting the contents of the report.
(iv) The court may exclude the attendance of a child from any portion of a disposition hearing that would be injurious to the best interest of the child in abuse and neglect cases with consent of the child's counsel.
(4) Explaining the purpose of the dispositional hearing. At the beginning of each disposition hearing, the judge shall inform the parties of the purpose of the hearing.
(5) Opportunity to present closing argument. At the conclusion of the evidence, the youth court shall give the parties an opportunity to present closing argument.

MRE 101

These rules govern proceedings in the courts of the State of Mississippi to the extent and with the exceptions stated in rule 1101.

MRE 1101

Rules Inapplicable. Except for the rules pertaining to privileges, these rules do not apply in the following situations:
(1) Preliminary Questions of Fact. The determination of questions of fact

> preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a). . . .
> (3) Miscellaneous Proceedings . . . probable cause hearings in . . . youth court cases; ... ***DISPOSITION HEARINGS***; granting or revoking probation; issuance of warrants for arrest, . . . and search warrants; and proceedings with respect to release on bail or otherwise.

THE GUARDIAN AD LITEM SHOULD RECOMMEND THE APPOINTMENT OF COUNSEL FOR THE PARENT IF:

- the parent is not given an opportunity to subpoena, confront and examine the person who prepared or furnished data for the report and to introduce evidence controverting the contents of the report;
- the parent is not informed of the purpose of the hearing; and/or
- the parent is not given an opportunity to present a closing argument.

Even if a parent has been told by a social worker or some other official of the purpose of the hearing, that apprisal falls short of what is required by the rule. It states: "At the beginning of each disposition hearing, ***THE JUDGE SHALL INFORM*** the parties of the purpose of the hearing."

THE CHILD'S INTERESTS ARE BEST SERVED WHEN THE CHILD'S AND THE PARENT'S DUE PROCESS RIGHTS ARE ZEALOUSLY PROTECTED.

Also, while the Mississippi Rules of Evidence do not apply to disposition hearings, there are constitutional standards.

For example,

Under the Mississippi Rules of Criminal Procedure, a judge may find probable cause for the issuance of an arrest warrant based on hearsay, in whole or in part, "provided there is a basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished."*See* MRCrP 2.2(b). Even though the Mississippi Rules of Evidence do not apply to probable cause hearings, the Mississippi Supreme Court has adopted a rule that provides a standard for taking judicial action based on hearsay testimony. Arguably, hearsay that does not meet this standard is not relevant since it lacks a reasonable indicia of credibility.

See also:

> S. C. v. State, 795 So. 2d 526, 529 (Miss. 2001) ("The youth court may hear any evidence that is material and relevant to [the] disposition of the cause, including hearsay and opinion evidence.");

In re R.D., 658 So. 2d 1378, 1383-84 (Miss. 1995) ("Dispositional hearings in youth courts are very informal, allowing for hearsay testimony as well as reports from various individuals or agencies who have information concerning the well being and "best interest" of the minors before the court.").

➤ **Factors to be considered**

U.R.Y.C.P. 26

(6) Factors to be considered. If the child has been adjudicated a neglected child or an abused child, before entering a disposition order, the youth court shall consider, ***AMONG OTHERS***, the following relevant factors:
(i) the child's physical and mental conditions;
(ii) the child's need of assistance;
(iii) the manner in which the parent, guardian or custodian participated in, tolerated or condoned the abuse, neglect or abandonment of the child;
(iv) the ability of a child's parent, guardian or custodian to provide proper supervision and care of a child; and
(v) relevant testimony and recommendations, where available, from the foster parent of the child, the grandparents of the child, the guardian ad litem of the child, representatives of any private care agency that has cared for the child, the family protection worker or family protection specialist assigned to the case, and any other relevant testimony pertaining to the case.

THESE ARE THE FACTORS THAT THE YOUTH COURT "SHALL CONSIDER" BEFORE ENTERING A DISPOSITION ORDER. DO NOT OVERLOOK THE "AMONG OTHERS" FACTORS.

In other words, the youth court must consider (i) through (v). But, it would also appear that the court *MUST* consider *ANY FACTOR THAT IS RELEVANT* to the best interests of the child in achieving reunification or some other desirable permanency outcome.

THEREFORE, it is important for the guardian ad litem to be ready to testify on matters that fully address:

- the child's physical and mental conditions;
- the child's need of assistance;
- the manner in which the parent, guardian or custodian participated in, tolerated or condoned the abuse, neglect or abandonment of the child;
- the ability of a child's parent, guardian or custodian to provide proper supervision and care of a child; and
- other relevant factors.

➤ **Entering disposition order**

U.R.Y.C.P. 26

(c)(7) Entering disposition order. After consideration of all the evidence and the relevant factors, the court shall enter a disposition order that shall not recite any of the facts or circumstances upon which the disposition is based, nor shall it recite that a child has been found guilty; but it shall recite that a child is found to be a neglected child or an abused child. Upon a written motion by a party, the court shall make written findings of fact and conclusions of law upon which it relies for the disposition order.

➤ **Authorized dispositions**

U.R.Y.C.P. 27

(c) Child protection proceedings.
(1) Authorized dispositions. In neglect and abuse cases, the disposition order may include any of the alternatives as set forth in section 43-21-609 of the Mississippi Code. Disposition orders shall comply, as applicable, with the requirements set forth in sections 43-21-603(7) and 43-21-609(f) and (g) of the Mississippi Code. Additionally, the court may order:
(i) any appropriate disposition designed for the treatment and care of a child in need of special care, including civil commitment to a state institution providing care for that disability or infirmity, pursuant to section 43-21-611 of the Mississippi Code;
(ii) parents or guardians to pay for the support of the child placed in custody of any person or agency, including any necessary medical treatment pursuant to section 43-21-615(2) of the Mississippi Code;
(iii) any person found encouraging, causing, or contributing to the abuse or neglect of the child to do or omit to do any act deemed reasonable and necessary for the welfare of the child pursuant to section 43-21-617 of the Mississippi Code;
(iv) financially able parents to pay for court ordered medical and other examinations and treatment of a child, for reasonable attorney's fees and court costs, and for other expenses found necessary or appropriate in the best interest of the child pursuant to section 43-21-619(1) of the Mississippi Code;
(v) enrollment or reenrollment of any compulsory-school-age child in school, and further order appropriate education services, pursuant to section 43-21-621 of the Mississippi Code.
(2) Two or more children subject of the same petition. The court shall enter a separate disposition on each adjudicated charge.
(d) Other matters pertaining to disposition orders.
(1) Transportation costs. The costs of transporting any child to any institution or

agency shall be pursuant to section 43-21-615(1) of the Mississippi Code. In the case of a female child, the court shall designate some suitable woman to accompany her to the institution or agency.

§ 43-21-611

If the youth court finds at the disposition hearing that a delinquent child, a child in need of supervision, a neglected child, ***AN ABUSED CHILD OR A DEPENDENT CHILD IS ALSO A CHILD IN NEED OF SPECIAL CARE***, the youth court may, in its discretion, make any appropriate additional disposition designed for the treatment of the disability or infirmity, which may include civil commitment to a state institution providing care for that disability or infirmity. Any commitment, including one to a Department of Mental Health facility, ordered pursuant to this section shall be in compliance with the requirements for civil commitment as set forth in Section 41-21-61 et seq. Discharge from a Department of Mental Health facility shall be made pursuant to the provisions of Section 41-21-87. Nothing contained in this section shall require any state institution, department or agency to provide any service, treatment or facility if said service, treatment or facility is not available, nor shall this section be construed to authorize the youth court to overrule an expulsion or suspension decision of appropriate school authorities.

See also Miss. Code Ann. § 43-21-105(o) ("A child in need of special care" means a child with any mental or physical illness that cannot be treated with the dispositional alternatives ordinarily available to the youth court.").

§ 43-21-603

(7) If the youth court orders that the custody or supervision of a child who has been adjudicated abused or neglected be placed with the Department of Human Services or any other person or public or private agency, other than the child's parent, guardian or custodian, the youth court shall find and the disposition order shall recite that:
(a)(i) Reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or
(ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody; and
(b) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that the placement of the child in foster care is in the best interests of the child; or
(c) Reasonable efforts to maintain the child within his home shall not be required if the court determines that:
(i) The parent has subjected the child to aggravated circumstances, including, but

not limited to, abandonment, torture, chronic abuse and sexual abuse; or
(ii) The parent has been convicted of murder of another child of that parent, voluntary manslaughter of another child of that parent, aided or abetted, attempted, conspired or solicited to commit that murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of that parent; or
(iii) The parental rights of the parent to a sibling have been terminated involuntarily; and
(iv) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that placement of the child in foster care is in the best interests of the child.
Once the reasonable efforts requirement is bypassed, the court shall have a permanency hearing under Section 43-21-613 within thirty (30) days of the finding.

§ 43-21-609

In neglect and abuse cases, the disposition order may include any of the following alternatives, giving precedence in the following sequence:
(a) Release the child without further action;
(b) Place the child in the custody of his parents, a relative or other person subject to any conditions and limitations as the court may prescribe. If the court finds that temporary relative placement, adoption or foster care placement is inappropriate, unavailable or otherwise not in the best interest of the child, durable legal custody may be granted by the court to any person subject to any limitations and conditions the court may prescribe; such durable legal custody will not take effect unless the child or children have been in the physical custody of the proposed durable custodians for at least six (6) months under the supervision of the Department of Human Services. The requirements of Section 43-21-613 as to disposition review hearings do not apply to those matters in which the court has granted durable legal custody. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities;
(c)(i) Grant durable legal relative guardianship to a relative or fictive kin licensed as a foster parent if the licensed relative foster parent or licensed fictive kin foster parent exercised physical custody of the child for at least six (6) months before the grant of durable legal relative guardianship and the Department of Child Protection Services had legal custody or exercised supervision of the child for at least six (6) months. In order to establish durable legal relative guardianship, the youth court must find the following:
1. That reunification has been determined to be inappropriate;
2. That the relative guardian or fictive kin guardian shows full commitment to the care, shelter, education, nurture, and reasonable medical care of the child; and
3. That the youth court consulted with any child twelve (12) years of age or older before granting durable legal relative guardianship.
(ii) The requirements of Section 43-21-613 as to disposition review hearings do

not apply to a hearing concerning durable legal relative guardianship. However, the Department of Child Protection Services must conduct an annual review and recertification of the durable legal relative guardianship to determine whether it remains in the best interest of the child. If a material change in circumstances occurs adverse to the best interest of the child, the parent, relative guardian, fictive kin guardian, or Department of Child Protection Services may petition the court to review the durable legal relative guardianship;

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

(e) Order youth court personnel, the Department of Child Protection Services or child care agencies to assist the child and the child's parent, guardian or custodian to secure social or medical services to provide proper supervision and care of the child;

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

(i) The Department of Child Protection Services for appropriate placement; or

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

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

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

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

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

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

SUMMARY OF THE DISPOSITION ALTERNATIVES:

- Rule 27 immediately directs us to the alternatives set forth in section 43-21-609. This statutory section primarily addresses custody and placement.

AFTER AN ADJUDICATION OF ABUSE OR NEGLECT, THE PREFERRED SEQUENCE OF CUSTODY AND PLACEMENT IS:

1. Release the child without further action.
2. Place the child in the custody of his parents, a relative or other person subject to any conditions and limitations as the court may prescribe.
3. Grant durable legal relative guardianship.
4. Give legal custody of the child to Department of Child Protection Services for appropriate placement or any private or public organization able to assume the education, care and maintenance of the child.

"If the court finds that temporary relative placement, adoption or foster care placement is inappropriate, unavailable or otherwise not in the best interest of the child, *DURABLE LEGAL CUSTODY* may be granted by the court to any person subject to any limitations and conditions the court may prescribe."

Placing a child in the custody of the parent or a relative is preferred over foster care:

> "The court directed the Department to work with the parties with an ultimate goal of returning [the child] to his family. This action is within the discretion of the court and is not inconsistent with the evidence."
>
> In re S.M., 739 So. 2d 473, 475 (Miss. Ct. App. 1999).

But, the polestar consideration is always the best interest of the child. In other words, the child's health, safety, and welfare is the paramount concern:

> "It defies logic to think that parents or relatives who have severely and permanently injured E.M. and have caused the death of her younger brother could be trusted to properly care for and raise E.M. without further incident . . . [T]he judgment of the youth court judge should be reversed and E.M. should be placed in appropriate foster care."
>
> In re E.M., 810 So. 2d 596, 600 (Miss. 2002).

See also:

> S.C. v. State, 795 So. 2d 526, 532–33 (Miss. 2001) ("The daughter was adjudicated to be sexually abused by the father and the son was adjudicated neglected. It is therefore clear that it is in the best interests of both children not to be placed in the custody of their father. As the maternal parent, the mother was not only the appropriate custodian but preferred.").
>
> David J. Herring, *The Adoption and Safe Families Act--Hope and Its Subversion*, 34 Fam. L.Q. 329, 329 (2000) ("Congress made clear that the paramount goal for public child welfare systems is to secure the health and safety of the children who enter these systems.").

A guardian ad litem, *IN ZEALOUSLY PROTECTING THE BEST INTERESTS OF THE CHILD*, should report to the court on whether the Department of Child Protection Services, or other appropriate entity or person, has exercised "reasonable care and due diligence" in offering "appropriate and available services to prevent the unnecessary removal of the child from the home or provide other services related to meeting the needs of the child and the parents." *See* Miss. Code Ann. § 43-21-105(gg).

REASONABLE EFFORTS APPEAR TO COMMENCE WITH THE INITIAL REPORT OF ABUSE OR NEGLECT:

> "[I]f a child protective investigation does not result in an out-of-home placement, a child protective investigator must provide information to the parent or guardians about community service programs that provide respite care, voluntary guardianship or other support services for families in crisis."
>
> Miss. Code Ann. § 43-21-353(9).

WHY MUST THE CHILD PROTECTIVE INVESTIGATOR PROVIDE THIS INFORMATION TO THE PARENT? Presumably, it is to prevent the unnecessary removal of the child from the home or to provide other services related to meeting the needs of the child and the parents.

ADDITIONALLY, if a child is removed from the custody of the parent, then the guardian ad litem should make sure that the youth court has recited in its disposition order all of the findings required by the statute. A failure to make these findings could impact federal funding and, possibly, affect future termination of parental rights proceedings.

- Rule 27 then allows for the following additional orders:

  (i) any appropriate disposition designed for the treatment and care of a child in need of special care, including civil commitment to a state institution providing care for that disability or infirmity, pursuant to section 43-21-611 of the Mississippi Code;

  (ii) parents or guardians to pay for the support of the child placed in custody of any person or agency, including any necessary medical treatment pursuant to section 43-21-615(2) of the Mississippi Code;

  (iii) any person found encouraging, causing, or contributing to the abuse or neglect of the child to do or omit to do any act deemed reasonable and necessary for the welfare of the child pursuant to section 43-21-617 of the Mississippi Code;

  (iv) financially able parents to pay for court ordered medical and other examinations and treatment of a child, for reasonable attorney's fees and court costs, and for other expenses found necessary or appropriate in the best interest of the child pursuant to section 43-21-619(1) of the Mississippi Code;

  (v) enrollment or reenrollment of any compulsory-school-age child in school, and further order appropriate education services, pursuant to section 43-21-621 of the Mississippi Code.

1203 MODIFICATION OF DISPOSITION ORDERS

U.R.Y.C.P. 22

(c) Modification of disposition hearings. Service of summons for modification of disposition hearings shall be made pursuant to Rule 22(a) of these rules. The clerk does not need to issue summons to:
(i) any person who has already been served with process or who has already appeared in court proceedings in the cause; and
(ii) who has received sufficient notice of the time, date, place and purpose of the modification hearing.

U.R.Y.C.P. 28

(b) Child protection proceedings.
(1) Modification of orders. Procedures governing the modification of a disposition order of an abused or neglected child shall be conducted pursuant to section 43-21-613(2) of the Mississippi Code. Service of summons for such hearings shall be pursuant to Rule 22(c) of these rules.
(2) Child protection reviews. Child protection reviews for abused or neglected children shall be conducted pursuant to Rules 29 and 31 of these rules.
(c) Dependent children.
(1) Modification of orders. Procedures governing the modification of a disposition order of a dependent child shall be conducted pursuant to section 43-21-613(2) of the Mississippi Code. Service of summons for such hearings shall be pursuant to Rule 22(c) of these rules.
(2) Child protection reviews. Child protection reviews for dependent children shall be conducted pursuant to Rules 29 and 31 of these rules.
(d) Durable legal custody.
(1) Modifications of orders. Procedures governing the modification of a durable legal custody order of a neglected or abused child shall be conducted pursuant to section 43-21-613(2) of the Mississippi Code. Service of summons for such hearings shall be pursuant to Rule 22(c) of these rules. A durable legal custody order shall not be modified except upon the court finding:
(i) a substantial change in circumstances which has adversely affected the child;
(ii) that the order modifying the durable legal custody order remedies the conditions; and
(iii) that such modification is in the best interest of the child and the interests of justice.
(2) Permanency review hearings not required. The requirements of section 43-21-613 of the Mississippi Code as to durable legal custody review hearings do not apply. Instead, permanency review hearings are not to be conducted unless explicitly ordered by the court. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities, and relieved of physical and legal custody and supervision of the child.

Advisory Note to Rule 28

The youth court has continuing jurisdiction to modify the disposition of an abused or neglected child as necessary. See In re R.D., 658 So. 2d 1378, 1386 (Miss. 1995) ("Section 43-21-613 provides that orders of the youth court determining the disposition of a child who has been adjudicated neglected, for instance, may be modified in the discretion of the youth court thereafter, as necessary."). Modification of a custody order requires a material change in circumstances and that the modification be in the best interest of the child. See In re V.L.W., 751 So. 2d 1033, 1035 (Miss. 1999). Any modification is to be of equal or greater precedence which the youth court could have originally ordered. See Miss. Code Ann. § 43-21-613(2) (2008).

§ 43-21-613

(2) ***ON MOTION OF A CHILD OR A CHILD'S PARENT, GUARDIAN OR CUSTODIAN***, the youth court may, in its discretion, conduct an informal hearing to review the disposition order. If the youth court finds a material change of circumstances relating to the disposition of the child, the youth court may modify the disposition order to any appropriate disposition of equal or greater precedence which the youth court could have originally ordered.

1204 DISPOSITION HEARINGS CHECKLIST

✓ Did the court follow the procedures governing the issuance of summons? Were all necessary parties summoned to appear? *See* U.R.Y.C.P. 22.

✓ Have diligent efforts been made to locate all person related to the child by the third degree? If not, then what relatives have not been contacted? What additional efforts might prove successful in locating these persons?

See, e.g.:

> "The Fostering Connections Act (PL 110-351) requires due diligence to identify and provide notice to all adult relatives within 30 days of removal (42 U.S.C. § 671(29)). This includes non-resident, non-custodial fathers and paternal relatives. The court should ask what actions the social worker has taken to identify and locate the father."
>
> National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 120 (2016).

✓ Was the disposition hearing *SEPARATE, DISTINCT AND SUBSEQUENT* to the adjudicatory hearing?

✓ Is there *GOOD CAUSE* for requesting a *POSTPONEMENT*?

✓ Has every person who likely has relevant information regarding the disposition been interviewed? If not, then why not?

✓ Did the court explain the purpose of the hearing to the parties? If not, then did that failure compromise the best interests of the child?

✓ Are there circumstances that urge a recommendation for the appointment of counsel for the parent(s)?

See, e.g.:

> "Effective advocacy can speed the process toward reunification with parents or toward another permanency option in a safe and loving home."
>
> Miriam C. Meyer-Thompson, *Wanted: Forever Home Achieving Permanent Outcomes for Nevada's Foster Children*, 14 Nev. L.J. 268, 290 (2013).

✓ Are you (guardian ad litem) prepared to testify on the following?

- the child's physical and mental conditions;
- the child's need of assistance;
- the manner in which the parent, guardian or custodian participated in, tolerated or condoned the abuse, neglect or abandonment of the child;
- the ability of a child's parent, guardian or custodian to provide proper supervision and care of a child; and
- other relevant factors.

✓ Have you thoroughly investigated all aspects of the home situation?

✓ Is your recommendation for custody and placement consistent with the preferred sequence set forth in Miss. Code Ann. § 43-21-609?

✓ If the child was placed in the custody or supervision of the Department of Child Protection Services or any other person or public or private agency, other than the child's parent, guardian or custodian, did the disposition order include the findings required by Miss. Code Ann. § 43-21-609?

✓ Has the Department of Child Protection Services or any other person or public or private agency made *REASONABLE EFFORTS* to prevent the unnecessary removal of the child from the home? Or, to provide other services related to meeting the needs of the child and the parents?

✓ Are there *ETHNIC, CULTURAL, OR RELIGIOUS CONSIDERATIONS* as these pertain to providing reasonable efforts over a reasonable period in diligently assisting the parent in complying with the service plan?

✓ Are the offered services local?

See, e.g.:

> In re C.R., 604 So. 2d 1079, 1083 (Miss. 1992) ("We cannot simply decide that a school many miles away is better and remove the child from a parent or parents who are doing the best they can within their resources and who are taking full advantage of the best the state or local school has to offer.").

✓ Is the child in need of special care? Is civil commitment to a state institution necessary for providing care for that disability or infirmity?

See Chapter 6 of the *Manual for Mississippi Youth Courts*, which is accessible on the Mississippi Judicial College web site at https://mjc.olemiss.edu/publications/, for applicable laws governing civil commitments for a child in need of special

care who is in need of mental treatment

✓ Have reasonable efforts been made by the state institution to accommodate visitation and to meets the needs of the child and the parents in providing care for the child's disability or infirmity?

See, e.g.,

> "The following words and phrases, for purposes of this chapter, shall have the meanings ascribed herein unless the context clearly otherwise requires:
> . . .
> (gg) 'Reasonable efforts' means the exercise of reasonable care and due diligence by the Department of Human Services, the Department of Child Protection Services, ***OR ANY OTHER APPROPRIATE ENTITY OR PERSON*** to use appropriate and available services to prevent the unnecessary removal of the child from the home or provide other services related to meeting the needs of the child and the parents.
>
> Miss. Code Ann. § 43-21-105.

✓ What is the financial situation in the home–including *THE NEED FOR HOUSING ASSISTANCE, TRANSPORTATION, AND FINANCIAL AID*? Has an "Affidavit of Substantial Financial Hardship" been submitted to the court?

See, e.g.:

> "Our review of the record reveals a very young, unwed mother, lacking financial resources and housing who was unemployed. The mother, in a responsible fashion, turned to CYS to obtain assistance to provide and care for her child. . . . [CYS] has failed to make reasonable efforts to prevent the separation of the mother and child.
> A fundamental purpose of the Juvenile Act is to preserve family unity whenever possible. . . It is well-settled that the Juvenile Act was not intended to provide a procedure to take the children of the poor and give them to the rich, nor to take children of the illiterate and crude and give them to the educated and cultured, nor to take the children of the weak and sickly and give them to the strong and healthy. Neither will this Court tolerate the separation of a young child from a parent to protect agency funding."
>
> In re S.A.D., 555 A.2d 123, 128-29 (1989).

✓ Is a parent financially able to pay for some of the expenses deemed necessary or appropriate in the best interest of the child?

See, e.g.:

> "The youth court may order financially able parents to pay for court ordered medical and other examinations and treatment of a child; for reasonable attorney's fees and court costs; and for other expenses found necessary or appropriate in the best interest of the child as determined by the youth court. The youth court is authorized to enforce payments ordered under this subsection."
>
> Miss. Code Ann. § 43-21-619.

See also Miss. Code Ann. § 43-21-105 ("'Financially able' means a parent or child who is ineligible for a court-appointed attorney.").

✓ Are the child's educational needs being met?

See also U.R.Y.C.P. 33 (Truancy); Miss. Code Ann. § 37-13-91 et seq. (Mississippi Compulsory Attendance Law); Miss. Code Ann. § 43-21-621 (Court ordered enrollment).

✓ Does the CPS service plan satisfactorily rehabilitate the home situation? Has the parent been given a copy of the service plan? Has the parent been informed of the consequences for failing to comply with its terms? Are there terms or conditions that should be added to, or removed from, the service plan to better promote a successful reunification or other desirable permanency outcome?

See, e.g.:

> "In all cases where the child is found to be . . . a neglected child or an abused child, the parent, guardian, custodian or any other person who, by any act or acts of wilful commission or omission, if found after notice and a hearing by the youth court to be encouraging, causing or contributing to the neglect or delinquency of such child, may be required by the youth court to do or to omit to do any act or acts that the judge may deem reasonable and necessary for the welfare of the child."
>
> Miss. Code Ann. § 43-21-617.

✓ Does the parent have indications of an *ALCOHOL PROBLEM OR A DRUG DEPENDENCY*?

> "One problem-solving court approach to improving outcomes in child abuse and neglect cases with parental alcohol and substance abuse is the family treatment drug court or dependency drug court. These specialized courts are devoted to cases of child abuse and neglect that involve substance abuse by the child's parents or other caregivers and aim to protect the safety and welfare of children while giving parents the tools they need to become sober, responsible caregivers."
>
> National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 89 (2016).

See also Miss. Code Ann. § 9-23-1 et seq. ("Alyce Griffin Clarke Intervention Court Act").

It would appear that this Act applies to youth court proceedings involving abused or neglected children:

> "Section 9-23-9(4) specifically provides 'The State [Intervention] Advisory Committee shall establish through rules and regulations a viable and fiscally responsible plan to expand the number of adult and juvenile drug court programs operating in Mississippi. These rules and regulations shall include plans to increase participation in existing and future programs while maintaining their voluntary nature.'"
>
> MS AG Opinion to Lackey (March 27, 2009).

✓ Does the child have siblings? If so, then has the Department of Child Protection Services made reasonable efforts to keep those children together?

See, e.g.:

> "[C]ounsel quite correctly begins by reminding us that it is presumed that the best interest of a child will be served by remaining in the custody of the natural parent. Almost as strong is the imperative that siblings should not be required to live apart.
>
> Carson v. Natchez Children's Home, 580 So. 2d 1248, 1257–58 (Miss. 1991).

See also Miss. Code Ann. § 43-15-13 ("(8) . . . The department shall adopt rules addressing concurrent planning for reunification and a permanent living arrangement. The department shall consider the following factors when determining appropriateness of concurrent planning: . . . (h) Placement of siblings.").

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CHAPTER 13

FOSTER CARE REVIEW HEARINGS

1300 FOSTER CARE REVIEW HEARINGS

- **Conducted pursuant to § 43-15-13**
- **Children under the foster care placement program**
- **Objectives**
- **System of individualized plans and reviews**
- **When referrals for termination of parental rights are initiated**
- **Progress evaluations**
- **Training program for persons who provide foster care and relative care**
- **Placement priorities and goals**
- **Changes in placement**
- **Notice to families**
- **Rights extended to persons who provide foster care and relative care**
- **Responsibilities for persons who provide foster care and relative care**

1301 FOSTER CARE REVIEW HEARINGS CHECKLIST

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1300 FOSTER CARE REVIEW HEARINGS

➤ **Conducted pursuant to § 43-15-13**

U.R.Y.C.P. 30

The foster care review of a child in foster care placement shall be conducted pursuant to section 43-15-13 of the Mississippi Code and as otherwise provided by law.

➤ **Children under the foster care placement program**

§ 43-15-13

(1) For purposes of this section, "children" means persons found within the state who are under the age of twenty-one (21) years, and who were placed in the custody of the Department of Child Protection Services by the youth court of the appropriate county. For purposes of this chapter, "commercial sexual exploitation" means any sexual act or crime of a sexual nature, which is committed against a child for financial or economic gain, to obtain a thing of value, for quid pro quo exchange of property or any other purpose.

➤ **Objectives**

§ 43-15-13

(2) The Department of Child Protection Services shall establish a foster care placement program for children whose custody lies with the department, with the following objectives:
(a) Protecting and promoting the health, safety and welfare of children;
(b) ***PREVENTING THE UNNECESSARY SEPARATION OF CHILDREN FROM THEIR FAMILIES*** by identifying family problems, assisting families in resolving their problems and preventing the breakup of the family where the prevention of child removal is desirable and possible when the child can be cared for at home without endangering the child's health and safety;
(c) Remedying or assisting in the solution of problems that may result in the neglect, abuse, exploitation, commercial sexual exploitation, human trafficking or delinquency of children;
(d) ***RESTORING TO THEIR FAMILIES CHILDREN WHO HAVE BEEN REMOVED,*** by the provision of services to the child and the families when the child can be cared for at home without endangering the child's health and safety;
(e) ***PLACING CHILDREN IN SUITABLE ADOPTIVE HOMES*** approved by a licensed adoption agency or family protection specialist, in cases ***WHERE RESTORATION TO THE BIOLOGICAL FAMILY IS NOT SAFE, POSSIBLE OR APPROPRIATE***;

(f) ***ASSURING SAFE AND ADEQUATE CARE OF CHILDREN AWAY FROM THEIR HOMES,*** in cases where the child cannot be returned home or cannot be placed for adoption, including temporary or emergency placement with a relative or fictive kin pending youth court action on the case. At the time of placement, the department shall implement concurrent planning, as described in subsection (8) of this section, so that permanency may occur at the earliest opportunity. Consideration of possible failure or delay of reunification should be given, to the end that the placement made is the best available placement to provide permanency for the child; and

(g) Providing a family protection specialist or worker or team of such specialists or workers for a family and child throughout the implementation of their permanent living arrangement plan. Wherever feasible, the same family protection specialist or worker or team shall remain on the case until the child is no longer under the jurisdiction of the youth court.

See also:

> In re G.Q.A., 771 So. 2d 331, 336 (Miss. 2000) ("Essentially, [the Adoption and Safe Families Act] clarifies that a child need not be forced to remain in or be returned to an unsafe home and allows the States to place the safety and welfare of the child before the interests of abusive parents.").
>
> Allison M. Whelan, *Denying Tax-Exempt Status to Discriminatory Private Adoption Agencies*, 8 UC Irvine L. Rev. 711, 747 (2018) ("In 1997, Congress passed the Adoption and Safe Families Act (ASFA). In passing the ASFA, Congress clearly and unequivocally established three national goals for children in foster care: safety, permanency, and well-being. The ASFA requires child welfare agencies to, inter alia, document the steps they take to find an adoptive family or other permanent living arrangement for a child once it is determined that reunification with the child's biological parents is not in the child's best interest.").
>
> David J. Herring, *The Adoption and Safe Families Act--Hope and Its Subversion*, 34 Fam. L.Q. 329, 330 (2000) ("ASFA backs away from the promotion of aggressive family reunification efforts and attempts to alter permanency planning priorities in a way that is consistent with an emphasis on safety.").

➤ **System of individualized plans and reviews**

§ 43-15-13

(3) The Department of Child Protection Services shall administer a system of individualized plans, reviews and reports ***ONCE EVERY SIX (6) MONTHS FOR EACH CHILD UNDER ITS CUSTODY*** within the State of Mississippi, which document each child who has been adjudged a neglected, abandoned or abused child, including a child alleged to have experienced commercial sexual exploitation and/or human trafficking and whose custody was changed by court order as a result of that adjudication, and each public or private facility licensed by the department. The department of child protection services' administrative review shall be completed on each child within the first three (3) months and a relative placement, fictive kin placement, or foster care review once every six (6) months after the child's initial forty-eight-hour shelter hearing. That system shall be for the purpose of enhancing potential family life for the child by the development of individual plans to return the child to the child's natural parent or parents, or to refer the child to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or foster/adoptive home. The goal of the Department of Child Protection Services shall be to return the child to the child's natural parent(s) or refer the child to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or foster/adoptive home within the time periods specified in this subsection or in subsection (4) of this section. In furthering this goal, the department shall establish policy and procedures designed to appropriately place children in permanent homes, provide counseling services and other appropriate services to children who have been victims of commercial sexual exploitation or human trafficking. The policy shall include a system of reviews for all children in foster care, as follows: foster care counselors in the department shall make all possible contact with the child's natural parent(s), custodial parent(s) of all siblings of the child, and any interested relative for the first two (2) months following the child's entry into the foster care system, and provide care for victims of commercial sexual exploitation or human trafficking. For purposes of contacting custodial parent(s) of a sibling, siblings include those who are considered a sibling under state law, and those who would have been considered a sibling under state law, except for termination or disruption of parental rights. For any child who has been in foster care ***FOR FIFTEEN (15) OF THE LAST TWENTY-TWO (22) MONTHS REGARDLESS OF WHETHER THE FOSTER CARE WAS CONTINUOUS FOR ALL OF THOSE TWENTY-TWO (22) MONTHS***, the department shall file a petition to terminate the parental rights of the child's parents. the time period starts to run from the date the court makes a finding of abuse and/or neglect, or commercial sexual exploitation or human trafficking, ***OR SIXTY (60) DAYS FROM WHEN THE CHILD WAS REMOVED FROM HIS OR HER HOME, WHICHEVER IS EARLIER***. The department can choose not to file a termination of parental

rights petition if the following apply:
(a) The child is being cared for by a relative; and/or
(b) The department has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child. Before granting or denying a request by the department for an extension of time for filing a termination of parental rights action, the court shall receive a written report on the progress which a parent of the child has made in treatment, to be made to the court in writing by a mental health/substance abuse therapist or counselor.

➤ **When referrals for termination of parental rights are initiated**

§ 43-15-13

(4) In the case of any child who is placed in foster care on or after July 1, 1998, except in cases of aggravated circumstances prescribed in Section 43-21-603(7)(c), the child's natural parent(s) will have a reasonable time to be determined by the court, which shall not exceed a six-month period of time, in which to meet the service agreement with the department for the benefit of the child unless the department has documented extraordinary and compelling reasons for extending the time period in the best interest of the child. If this agreement has not been satisfactorily met, simultaneously the child will be referred to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or a foster/adoptive home. For children under the age of three (3) years, termination of parental rights shall be initiated within six (6) months, unless the department has documented compelling and extraordinary circumstances, and placement in a permanent relative's home, adoptive home or foster/adoptive home within two (2) months. For children who have been abandoned under the provisions of Section 97-5-1, termination of parental rights shall be initiated within thirty (30) days and placement in an adoptive home shall be initiated without necessity for placement in a foster home. ***THE DEPARTMENT NEED NOT INITIATE TERMINATION OF PARENTAL RIGHTS PROCEEDINGS WHERE THE CHILD HAS BEEN PLACED IN DURABLE LEGAL CUSTODY, DURABLE LEGAL RELATIVE GUARDIANSHIP, OR LONG-TERM OR FORMALIZED FOSTER CARE BY A COURT OF COMPETENT JURISDICTION.***

➤ **Progress evaluations**

§ 43-15-13

(5) The foster care review once every six (6) months shall be conducted by the youth court or its designee(s), and/or by personnel within the Department of Child Protection Services or by a designee or designees of the department and may include others appointed by the department, and the review shall include at a

minimum an evaluation of the child based on the following:
(a) The extent of the care and support provided by the parents or parent while the child is in temporary custody;
(b) The extent of communication with the child by parents, parent or guardian;
(c) The degree of compliance by the agency and the parents with the social service plan established;
(d) The methods of achieving the goal and the plan establishing a permanent home for the child;
(e) Social services offered and/or utilized to facilitate plans for establishing a permanent home for the child; and
(f) Relevant testimony and recommendations from the foster parent of the child, the grandparents of the child, the guardian ad litem of the child, when appointed, the Court-Appointed Special Advocate (CASA) of the child, representatives of any private care agency that has cared for the child, the family protection worker or family protection specialist assigned to the case, and any other relevant testimony pertaining to the case.

EACH CHILD'S REVIEW PLAN ONCE EVERY SIX (6) MONTHS SHALL BE FILED WITH THE COURT WHICH AWARDED CUSTODY AND SHALL BE MADE AVAILABLE TO NATURAL PARENTS OR FOSTER PARENTS UPON APPROVAL OF THE COURT. The court shall make a finding as to the degree of compliance by the agency and the parent(s) with the child's social service plan. The court also shall find that the child's health and safety are the paramount concern. In the interest of the child, the court shall, where appropriate, initiate proceedings on its own motion. The Department of Child Protection Services shall report to the Legislature as to the number of those children, the findings of the foster care review board and relevant statistical information in foster care in a semiannual report to the Legislature to be submitted to the Joint Oversight Committee of the Department of Child Protection Services. The report shall not refer to the specific name of any child in foster care.

➤ **Training program for persons who provide foster care and relative care**

§ 43-15-13

(6)(a) The Department of Child Protection Services, with the cooperation and assistance of the State Department of Health, shall develop and implement a training program for foster care parents to indoctrinate them as to their proper responsibilities upon a child's entry into their foster care. The program shall provide a minimum of twelve (12) clock hours of training, which shall include training foster care parents about providing mental and physical support to children who have experienced commercial sexual exploitation or human trafficking. The foster care training program shall be satisfactorily completed by such foster care parents before or within ninety (90) days after child placement with the parent. Record of the foster care parent's training program participation

shall be filed with the court as part of a child's foster care review plan once every six (6) months.
(b)(i) The court may waive foster care training for an appropriate relative placement.
(ii) A relative exempted from foster care training is not eligible for board payments, foster care payments, kinship care payments, therapeutic care payments, or any other monthly payments from the department to assist in the care of the child.
(7) When the Department of Child Protection Services is considering placement of a child in a foster home and when the department deems it to be in the best interest of the child, the department shall give first priority to placing the child in the home of one (1) of the child's relatives within the third degree, as computed by the civil law rule.
(a) In placing the child in a relative's home, the department may waive any rule, regulation or policy applicable to placement in foster care that would otherwise require the child to have a separate bed or bedroom or have a bedroom of a certain size, if placing the child in a relative's home would be in the best interest of the child and those requirements cannot be met in the relative's home.
(b) The court may waive foster care training for a relative only when appropriate.

➤ **Placement priorities and goals**

§ 43-15-13

(8) The Legislature recognizes that the best interests of the child require that the child be placed in the most permanent living arrangement as soon as is practicably possible. To achieve this goal, the Department of Child Protection Services is directed to conduct concurrent planning so that a permanent living arrangement may occur at the earliest opportunity. Permanent living arrangements may include prevention of placement of a child outside the home of the family when the child can be cared for at home without endangering the child's health or safety; reunification with the family, when safe and appropriate, if temporary placement is necessary; or movement of the child toward the most permanent living arrangement and permanent legal status. ***WHEN A CHILD IS PLACED IN FOSTER CARE OR RELATIVE CARE, THE DEPARTMENT SHALL FIRST ENSURE AND DOCUMENT THAT REASONABLE EFFORTS, AS DEFINED IN SECTION 43-21-105, WERE MADE TO PREVENT OR ELIMINATE THE NEED TO REMOVE THE CHILD FROM THE CHILD'S HOME.*** The department's first priority shall be to make reasonable efforts to reunify the family when temporary placement of the child occurs or shall request a finding from the court that reasonable efforts are not appropriate or have been unsuccessful. A decision to place a child in foster care or relative care shall be made with consideration of the child's health, safety and best interests. At the time of placement, consideration should also be given so that if reunification fails or is delayed, the placement made is the best available placement to provide a

permanent living arrangement for the child. The department shall adopt rules addressing concurrent planning for reunification and a permanent living arrangement. The department shall consider the following factors when determining appropriateness of concurrent planning:
(a) The likelihood of prompt reunification;
(b) The past history of the family;
(c) The barriers to reunification being addressed by the family;
(d) The level of cooperation of the family;
(e) The foster parents' willingness to work with the family to reunite;
(f) The willingness and ability of the foster family or relative placement to provide an adoptive home or long-term placement;
(g) The age of the child; and
(h) Placement of siblings.

➤ **Changes in placement**

§ 43-15-13

(9) If the department has placed a child in foster care or relative care under a court order, the department may not change the child's placement unless the department specifically documents to the court that the current placement is unsafe or unsuitable or that another placement is in the child's best interests unless the new placement is in an adoptive home or other permanent placement. Except in emergency circumstances as determined by the department or where the court orders placement of the child under Section 43-21-303, the foster parents, grandparents or other relatives of the child shall be given an opportunity to contest the specific reasons documented by the department at least seventy-two (72) hours before any such departure, and the court may conduct a review of that placement unless the new placement is in an adoptive home or other permanent placement. When a child is returned to foster care or relative care, the former foster parents or relative placement shall be given the prior right of return placement in order to eliminate additional trauma to the child.

➤ **Notice to families**

§ 43-15-13

(10) The Department of Child Protection Services shall provide the foster parents, grandparents or other relatives with at least a seventy-two-hour notice of departure for any child placed in their foster care or relative care, except in emergency circumstances as determined by the department or where the court orders placement of the child under Section 43-21-303. The parent/legal guardian, grandparents of the child, guardian ad litem and the court exercising jurisdiction shall be notified in writing when the child leaves foster care or relative care placement, regardless of whether the child's departure was planned or unplanned.

The only exceptions to giving a written notice to the parent(s) are when a parent has voluntarily released the child for adoption or the parent's legal rights to the child have been terminated through the appropriate court with jurisdiction.

➤ **Rights extended to persons who provide foster care and relative care**

§ 43-15-13

(11) The Department of Child Protection Services shall extend the following rights to persons who provide foster care and relative care:
(a) A clear understanding of their role while providing care and the roles of the birth parent(s) and the placement agency in respect to the child in care;
(b) Respect, consideration, trust and value as a family who is making an important contribution to the agency's objectives;
(c) Involvement in all the agency's crucial decisions regarding the child as team members who have pertinent information based on their day-to-day knowledge of the child in care;
(d) Support from the family protection worker or the family protection specialist in efforts to do a better day-to-day job in caring for the child and in working to achieve the agency's objectives for the child and the birth family through provision of:
(i) Pertinent information about the child and the birth family;
(ii) Help in using appropriate resources to meet the child's needs, including counseling or other services for victims of commercial sexual exploitation or human trafficking;
(iii) Direct interviews between the family protection worker or specialist and the child, previously discussed and understood by the foster parents;
(iv) Information regarding whether the child experienced commercial sexual exploitation or human trafficking;
(e) The opportunity to develop confidence in making day-to-day decisions in regard to the child;
(f) The opportunity to learn and grow in their vocation through planned education in caring for the child;
(g) The opportunity to be heard regarding agency practices that they may question;
(h) Reimbursement for costs of the child's care in the form of a board payment based on the age of the child as prescribed in Section 43-15-17 unless the relative is exempt from foster care training and chooses to exercise the exemption; and
(i) Reimbursement for property damages caused by children in the custody of the Department of Child Protection Services in an amount not to exceed Five Hundred Dollars ($500.00), as evidenced by written documentation. The Department of Child Protection Services shall not incur liability for any damages as a result of providing this reimbursement.

➤ **Responsibilities for persons who provide foster care and relative care**

§ 43-15-13

(12) The Department of Child Protection Services shall require the following responsibilities from participating persons who provide foster care and relative care:
(a) Understanding the department's function in regard to the foster care and relative care program and related social service programs;
(b) Sharing with the department any information which may contribute to the care of children;
(c) Functioning within the established goals and objectives to improve the general welfare of the child;
(d) Recognizing the problems in home placement that will require professional advice and assistance and that such help should be utilized to its full potential;
(e) Recognizing that the family who cares for the child will be one of the primary resources for preparing a child for any future plans that are made, including return to birth parent(s), termination of parental rights or reinstitutionalization;
(f) Expressing their views of agency practices which relate to the child with the appropriate staff member;
(g) Understanding that all information shared with the persons who provide foster care or relative care about the child and his/her birth parent(s) must be held in the strictest of confidence;
(h) Cooperating with any plan to reunite the child with his birth family and work with the birth family to achieve this goal; and
(i) Attending dispositional review hearings and termination of parental rights hearings conducted by a court of competent jurisdiction, or providing their recommendations to the court in writing.

1301 FOSTER CARE REVIEW HEARINGS CHECKLIST

✓ Request the Department of Child Protection Services to contact you on the time, date, and location of the foster care review for the child whose best interests you have been appointed to zealously protect.

✓ Prior to attending the foster care review, re-read Miss. Code Ann. § 43-15-13 word for word. It is important for you to understand the procedures of the review.

✓ Prior to attending the foster care review, review the court's disposition order, the CPS service plan, the reports submitted to the court, and any investigative notes on the case. Be prepared to make suggestions for protecting and promoting the health, safety and welfare of the child consistent with the objectives and priorities set forth in the Mississippi Youth Court Law and Miss. Code Ann. § 43-15-13.

✓ Even if not prepared, you should still attend. Just being present may make a difference. But, if you cannot attend, then at least carefully read the review plan–which must be filed with the court. *See* Miss. Code Ann. § 43-15-13(5).

✓ If the Department of Child Protection Services is moving toward initiating proceedings for the termination of parental rights, then you should consider whether to make a recommendation for the appointment of counsel for the parent.

CHAPTER 14

PERMANENCY HEARINGS /
PERMANENCY REVIEW HEARINGS

1400 PERMANENCY HEARINGS

- ➤ **General overview**
- ➤ **Time of hearing if reasonable efforts not required**
- ➤ **Time of hearing if reasonable efforts are required**
- ➤ **Permanency hearing required for any child placed in foster care**
- ➤ **Summons**
- ➤ **Conduct of hearing**
- ➤ **Key decisions to be determined at review hearing**
- ➤ **Key elements for showing reasonable efforts**
- ➤ **Finding that termination of parental rights is not in the child's best interest**
- ➤ **Forwarding a termination of parental rights package**
- ➤ **Permanency review hearings**

1401 PERMANENCY REVIEW HEARINGS

- ➤ **Time**
- ➤ **Summons**
- ➤ **Conduct of hearing**
- ➤ **Key decisions to be determined at review hearing**
- ➤ **Key elements for showing reasonable efforts**
- ➤ **Finding that termination of parental rights is not in the child's best interest**
- ➤ **Forwarding a termination of parental rights package**

1402 PERMANENCY HEARINGS / PERMANENCY REVIEW HEARINGS CHECKLIST

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1400 PERMANENCY HEARINGS

➤ General overview

The importance of permanency hearings cannot be overstated. Ultimately, the findings of these hearings will significantly, and often dramatically, affect the lives of many people: the child, the parents, the grandparents, aunts and uncles, cousins, friends, and other interested persons within the community.

PERMANENCY HEARINGS ARE PRIMARILY ABOUT REVIEWING THE PROGRESS THAT IS BEING MADE TOWARD ACHIEVING REUNIFICATION OR SOME OTHER DESIRABLE PERMANENCY OUTCOME:

> "Permanency hearings determine whether a parent has reformed sufficiently to be entitled to custody of his or her children or whether the parent will be deprived of their child's custody for a further period of time. The latter option is itself a significant deprivation of liberty, especially from the perspective of children, who are both the subjects of state custody and whose sense of time demands prompt action.
>
> Second, permanency hearings establish what services, if any, will be provided to facilitate reunification between parents and children. When a permanency plan is changed, the state agency no longer has any obligation to make 'reasonable efforts' to achieve the old permanency plan. Whatever services had been offered to help a parent address the problems [that] led to his or her child's removal will likely no longer be offered–indeed, the parent and child will no longer have any entitlement to such services. The child will now be entitled to a different set of services: those deemed to be 'reasonable efforts' to achieve the new permanency goal.
>
> Third (and related to second point), permanency hearing decisions set in motion a process of working towards the chosen permanency plan, which can take years, if not the remainder of a foster child's childhood. The length of time that will follow, which is indefinite at the time a permanency plan is decided, adds significant weight to these decisions, especially considering children's sense of time.
>
> At the point a permanency plan is decided, nobody can be sure when or even if a later trial will occur. On one hand, the permanency plan is supposed to be 'final,' but, on the other, it may be revised at any subsequent permanency hearing based on new facts."
>
> Josh Gupta-Kagan, *Filling the Due Process Donut Hole: Abuse and Neglect Cases Between Disposition and Permanency*, 10 Conn. Pub. Int. L.J. 13, 36 (2010).

But, it's more than just obtaining a result that will withstand legal scrutiny on appeal. It's about "saving lives" in every sensible connotation–physically, emotionally, and spiritually. Healthy family dynamics nurture flourishing communities and strong economies. Happy children are the heartbeat of our future. It is about all of us!

For all these reasons, a guardian ad litem in zealously protecting the best interests of the child should embrace a spirit of perseverance, resourcefulness, and trustworthiness. That is especially true for permanency hearings.

PERSEVERE means "to persist in a state, enterprise , or undertaking in spite of counterinfluences, opposition, or discouragement."

For example,

> Suppose a parent with a drug addiction relapses. Was there progress? What happened to trigger the downward spiral? What precautions can be put in place to ensure the safety of the child should it happen again? Does the parent have a support group to reach out to when the urge to use returns with a vengeance? Has the parent been to treatment? Maybe a new recovery approach might find success? Does the parent feel overwhelmed due to financial troubles? Is it more than a drug addiction? Is the parent taking drugs to mask feelings of hopelessness or depression cause by a mental disorder? Should the parent be referred to a qualified mental health professional? Did an abusive domestic partner make a surprise visit? Are there cultural or language barriers impeding the recovery process? Persevere. Beyond the dark twilight is often a radiant dawn.

RESOURCEFUL means "able to meet situations [or] capable of devising ways and means."

For example,

> Once the parent's and the child's needs have been identified, make a few calls to various public and/or private agencies that provide services for assisting families. See if they can help or, at least, make a referral to someone who can.
>
> The Mississippi Department of Mental Health lists on its web site the following services:
>
> - Services for adults with mental illness
> - Services for children and youth with serious emotional disturbance
> - Services for people with intellectual/developmental disabilities
> - Alcohol and drug services
>
> http://www.dmh.ms.gov/who-we-are/community-services/

Families First for Mississippi states on its web site:

> "Over the past 20 years, Families First for Mississippi has successfully served the state of Mississippi by providing services to meet the vast needs of Mississippians that span over generations and cross demographic, cultural and economic backgrounds. We strive to support the family system to create successful employees, provide academic and social opportunities for all Mississippi students, and provide stability for families to flourish successfully across the state of Mississippi.
> . . .
> Families First for Mississippi's core services stimulate employment through job readiness, support family financial stability, promote literacy, increase graduation rates, support positive youth development, and promote parenting skills development. In an effort to provide students assistance who are at risk of not graduating, Families First for Mississippi offers courses in a flexible and hassle-free environment as an option to earn a high school diploma. Our courses prepare students for postsecondary institutions, military, and employment opportunities."
>
> https://www.familiesfirstforms.org/

Sometimes, a particular service may not be available in your community. That shouldn't foreclose you recommending it. Perhaps, it's a service that would benefit your community. It's rather troubling that some families have access to services while others do not simply because of their locality. Be resourceful. If possible, find a way for the parents and/or the child to go to the services or, alternatively, to have the services brought to them. Technology is opening new channels for improving lives–especially in areas of medical care, education, and job training.

TRUSTWORTHY means "worthy of confidence [or] dependable."

For example,

> When interviewing a parent, don't oppressively shame them. Your role is not to judge the parent, but rather to assess the home situation and to make recommendations that will allow the child to return to the home or, if that proves futile despite reasonable efforts, then to work towards a desirable permanency outcome that is in the best interests of the child. Be thoughtful and encouraging. Be straightforward and honest. And, at all times, perform your duties faithfully, impartially, and diligently.

Definitions from Merriam-Webster's Collegiate Dictionary, 10th Edition.

➤ **Time of hearing if reasonable efforts not required**

U.R.Y.C.P. 29

(a) Time of hearing following disposition.
(1) When reasonable efforts to maintain child within child's own home are not required. Where the court has found at the disposition hearing that reasonable efforts to maintain the child within the child's own home are not required, it shall conduct a permanency hearing ***WITHIN THIRTY (30) DAYS*** of such finding.

Accord 45 U.S.C. § 1355.20.

➤ **Time of hearing if reasonable efforts are required**

U.R.Y.C.P. 29

(a)(2) When reasonable efforts to maintain child within child's own home are required. Where the court has found at the disposition hearing that reasonable efforts to maintain the child within the child's own home are required, it shall conduct a permanency hearing for any child who has been placed with the [Department of Child Protection Services] or any other person or public or private agency, other than the child's parent, guardian or custodian, unless a lesser period of time is required under the Mississippi Code, ***WITHIN SIX (6) MONTHS AFTER THE EARLIER OF***:
(i) an adjudication that the child has been adjudicated abused or neglected; or
(ii) the date of the child's removal from the allegedly abusive or neglectful custodian/parent.
The court may extend the period of time to conduct the hearing for an additional six (6) months upon finding extraordinary and compelling reasons for extending the time period in the best interest of the child.

Accord Miss. Code Ann. § 43-21-613(3)(a).

➤ **Permanency hearing required for any child placed in foster care**

U.R.Y.C.P. 29

(a)(3) Children placed in foster care on or after July 1, 1998. The court shall conduct a permanency hearing for any child placed in foster care on or after July 1, 1998 within a time period that substantially complies with section 43-15-13(4) of the Mississippi Code.

§ 43-15-13

(4) In the case of any child who is placed in foster care on or after July 1, 1998, except in cases of aggravated circumstances prescribed in Section 43-21-603(7)(c), ***THE CHILD'S NATURAL PARENT(S) WILL HAVE A REASONABLE TIME TO BE DETERMINED BY THE COURT, WHICH SHALL NOT EXCEED A SIX-MONTH PERIOD OF TIME, IN WHICH TO MEET THE SERVICE AGREEMENT WITH THE DEPARTMENT FOR THE BENEFIT OF THE CHILD UNLESS THE DEPARTMENT HAS DOCUMENTED EXTRAORDINARY AND COMPELLING REASONS FOR EXTENDING THE TIME PERIOD IN THE BEST INTEREST OF THE CHILD.*** If this agreement has not been satisfactorily met, simultaneously the child will be referred to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or a foster/adoptive home. For children under the age of three (3) years, termination of parental rights shall be initiated within six (6) months, unless the department has documented compelling and extraordinary circumstances, and placement in a permanent relative's home, adoptive home or foster/adoptive home within two (2) months. For children who have been abandoned under the provisions of Section 97-5-1, termination of parental rights shall be initiated within thirty (30) days and placement in an adoptive home shall be initiated without necessity for placement in a foster home. the department need not initiate termination of parental rights proceedings where the child has been placed in durable legal custody, durable legal relative guardianship, or long-term or formalized foster care by a court of competent jurisdiction.

➤ **Summons**

U.R.Y.C.P. 29

(b) Summons.

(1) Persons summoned. When the date of the permanency hearing has been set by the youth court, and if necessary to fulfill the notice requirements, the judge or the judge's designee shall order the clerk of the youth court to issue a summons to the following to appear personally at such hearing: the child named in the petition; the person or persons who have custody or control of the child; the parent or guardian of the child if such parent or guardian does not have custody of the child, except in no event shall summons issue to the parent(s) whose parental rights have been terminated; the foster parent(s); the residential child agency providing care for the child; ***AND ANY OTHER PERSON WHOM THE COURT DEEMS NECESSARY***.

The clerk does not need to issue summons to any person who has already received sufficient notice of the time, date, place, and purpose of the permanency hearing.

(2) Form. The form of the summons shall be pursuant to Rule 22(a)(2) of these rules.

(3) Manner of service. The manner of service shall be pursuant to Rule 22(a)(3) of these rules.
(4) Time. Summons shall be served not less than three (3) days before the date set for the permanency hearing.
(5) Waiver of summons by a party other than the child. Waiver of summons by a party other than the child shall be pursuant to Rule 22(a)(5) of these rules.
(6) Waiver of three (3) days' time before hearing by a child served with process. Waiver of three (3) days' time before the permanency hearing by a child served with process shall be pursuant to Rule 22(a)(6) of these rules.
(7) Enforcement. Enforcement of the summons shall be pursuant to Rule 22(a)(7) of these rules.

Accord Miss. Code Ann. § 43-21-613(3)(a).

Advisory Note to Rule 29(b)

Foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the permanency hearing. See also Miss. Code Ann. 43-15-13(11) (providing rights to be extended to foster parents).

Persons who should always be present at the permanency hearing include: "judge or judicial officer; age-appropriate children; parents whose rights have not been terminated, including putative fathers; relatives with legal standing or other custodial adults; assigned caseworker; agency attorney; attorney for parents (separate attorney if conflict warrants); legal advocate for the child and/or GAL/CASA; court reporter or suitable technology; and security personnel." National Council of Juvenile and Family Court Judges, Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases 85 (1995). Other persons whose presence may be needed at the permanency hearing include: "extended family members; . . . prospective adoptive parents; judicial case management staff; service providers; adult or juvenile probation or parole officers; other witnesses." Id.

➤ **Conduct of hearing**

U.R.Y.C.P. 29

(c) Conduct of hearing. In conducting the hearing, the court shall require a written report and may require information or statements from the child's [Department of Child Protection Services] worker, youth court counselor, if any, parent, guardian or custodian, which includes, but is not limited to, an evaluation of the family's progress and recommendations for modifying the permanency plan and concurrent plan in the best interest of the child. The judge or referee shall, at the permanency hearing, determine the future status of the child, including, but not limited to, whether the child should be:

(i) returned to the parent(s),
(ii) placed with suitable relatives,
(iii) referred for termination of parental rights and placed for adoption,
(iv) placed for the purpose of establishing durable legal custody, or
(v) continued in foster care on a permanent or long-term basis because of the child's special needs or circumstances.
If the child is in an out-of-state placement, the hearing shall determine whether the out-of-state placement continues to be appropriate and in the best interest of the child. ***AT THE PERMANENCY HEARING THE JUDGE OR REFEREE SHALL DETERMINE, AND THE COURT ORDER SHALL RECITE THAT REASONABLE EFFORTS WERE MADE BY THE [DEPARTMENT OF CHILD PROTECTION SERVICES]*** to finalize the child's permanency plan and concurrent plan that was in effect on the date of the disposition hearing. The judge or referee may find that reasonable efforts to maintain the child within the child's home shall not be required in accordance with section 43-21-603(7)(c) of the Mississippi Code.

Accord § 43-21-613(3)(a).

Advisory Note to Rule 29(c)

Reasonable efforts findings are required until the permanency plan or concurrent plan is achieved.

§ 43-21-603

(7)(c) Reasonable efforts to maintain the child within his home shall not be required if the court determines that:
(i) The parent has subjected the child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse and sexual abuse; or
(ii) The parent has been convicted of murder of another child of that parent, voluntary manslaughter of another child of that parent, aided or abetted, attempted, conspired or solicited to commit that murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of that parent; or
(iii) The parental rights of the parent to a sibling have been terminated involuntarily; and
(iv) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that placement of the child in foster care is in the best interests of the child.
ONCE THE REASONABLE EFFORTS REQUIREMENT IS BYPASSED, THE COURT SHALL HAVE A PERMANENCY HEARING UNDER SECTION 43-21-613 WITHIN THIRTY (30) DAYS OF THE FINDING.

➤ **Key decisions to be determined at review hearing**

Advisory Note to Rule 29(c)

Key decisions the court should make at the permanency review hearing include: "whether there is a need for continued placement of a child; whether the court-approved, long-term permanent plan for the child remains the best plan for the child; whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child; whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances; whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs; whether the terms of visitation need to be modified; whether terms of child support need to be set aside or adjusted; whether any additional court orders need to be made to move the case toward successful completion; [and] what time frame should be followed to achieve reunification or other permanent plan for each child." National Council of Juvenile and Family Court Judges, Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases 75 (1995).

➤ **Key elements for showing reasonable efforts**

Advisory Note to Rule 29(c)

[CPS] must show that reasonable efforts have been made to maintain the child within the child's own home when recommending continued foster care. Key elements to this showing include: "a description of the efforts made by the agency to reunify the family since the last disposition or review hearing and an explanation why those efforts were not successful; [and,] an explanation why the child cannot presently be protected from the identified problems in the home even if services are provided to the child and family." National Council of Juvenile and Family Court Judges, Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases 75 (1995).

➤ **Finding that termination of parental rights is not in the child's best interest**

U.R.Y.C.P. 29

(d) Findings pertaining to termination of parental rights.
(1) The court may find that the filing of a termination of parental rights petition is not in the child's best interest if:
(i) the child is being cared for by a relative; and/or
(ii) the Department of Human Services has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child.

Accord Miss. Code Ann. § 43-21-613(3)(b).

➤ **Forwarding a termination of parental rights package**

U.R.Y.C.P. 29

(d)(2) Where the court does not make a finding under Rule 29(d)(1), the [Department of Child Protection Services] may forward a termination of parental rights package to the Mississippi Attorney General's Office for a termination of parental rights petition to be filed pursuant to the "Termination of Rights of Unfit Parents Law" if:
(i) the child is in the legal custody of the [Department of Child Protection Services]; and
(ii) the court ordered permanency plan or concurrent plan is adoption.

Accord 42 U.S.C. § 675; 45 C.F.R. § 1356.21; Miss. Code Ann. §§ 43-15-13, 93-15-101 to -111.

Advisory Note to Rule 29(d)(2)

The [Department of Child Protection Services] is required to make reasonable efforts to finalize the adopted permanency plan and concurrent plan for the child. This provision is consistent with federal and state laws.
. . .
Termination of parental rights package.
A termination of parental rights package contains forms and documentation required by the Mississippi Attorney General's Office to proceed with a termination of parental rights action.

➤ **Permanency review hearings**

U.R.Y.C.P. 29

(e) Permanency review hearings. Permanency review hearings shall be conducted pursuant to Rule 31 of these rules.

1401 PERMANENCY REVIEW HEARINGS

➤ **Time**

U.R.Y.C.P. 31

(a) Time. The court shall conduct permanency review hearings for a child who has been adjudicated abused or neglected, ***AT LEAST ANNUALLY AFTER EACH PERMANENCY HEARING***, for as long as the child remains in the custody of the Mississippi Department of Human Services. Such shall include each case where there has been a termination of parental rights and the child is in the custody of the [Department of Child Protection Services], until such time as either:
(i) the child is adopted; or
(ii) an appropriate permanency plan is achieved.

➤ **Summons**

U.R.Y.C.P. 31

(b) Summons.
(1) Persons summoned. When the date of the permanency review hearing has been set by the youth court, and if necessary to fulfill the notice requirements, the judge or the judge's designee shall order the clerk of the youth court to issue a summons to the following to appear personally at such hearing: the child named in the petition; the person or persons who have custody or control of the child; the parent or guardian of the child if such parent or guardian does not have custody of the child, except in no event shall summons issue to the parent(s) whose parental rights have been terminated; the foster parent(s); the residential child agency providing care for the child; and any other person whom the court deems necessary. The clerk does not need to issue summons to:
(i) any person who has already been served with process or who has already appeared in court proceedings in the cause; and
(ii) who has received sufficient notice of the time, date, place and purpose of the permanency review hearing.
(2) Form. The form of the summons shall be pursuant to Rule 22(a)(2) of these rules.
(3) Manner of service. The manner of service shall be pursuant to Rule 22(a)(3) of these rules, except in no event shall summons issue to the parent(s) whose parental rights have been terminated.
(4) Time. Summons shall be served not less than three (3) days before the date set for the permanency review hearing.
(5) Waiver of summons by a party other than the child. Waiver of summons by a party other than the child shall be pursuant to Rule 22(a)(5) of these rules.
(6) Waiver of three (3) days' time before hearing by a child served with process. Waiver of three (3) days' time before the permanency review hearing by a child served with process shall be pursuant to Rule 22(a)(6) of these rules.
(7) Enforcement. Enforcement of the summons shall be pursuant to Rule 22(a)(7) of

these rules.

Advisory Note to Rule 31(b)(1)

Foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the permanency hearing. See also Miss. Code Ann. § 43-15-13(11) (providing rights to be extended to foster parents).

Persons who should always be present at the permanency hearing include: "judge or judicial officer; age-appropriate children; parents whose rights have not been terminated, including putative fathers; relatives with legal standing or other custodial adults; assigned caseworker; agency attorney; attorney for parents (separate attorney if conflict warrants); legal advocate for the child and/or GAL/CASA; court reporter or suitable technology; and security personnel." National Council of Juvenile and Family Court Judges, Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases 85 (1995). Other persons whose presence may be needed at the permanency hearing include: "extended family members; . . . prospective adoptive parents; judicial case management staff; service providers; adult or juvenile probation or parole officers; other witnesses." Id. These listings should likewise pertain to a permanency review hearing.

➤ **Conduct of hearing**

U.R.Y.C.P. 31

(c) Conduct of hearing. The court shall conduct the permanency review hearing in like manner as required for permanency hearings under Rule 29(c) of these rules. At each such hearing, the court shall determine the adequacy of the child's permanency plan and, as deemed in the best interest of the child, make appropriate modifications thereto.

Accord Miss. Code Ann. § 43-21-613(3)(a).

Advisory Note to Rule 31(c)

Reasonable efforts findings are required until the permanency plan or concurrent plan is achieved.

➤ **Key decisions to be determined at review hearing**

Advisory Note to Rule 31(c)

Key decisions the court should make at the permanency review hearing include: "whether there is a need for continued placement of a child; whether the court-approved, long-term permanent plan for the child remains the best plan for the child; whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child; whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances; whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs; whether the terms of visitation need to be modified; whether terms of child support need to be set aside or adjusted; whether any additional court orders need to be made to move the case toward successful completion; [and] what time frame should be followed to achieve reunification or other permanent plan for each child." National Council of Juvenile and Family Court Judges, Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases 75 (1995).

➤ **Key elements for showing reasonable efforts**

Advisory Note to Rule 31(c)

[CPS] must show that reasonable efforts have been made to maintain the child within the child's own home when recommending continued foster care. Key elements to this showing include: "a description of the efforts made by the agency to reunify the family since the last disposition or review hearing and an explanation why those efforts were not successful; [and,] an explanation why the child cannot presently be protected from the identified problems in the home even if services are provided to the child and family." National Council of Juvenile and Family Court Judges, Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases 75 (1995).

➤ **Finding that termination of parental rights is not in the child's best interest**

U.R.Y.C.P. 31

(d) Findings pertaining to termination of parental rights.
(1) If the permanency plan is termination of parental rights, the court may find that the filing of a termination of parental rights petition is not in the child's best interest if:
(i) the child is being cared for by a relative; and/or
(ii) the Department of Human Services has documented compelling and extraordinary reasons why termination of parental rights would not be in the best

interests of the child.

Accord Miss. Code Ann. § 43-21-613(3)(b).

➤ **Forwarding a termination of parental rights package**

U.R.Y.C.P. 31

(d)(2) Where the court does not make a finding under Rule 31(d)(1), the Department of Human Services, Division of Family and Children's Services may forward a termination of parental rights package to the Mississippi Attorney General's Office for a termination of parental rights petition to be filed pursuant to the "Termination of Rights of Unfit Parents Law" if:
(i) the child is in the legal custody of the [Department of Child Protection Services]; and
(ii) the court ordered permanency plan or concurrent plan is adoption.

Accord Miss. Code Ann. § 43-21-613(3)(b).

Advisory Note to Rule 31(d)(2)

The [Department of Child Protection Services] is required to make reasonable efforts to finalize the adopted permanency plan and concurrent plan for the child.
. . .
Termination of parental rights package.
A termination of parental rights package contains forms and documentation required by the Mississippi Attorney General's Office to proceed with a termination of parental rights action.

Accord 42 U.S.C. § 675; 45 C.F.R. § 1356.21; Miss. Code Ann. §§ 43-15-13, 93-15-101 to -111.

✓ Attend the foster care review hearings regarding the case. Is CPS satisfied with the progress of the parents? If not, then why not?

✓ Are there circumstances that urge a recommendation for the appointment of counsel for the parent(s)?

See, e.g.:

> "Not all permanency plan decisions have equal constitutional implications. The core constitutional right at stake in abuse and neglect cases is the parent's right to "care, custody, and control" of their child, and the child's reciprocal right to a relationship with his parent. Changing a child's permanency plan from reunification with a parent to anything else directly implicates this constitutional right; it means the state agency will no longer work towards protecting the parent-child relationship and will instead work towards a permanency plan that will permanently disrupt that relationship."
>
> Josh Gupta-Kagan, *Filling the Due Process Donut Hole: Abuse and Neglect Cases Between Disposition and Permanency*, 10 Conn. Pub. Int. L.J. 13, 40-41 (2010).

✓ Is the child currently in *THE LEAST RESTRICTIVE CUSTODY*?

> "When removal from the natural home is necessary, children should be in one placement in their home community. Siblings should remain together and, if possible, should continue to attend the school they were attending at the time of their removal. Accommodations to these basic principles should be made only when a child's safety is at risk."
>
> *Measuring Progress in Improving Court Processing of Child Abuse and Neglect Cases*, 39 Fam. Ct. Rev. 158, 160 (2001).

See also Miss. Code Ann. § 43-21-303(2) ("When it is necessary to take a child into custody, the least restrictive custody should be selected.").

✓ Did the court follow the procedures and time lines governing the permanency hearings and permanency review hearings? Were summonses for these hearings issued pursuant to the rules. *See* U.R.Y.C.P. 29(b)(1) and 31(b)(1).

Remember, a permanency hearing must be conducted even if there are aggravated circumstances for which the court may bypass the reasonable efforts requirement. *See* Miss. Code Ann. § 43-21-603(7)(c) ("Once the reasonable efforts requirement is bypassed, the court shall have a permanency hearing under section 43-21-613 within thirty (30) days of the finding.").

✓ Have diligent efforts been made to locate all person related to the child by the third degree? If not, then what relatives have not been contacted? What additional efforts might prove successful in locating these persons?

See, e.g.:

> "The Fostering Connections Act (PL 110-351) requires due diligence to identify and provide notice to all adult relatives within 30 days of removal (42 U.S.C. § 671(29)). This includes non-resident, non-custodial fathers and paternal relatives. The court should ask what actions the social worker has taken to identify and locate the father."
>
> National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 120 (2016).

See also Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* 102 (2014) ("For a variety of reasons fathers are often not involved in the juvenile dependency process. Yet fathers may provide a placement for the child and have resources that benefit the child. By identification and engagement the father also dramatically increases the number of the child's relatives.").

✓ Be prepared to make recommendations on the key decisions to be made by the court:

For example:

- Is there a need for continued placement of the child? If so, then what health, safety, or other well-being concern is preventing the child from returning home? Are there services or accommodations that might facilitate a resolution of these concerns?

- Is the current permanency plan still in the best interests of the child? If not, then what change of circumstances (whether good or bad) compels a modification of that plan?

- Has the child caring agency made reasonable efforts to rehabilitate the family and eliminate the need for placement of a child? If not, then what is lacking?

- Are there terms or condition in the CPS service plan that need clarification? Or, that need modification due to the unavailability of timely services or a change of circumstances?

- Does the current placement adequately meet all of the child's physical, emotional and educational needs? If not, then what services or accommodations will bring compliance?

- Do the terms of visitation need to be modified? If so, then what changes would promote either reunification or some other desirable permanency outcome?

- Do the terms of child support need to be set aside or adjusted? If so, then why? Does the parent qualify for federal or state financial assistance?

  For example,

  Aid to Families with Dependent Children (AFDC)
  Supplemental Nutrition Assistance Program (SNAP) (e.g., food stamps)
  Temporary Assistance for Needy Families (TANF)
  Supplemental Security Income (SSI)
  Social Security Disability Insurance (SSDI)
  VA Disability Compensation
  Medicaid

- Are there any additional concerns that need to be brought the court's attention for resolution?

- What is the likely time table for achieving reunification? Or, other court-approved permanency plan?

See also National Council of Juvenile and Family Court Judges, *Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 75 (1995) (listing key decisions to be made at the permanency hearing).

CHAPTER 15

TERMINATION OF PARENTAL RIGHTS

1500 TERMINATION OF PARENTAL RIGHTS

- **Short title**
- **Definitions**
- **Jurisdiction and venue**
- **Commencement of proceedings; parties; summons**
- **Surrender of a child to DHS or a home**
- **Termination by written voluntary release**
- **Conduct of hearing for involuntary TPR; counsel for parent**
- **Involuntary termination when reasonable efforts for reunification are required; standard of proof**
- **Involuntary termination when reasonable efforts for reunification are not required; standard of proof**
- **Involuntary termination for reasons of abandonment, desertion, or parental unfitness to raise the child; standard of proof**
- **Grounds for termination**
- **Court discretion not to terminate**
- **Compliance with Indian Child Welfare Act**
- **Effect on another parent's rights**
- **Petitions involving sexual abuse or serious bodily injury treated as preference case**
- **Post-judgment proceedings**
- **Review by Supreme Court**

1501 IMPORTANT CONSIDERATIONS IN TERMINATION PROCEEDINGS

- **Due process**
- **Termination is always a possibility**
- **Review all statutory grounds for termination**
- **Best interests of the child prevails**
- **Time matters**

1502 RECOMMENDING APPOINTMENT OF COUNSEL FOR THE PARENT

1503 KEY INQUIRIES ON ABANDONMENT, DESERTION, AND MENTALLY, MORALLY OR OTHERWISE UNFIT

- **Does the parent's conduct meet the statutory criteria of abandonment by clear and convincing evidence?**

- **Are there compelling and extraordinary circumstances for not terminating the parent's parental rights?**
- **Were reasonable efforts made for reunification?**
- **Are there other grounds for terminating the parent's parental rights?**

1504 KEY INQUIRIES ON GROUND THAT A PARENT HAS COMMITTED AGAINST THE OTHER PARENT A SEXUAL ACT THAT IS UNLAWFUL UNDER SECTION 97–3–65 OR 97–3–95

1505 GENERAL INQUIRIES ON GROUNDS UNDER SECTION 93-15-121

- **Is reunification desirable?**
- **Are there less restrictive alternatives?**
- **Does the service plan address the underlying problems?**
- **Does the service plan accommodate special needs and circumstances?**
- **Was the parent cooperative?**
- **Was the parent making progress?**
- **Was the parent given an opportunity to sign the service plan?**
- **Was the parent warned of the consequences for not complying?**
- **Were reasonable efforts made as required by law?**
- **Are there compelling reasons for not terminating a parent's rights?**
- **What is in the best interests of the child?**
- **What harms or dangers prevent reunification as a possibility?**

1506 SPECIFIC INQUIRIES ON GROUNDS UNDER SECTION 93-15-121

- **Severe mental illness or deficiency**
- **Extreme physical incapacitation**
- **Habitual alcoholism or other drug addiction**
- **Unwilling to provide necessary food, clothing, shelter, or medical care**
- **Failed to exercise reasonable visitation or communication**
- **Substantial erosion of the relationship between the parent and the child**
- **Abusive acts making future contacts undesirable**
- **Criminal convictions against any child**

1507 EVIDENTIARY CONSIDERATIONS

- **Mississippi Rules of Evidence are applicable**
- **Guardian ad litem to testify on relevant matters**

1508 DIFFERENCES BETWEEN DURABLE LEGAL CUSTODY AND TERMINATION OF PARENTAL RIGHTS

1509 TERMINATION OF PARENTAL RIGHTS CHECKLIST

1500 MISSISSIPPI TERMINATION OF PARENTAL RIGHTS LAW

➤ **Short title**

§ 93-15-101

This chapter shall be known and may be cited as the "Mississippi Termination of Parental Rights Law."

See also M.R.C.P. 81 ("(a) Applicability in General. These rules apply to all civil proceedings but are subject to limited applicability in the following actions which are generally governed by statutory procedures. . . . (9) Title 93 of the Mississippi Code of 1972;").

➤ **Definitions**

§ 93-15-103

For purposes of this chapter, unless a different meaning is plainly expressed by the context, the following definitions apply:

(a) "Abandonment" means any conduct by the parent, whether consisting of a single incident or actions over an extended period of time, that evinces a settled purpose to relinquish all parental claims and responsibilities to the child. Abandonment may be established by showing:

(i) For a child who is under three (3) years of age on the date that the petition for termination of parental rights was filed, that the parent has deliberately made no contact with the child for six (6) months;

(ii) For a child who is three (3) years of age or older on the date that the petition for termination of parental rights was filed, that the parent has deliberately made no contact with the child for at least one (1) year; or

(iii) If the child is under six (6) years of age, that the parent has exposed the child in any highway, street, field, outhouse, or elsewhere with the intent to wholly abandon the child.

(b) "Child" means a person under eighteen (18) years of age.

(c) "Court" means the court having jurisdiction under the Mississippi Termination of Parental Rights Law.

(d) "Desertion" means:

(i) Any conduct by the parent over an extended period of time that demonstrates a willful neglect or refusal to provide for the support and maintenance of the child; or

(ii) That the parent has not demonstrated, within a reasonable period of time after the birth of the child, a full commitment to the responsibilities of parenthood.

(e) "Home" means any charitable or religious corporation or organization or the superintendent or head of the charitable or religious corporation or organization organized under the laws of the State of Mississippi, any public authority to which has been granted the power to provide care for or procure the adoption of children by any Mississippi statute, and any association or institution engaged in placing children for adoption on July 1, 1955.

(f) "Interested person" means any person related to the child by consanguinity or affinity, a custodian or legal guardian of the child, a guardian ad litem representing the child's best interests, or an attorney representing the child's preferences under Rule 13 of the Uniform Rules of Youth Court Practice.

(g) "Minor parent" means any parent under twenty-one (21) years of age.

(h) "Parent" means a natural or adoptive parent of the child.

(i) "Permanency outcome" means achieving a permanent or long-term custodial arrangement for the custody and care of the child that ends the supervision of the Department of Child Protection Services.

(j) "Qualified health professional" means a licensed or certified professional who is engaged in the delivery of health services and who meets all applicable federal or state requirements to provide professional services.

(k) "Qualified mental health professional" means a person with at least a master's degree in mental health or a related field and who has either a professional license or a Department of Mental Health credential as a mental health therapist.

(l) "Reunification" means the restoration of the parent's custodial rights in providing for the safety and welfare of the child which ends the supervision of the Department of Child Protection Services.

See also:

Miss. Code Ann. § 97-5-1 ("If the father or mother of any child under the age of six years, or any other person having the lawful custody of such child, or to whom such child shall have been confided, shall expose such child in any highway,

street, field, house, outhouse, or elsewhere, ***WITH INTENT WHOLLY TO ABANDON IT***, such person shall, upon conviction, be punished by imprisonment in the penitentiary not more than seven years, or in the county jail not more than one year.").

In re Adoption of Minor Child, 931 So. 2d 566, 577-78 (Miss. 2006) ("Abandonment . . . includes not only the defined criminal offense of abandonment [i.e., § 97–5–1] but also includes 'any conduct by a parent which evinces a settled purpose to forego all duties and relinquish all parental claims to the child.' The test [is whether] under the totality of the circumstances, 'the natural parent has manifested [his] severance of all ties with the child.' . . . [In this case, the mother] has not been totally absent from [the child's] life for any significant period of time . . . to support a finding of either constructive or actual abandonment.").

➤ **Jurisdiction and venue**

§ 93-15-105

(1) The chancery court has original exclusive jurisdiction over all termination of parental rights proceedings except when a county court sitting as a youth court has acquired jurisdiction of a child in an abuse or neglect proceeding, then the county court shall have original exclusive jurisdiction to hear a petition for termination of parental rights against a parent of that child pursuant to the procedures of this chapter.

(2)(a) Venue in a county court sitting as a youth court for termination of parental rights proceedings shall be in the county in which the court has jurisdiction of the child in the abuse or neglect proceedings. Venue in chancery court for termination of parental rights proceedings shall be proper either in the county in which the defendant resides, the child resides or in the county where an agency or institution having custody of the child is located.
(b) Transfers of venue shall be governed by the Mississippi Rules of Civil Procedure.

See also:

K.M.K. v. S.L.M., 775 So. 2d 115, 118 (Miss. 2000) ("[The] Legislature has given both chancery and county courts acting as youth courts the power to determine whether parental rights should be terminated.").

➤ **Commencement of proceedings; parties; summons**

§ 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. 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. The guardian ad litem fees shall be determined and assessed in the discretion of the court.
(2) Voluntary termination of parental rights by written voluntary release is governed by Section 93-15-111.
(3) In all cases involving termination of parental rights, a minor parent shall be served with process as an adult.
(4) The court may waive service of process if an adoptive child was born in a foreign country, put up for adoption in the birth country, and has been legally admitted into this country.

See also:

In re E.M.C., 695 So. 2d 576, 580 (Miss. 1997) ("Appointment of a guardian ad litem is made mandatory by § 93–15–107. A guardian ad litem should be someone "who is unbiased and independent of the natural mother to insure protection for the child's best interests.").

Luttrell v. Kneisly, 427 So. 2d 1384 (Miss. 1983) ("[The statute] unequivocally mandates that a guardian ad litem be appointed to protect the interest of a child in a termination of parental rights proceeding. The statute is clearly mandatory and not permissive.").

Chitwood v. Stone Cty. Dep't of Child Prot. Servs., 2020 WL 2126713 (Miss. Ct. App.) ("The GAL repeatedly attempted to contact [the father] before and after their one interaction in court on October 9, 2018. She gave [the father] her contact information, [but he] failed to contact her. . . . Given the GAL's repeated attempts to contact [the father] and her other efforts on behalf of [the child], we cannot agree with [the father's] assertion that [the GAL] failed in her duty . . . to represent [the child's] best interest.").

Heffner v. Rensink, 938 So. 2d 917, 920 (Miss. Ct. App. 2006) ("[F]ailure to appoint a guardian ad litem in a termination of parental rights proceeding constitutes reversible error.").

Mississippi Counsel of Youth Court Judges Resolution Regarding Guardians Ad Litem for TPR/Adoption Cases in Chancery Court (Sept. 2017) ("Now, therefore, be it resolved by the Mississippi Council of Youth Court Judges as follows: The Council requests that the Mississippi Conference of Chancery Judges evaluate this request and that each Chancellor hearing TPR and adoption cases ***APPOINT THE SAME GUARDIAN AD LITEM*** for the child as was had in the related underlying abuse and/or neglect case heard in Youth Court to achieve better safety, permanency and well-being outcomes for children. . . .").

➤ **Surrender of a child to DHS or a home**

§ 93-15-109

(1) A parent may accomplish the surrender of a child to the Department of Child Protection Services or to a home by:
(a) Delivering the child to the Department of Child Protection Services or the home;
(b) Executing an affidavit of a written agreement that names the child and which vests in the Department of Child Protection Services or the home the exclusive custody, care and control of the child; and
(c) Executing a written voluntary release as set forth in Section 93-15-111(2).
(2) If a child has been surrendered to a home or other agency operating under the laws of another state, and the child is delivered into the custody of a petitioner or home within this state, the execution of consent by the nonresident home or agency shall be sufficient.
(3) Nothing in this section prohibits the delivery and surrender of a child to an emergency medical services provider pursuant to Sections 43-15-201 through 43-15-209.

➤ **Termination by written voluntary release**

§ 93-15-111

(1) The court may accept the parent's written voluntary release if it meets the following minimum requirements:

(a) Is signed under oath and dated at least seventy-two (72) hours after the birth of the child;
(b) States the parent's full name, the relationship of the parent to the child, and the parent's address;
(c) States the child's full name, date of birth, time of birth if known, and place of birth as indicated on the birth certificate;
(d) Identifies the governmental agency or home to which the child has been surrendered, if any;
(e) States the parent's consent to adoption of the child and waiver of service of process for any future adoption proceedings;
(f) Acknowledges that the termination of the parent's parental rights and that the subsequent adoption of the child may significantly affect, or even eliminate, the parent's right to inherit from the child under the laws of Descent and Distribution (Chapter 1, Title 91, Mississippi Code of 1972);
(g) Acknowledges that all provisions of the written voluntary release were entered into knowingly, intelligently, and voluntarily; and
(h) Acknowledges that the parent is entitled to consult an attorney regarding the parent's parental rights.

(2) The court's order accepting the parent's written voluntary release terminates all of the parent's parental rights to the child, including, but not limited to, the parental right to control or withhold consent to an adoption. If the court does not accept the parent's written voluntary release, then any interested person, or any agency, institution or person holding custody of the child, may commence involuntary termination of parental rights proceedings under Section 93-15-107.

See also:

In re C.C.B. v. G.A.K., 306 So. 3d 674, 680 (Miss. 2020) ("The voluntary release is a document filed by the parent that, if valid and accepted by the court, operates as the parent's consent to the child's adoption. . . . Nothing in the MTPRL vests a county court sitting as a youth court in an abuse or neglect case with exclusive jurisdiction to accept a voluntary release executed by the child's natural parent as a consent to adoption.").

Adoption of J.M.M. v. New Beginnings of Tupelo, Inc., 796 So. 2d 975, 983 (Miss. 2001) ("[O]ur statute clearly allows for minors to relinquish their parental rights. This Court has never held that a guardian ad litem should be appointed to

protect the interests of a minor parent.").

Grafe v. Olds, 556 So. 2d 690, 694 (Miss. 1990) ("[A] written voluntary release . . . terminates the parental rights and thereafter, no objection to the adoption from the natural parent may be sustained.").

➤ **Conduct of hearing for involuntary TPR; counsel for parent**

§ 93-15-113

(1) A hearing on the involuntary termination of parental rights shall be conducted without a jury and in accordance with the Mississippi Rules of Evidence. The court may exclude the child from the hearing if the court determines that the exclusion of the child from the hearing is in the child's best interest.
(2)
(a) At the beginning of the involuntary termination of parental rights hearing, the court shall determine whether all necessary parties are present and identify all persons participating in the hearing; determine whether the notice requirements have been complied with and, if not, determine whether the affected parties intelligently waived compliance with the notice requirements; explain to the parent the purpose of the hearing, the standard of proof required for terminating parental rights, and the consequences if the parent's parental rights are terminated. The court shall also explain to the parent:
(i) ***THE RIGHT TO COUNSEL***;
(ii) The right to remain silent;
(iii) The right to subpoena witnesses;
(iv) The right to confront and cross-examine witnesses; and
(v) The right to appeal, including the right to a transcript of the proceedings.
(b) ***THE COURT SHALL THEN DETERMINE WHETHER THE PARENT BEFORE THE COURT IS REPRESENTED BY COUNSEL.*** If the parent wishes to retain counsel, the court shall continue the hearing for a reasonable time to allow the parent to obtain and consult with counsel of the parent's own choosing. If an indigent parent does not have counsel, the court shall determine whether the parent is entitled to appointed counsel under the Constitution of the United States, the Mississippi Constitution of 1890, or statutory law and, if so, appoint counsel for the parent and then continue the hearing for a reasonable time to allow the parent to consult with the appointed counsel. The setting of fees for court-appointed counsel and the assessment of those fees are in the discretion of the court.

See also:

Mississippi Dep't of Child Prot. Servs. v. Bynum, 305 So. 3d 1158, 1163 (Miss. 2020) ("[T]he Legislature has left the issue of setting and assessing court-appointed counsel's fees to the court's discretion.").

Blakeney v. McRee, 188 So. 3d 1154, 1163 (Miss. 2016) ("[I]t is outside our authority to decide whether, as a matter of public policy, all indigent parents in Mississippi should be entitled to appointed counsel in termination proceedings. [W]e find that the Mississippi Legislature is the proper authority to address this important issue, as any public-policy determinations of the law are vested exclusively in the legislative branch of government.").

Children's Justice Commission Report (October 2013) (*APPENDIX II: Review of Case Law Relevant to Court-Appointed Counsel for Indigent Parents in Cases involving Termination of Parental Rights or Loss of Permanent Custody In Current MS Youth Court Structure*). https://courts.ms.gov

➤ **Involuntary termination when reasonable efforts for reunification are required; standard of proof**

§ 93-15-115

When reasonable efforts for reunification are required 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, the court hearing a petition under this chapter may terminate the parental rights of a parent if, after conducting an evidentiary hearing, the court finds ***BY CLEAR AND CONVINCING EVIDENCE*** that:
(a) The child has been adjudicated abused or neglected;
(b) The child has been in the custody and care of, or under the supervision of, the Department of Child Protection Services for at least six (6) months, and, in that time period, the Department of Child Protection Services has developed a service plan for the reunification of the parent and the child;
(c) A permanency hearing, or a permanency review hearing, has been conducted pursuant to the Uniform Rules of Youth Court Practice and the court has found that the Department of Child Protection Services, or a licensed child caring agency under its supervision, has made ***REASONABLE EFFORTS*** over a reasonable period to diligently assist the parent in complying with the service plan but the parent has failed to substantially comply with the terms and conditions of the plan and that reunification with the abusive or neglectful parent is not in the best interests of the child; and
(d) Termination of the parent's parental rights is appropriate because ***REUNIFICATION BETWEEN THE PARENT AND CHILD IS NOT DESIRABLE TOWARD OBTAINING A SATISFACTORY PERMANENCY OUTCOME*** based on one or more of the grounds set out in Section 93-15-119 or 93-15-121.

See also:

Santosky v. Kramer, 455 U.S. 745, 747-48 (1982) ("Before a State may sever completely and irrevocably the right rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence.").

In re V.M.S., 938 So. 2d 829, 834 (Miss. 2006) ("[U]nder Mississippi law a strong presumption exists that the natural parent should retain his or her parental rights. Terminating those rights requires overcoming that strong presumption with clear and convincing evidence.").

M.L.B. v. S.L.J., 519 U.S. 102 (1996) ("Consistent with Santosky, Mississippi has, by statute, adopted a "clear and convincing proof" standard for parental status termination cases.").

Miss. Code Ann. § 43-21-105(gg) ("'Reasonable efforts' means the exercise of reasonable care and due diligence by the Department of Human Services, the Department of Child Protection Services, or any other appropriate entity or person to use appropriate and available services to prevent the unnecessary removal of the child from the home or provide other services related to meeting the needs of the child and the parents.").

➤ **Involuntary termination when reasonable efforts for reunification are not required; standard of proof**

§ 93-15-117

When reasonable efforts for reunification are not required, a court hearing a petition under this chapter may terminate the parental rights of a parent if, after conducting an evidentiary hearing, the court finds by clear and convincing evidence:
(a) That the child has been adjudicated abused or neglected;
(b) That the child has been in the custody and care of, or under the supervision of, the Department of Child Protection Services for at least sixty (60) days and the Department of Child Protection Services is not required to make reasonable efforts for the reunification of the parent and the child pursuant to Section 43-21-603(7)(c) of the Mississippi Youth Court Law;
(c) That a permanency hearing, or a permanency review hearing, has been conducted pursuant to the Uniform Rules of Youth Court Practice and the court has found that reunification with the abusive or neglectful parent is not in the best interests of the child; and
(d) That termination of the parent's parental rights is appropriate because reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome based on one or more of the following grounds:

(i) The basis for bypassing the reasonable efforts for reunification of the parent and child under Section 43-21-603(7)(c) is established by clear and convincing evidence; or

(ii) Any ground listed in Section 93-15-119 or 93-15-121 is established by clear and convincing evidence.

See also:

Carson v. Natchez Children's Home, 580 So. 2d 1248, 1257-58 (Miss. 1991) ("From the testimony of observers and experts, and the chancellor's questioning of [the children] in chambers, these children had been subjected to numerous incidents of sexual arousal by, and sexual gratification to different adults. . . . [The evidence supported] the clear and convincing standard required to terminate Carson's parental rights.").

➤ **Involuntary termination for reasons of abandonment, desertion, or parental unfitness to raise the child; standard of proof**

§ 93-15-119

(1) A court hearing a petition under this chapter may terminate the parental rights of a parent when, after conducting an evidentiary hearing, the court finds by clear and convincing evidence:

(a) (i) That the parent has engaged in conduct constituting abandonment or desertion of the child, as defined in Section 93-15-103, or is mentally, morally, or otherwise unfit to raise the child, which shall be established by showing past or present conduct of the parent that demonstrates a substantial risk of compromising or endangering the child's safety and welfare; and
(ii) That termination of the parent's parental rights is appropriate because reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome; or

(b) That a parent has committed against the other parent a sexual act that is unlawful under Section 97-3-65 or 97-3-95, or under a similar law of another state, territory, possession or Native American tribe where the offense occurred, and that the child was conceived as a result of the unlawful sexual act. A criminal conviction of the unlawful sexual act is not required to terminate the offending parent's parental rights under this paragraph (b).

(2) An allegation of desertion may be fully rebutted by proof that the parent, in accordance with the parent's means and knowledge of the mother's pregnancy or the child's birth, either:

(a) Provided financial support, including, but not limited to, the payment of consistent support to the mother during her pregnancy, contributions to the payment of the medical expenses of the pregnancy and birth, and contributions of consistent support of the child after birth; frequently and consistently visited the child after birth; and is now willing and able to assume legal and physical care of the child; or

(b) Was willing to provide financial support and to make visitations with the child, but reasonable attempts to do so were thwarted by the mother or her agents, and that the parent is now willing and able to assume legal and physical care of the child.

(3) The court shall inquire as to the military status of an absent parent before conducting an evidentiary hearing under this section.

See also:

K.D.F. v. J.L.H., 933 So. 2d 971, 979 (Miss. 2006) ("While premarital and unprotected sexual relations can be relevant to a determination of moral fitness, the chancellor found that [the father's] actions did not rise to a level requiring termination of his parental rights. . . [That] decision was not manifestly wrong, as it was supported by credible evidence.").

In re M.L.B., 806 So. 2d 1023, 1024-29 (Miss. 2000) ("[T]he conduct of Mr. Petit does not evince a settled purpose to forego all parental rights and relinquish all parental claim to these children. He does, however, come close and is "teetering" on the brink insofar as his duty to support the children is concerned. In fact, if the totality of the circumstances continue without improvement over a substantial period of time in the future, a court would be justified in decreeing an adoption over his protest.").

➤ **Grounds for termination**

§ 93-15-121

Any of the following, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:

(a) The parent has been medically diagnosed by a qualified mental health professional with a severe mental illness or deficiency that is unlikely to change in a reasonable period of time and which, based upon expert testimony or an established pattern of behavior, makes the parent unable or unwilling to provide an adequate permanent home for the child;

(b) The parent has been medically diagnosed by a qualified health professional with an extreme physical incapacitation that is unlikely to change in a reasonable period of time and which, based upon expert testimony or an established pattern of behavior, prevents the parent, despite reasonable accommodations, from providing minimally acceptable care for the child;

(c) The parent is suffering from habitual alcoholism or other drug addiction and has failed to successfully complete alcohol or drug treatment;

(d) The parent is unwilling to provide reasonably necessary food, clothing, shelter, or medical care for the child; reasonably necessary medical care does not include recommended or optional vaccinations against childhood or any other disease;

(e) The parent has failed to exercise reasonable visitation or communication with the child;

(f) The parent's abusive or neglectful conduct has caused, at least in part, an extreme and deep-seated antipathy by the child toward the parent, or some other substantial erosion of the relationship between the parent and the child;

(g) The parent has committed an abusive act for which reasonable efforts to maintain the children in the home would not be required under Section 43-21-603, or a series of physically, mentally, or emotionally abusive incidents, against the child or another child, whether related by consanguinity or affinity or not, making future contacts between the parent and child undesirable; or

(h) (i) The parent has been convicted of any of the following offenses against any child:

1. Rape of a child under Section 97-3-65;
2. Sexual battery of a child under Section 97-3-95(c);
3. Touching a child for lustful purposes under Section 97-5-23;
4. Exploitation of a child under Sections 97-5-31 through 97-5-37;
5. Felonious abuse or battery of a child under Section 97-5-39(2);
6. Carnal knowledge of a step or adopted child or a child of a cohabitating partner under Section 97-5-41; or
7. Human trafficking of a child under Section 97-3-54.1; or

(ii) The parent has been convicted of:

1. Murder or voluntary manslaughter of another child of the parent;
2. Aiding, abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of the child or another child of the parent; or
3. A felony assault that results in the serious bodily injury to the child or another child of the parent.

See also:

In re S.R.B.R., 798 So. 2d 437, 445 (Miss. 2001) ("The evidence was clear and convincing. . . . [The parents] failed to comply with the single requirement of completing the counseling program required by the court. The court was of the correct opinion that the mother is psychologically overborne by the father, and thus, unable to protect the children from further abuse.").

In re J.K., 304 So. 3d 184, 195 (Miss. Ct. App. 2020) ("[T]he youth court recognized that '[a]lthough incarceration cannot be the sole basis for termination, the results, i.e., erosion or non-existence of the relationship, can be considered a significant factor when determining whether rights should be terminated.' . . . Kirkley's illegal activities and continuous incarceration were of his own making; it was not the fault of the court or the DHS. [He] had an opportunity to demonstrate that he 'could maintain a stable, drug free lifestyle,' but he continued to use drugs and 'engage in criminal behavior.').

In re K.D.G., 68 So. 3d 748, 752 (Miss. Ct. App. 2011) ("We find the fact that KDG happened to see RCG briefly at the court-ordered paternity procedure insufficient to overcome the chancery court's finding [of no contacts for over a year].").

In re C.B.Y., 936 So. 2d 974, 980 (Miss. Ct. App. 2006) ("[I]nvoluntary termination of parental rights may be based on one or more of the enumerated [statutory] factors.").

Measuring Progress in Improving Court Processing of Child Abuse and Neglect Cases, 39 Fam. Ct. Rev. 158, 163 (2001) ("Before a final decision is made, a case can easily remain in litigation for a year or more after the termination petition is

filed. Termination cases based on a parent's mental illness are often delayed by difficulties in obtaining court-ordered evaluations.").

➤ **Court discretion not to terminate**

§ 93-15-123

Notwithstanding any other provision of this chapter, the court may exercise its discretion not to terminate the parent's parental rights in a proceeding under this chapter if the child's safety and welfare will not be compromised or endangered and terminating the parent's parental right is not in the child's best interests based on one or more of the following factors:

(a) The Department of Child Protection Services has documented compelling and extraordinary reasons why terminating the parent's parental rights would not be in the child's best interests;

(b) There is a likelihood that continuing reasonable efforts for achieving reunification will be successful;

(c) Terminating the parent's parental rights would inappropriately relieve the parent of the parent's financial or support obligations to the child; or

(d) The child is being cared for by the other parent, or a relative, guardian, or custodian, in a residence not occupied by the abusive or neglectful parent and terminating the parent's parental rights would not expedite the process for obtaining a satisfactory permanency outcome.

➤ **Compliance with Indian Child Welfare Act**

§ 93-15-125

In any proceeding under this chapter, where the court knows or has reason to know that an Indian child is involved, the court must comply with the Indian Child Welfare Act (25 USCS Section 1901 et seq.) in regard to notice, appointment of counsel, examination of reports or other documents, remedial services and rehabilitation programs, and other protections the act provides. Additionally, no termination of parental rights may be ordered in the proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the Indian child by the parent is likely to result in serious emotional or physical damage to the Indian child.

➤ **Effect on another parent's rights**

§ 93-15-127

Termination under this chapter of a parent's parental rights does not affect the parental rights of another parent.

➤ **Petitions involving sexual abuse or serious bodily injury treated as preference case**

§ 93-15-129

In any case where a child has been removed from the custody and care of the parent due to sexual abuse or serious bodily injury to the child, or is not living in the home of the offending parent, the court shall treat the petition for termination of parental rights as a preference case to be determined with all reasonable expedition.

➤ **Post-judgment proceedings**

§ 93-15-131

(1) If the court does not terminate the parent's parental rights, the custody and care of the child shall continue with the person, agency, or institution that is holding custody of the child at the time the judgment is rendered, or the court may grant custody to the parent whose rights were sought to be terminated if that is in the best interest of the child. If the Department of Child Protection Services has legal custody of the child, the court must conduct a permanency hearing and permanency review hearings as required under the Mississippi Youth Court Law and the Mississippi Uniform Rules of Youth Court Practice.

(2) If the court terminates the parent's parental rights, the court shall place the child in the custody and care of the other parent or some suitable person, agency, or institution until an adoption or some other permanent living arrangement is achieved. No notice of adoption proceedings or any other subsequent proceedings pertaining to the custody and care of the child shall be given to a parent whose rights have been terminated.

➤ **Review by Supreme Court**

§ 93-15-133

Appeal from a final judgment on the termination of parental rights under this chapter shall be to the Supreme Court of Mississippi pursuant to the Mississippi Rules of Appellate Procedure.

1501 IMPORTANT CONSIDERATIONS IN TERMINATION PROCEEDINGS

➤ **Due process**

Procedures for terminating the parental rights must be fundamentally fair:

> "If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures."
>
> Santosky v. Kramer, 455 U.S. 745, 753–54 (1982).

➤ **Termination is always a possibility**

Guardians ad litem should consider involuntary termination of parental rights as a possibility ***ANYTIME A CHILD HAS BEEN TAKEN INTO CUSTODY***. Within sixty (60) days from the date of the child being removed from the home, the court must adopt a permanency plan and a concurrent plan. *See* U.R.Y.C.P. 11(b)(3). That means one of the following will happen in the course of the youth court case:

- At the adjudication hearing, the youth court finds that the child is not an abused or neglected child and reunification occurs;
- At the adjudication hearing, the youth court finds that the child is an abused or neglected child, the parent complies with the court-approved service plan, and reunification occurs; or
- At the adjudication hearing, the youth court finds that the child is an abused or neglected child, the parent does not comply with the court-approved service plan, and the permanency plan becomes adoption or something other than reunification.

That means the guardian ad litem in zealously protecting the best interests of the child must thoroughly investigate all underlying aspects of the family situation that necessitated the removal of the child from the home. It also means that the guardian ad litem must make recommendations to the court on "appropriate and available services" that will allow for reunification to occur. *See* Miss. Code Ann. § 43-21-105 (defining reasonable efforts).

➤ **Review all statutory grounds for termination**

BECAUSE IT ONLY TAKES PROOF OF ONE GROUND TO TERMINATE A PARENT'S PARENTAL RIGHTS, it is important for the guardian ad litem to address every ground listed under Sections 93-15-119 and -121 of the Mississippi Code applicable to the existing circumstances in the home. In other words, resolving all the problems except for one leaves a parent vulnerable to losing complete custody of the child forever. That is not a preferred result if reasonable efforts can rehabilitate the home. *See* J.J. v. Smith, 31 So. 3d 1271, 1276 (Miss. Ct. App. 2010) ("Unless it is proven otherwise, it is presumed that the best interest of the child will be served by remaining with his or her parents."). But sometimes termination *is* the last resort for ensuring the child's health, safety, and general welfare, and for any hope of providing the child with a promising future.

➤ **Best interests of the child prevails**

Guardians ad litem are required to "protect the interest of a child for whom he/she has been appointed" and to "investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest." U.R.Y.C.P. 13(c). That duty embraces the responsibility of making recommendations to the court regarding the child's present and long-term best interests. It is the court's responsibility to weigh the testimony before making a determination of whether to continue efforts at reunification or to allow the commencement of termination of parental rights by ordering a permanency plan of adoption.

> "Although aware of the great responsibility placed upon any court when determining whether a parent's fundamental right to rear their offspring should be terminated, we think we would be remiss in our duties if we did not terminate the parental rights to safeguard the childrens' greater right to food, shelter, and opportunity to become useful citizens. . . . The record is replete with evidence that the [the parents] were given considerable opportunity and warning that they must change their lifestyle. Nothing was required of [them] by the welfare department beyond . . . providing their children with the most basic necessities for a healthy life which were well within [their] capabilities if they were so inclined."
>
> Adams v. Powe, 469 So. 2d 76, 78-79 (Miss. 1985).

See also:

> SD v. Carbon Cty. Dep't of Family Servs., 57 P.3d 1235, 1241 (Wyo. 2002) ("While we zealously guard the fundamental right of parents to care for and associate with their children, we also recognize that a child has the fundamental right to live in an environment free from filth, health hazards, and danger; [a child] also has the right to nourishment, education, and necessary medical attention. 'When the rights of a parent and the rights of a child are on a collision

course, the rights of the parent must yield.'").

Matter of S.C., 869 P.2d 266, 270-71 (Mont. 1994) ("[The mother's] mental health rendered her unfit to parent and her mental health was not likely to improve in a reasonable time . . . Specifically, . . . even with the Department's support system, ***[SHE] WAS HOSPITALIZED SEVEN TIMES IN A FIVE AND ONE-HALF MONTH PERIOD FOR MENTAL HEALTH AND SUICIDAL TENDENCIES [AND SHE LEFT THE CHILD] IN THE CARE OF HER MOTHER, WHO LIVED WITH A MAN CHARGED WITH SEXUALLY ASSAULTING A CHILD.*** [The child's] needs for stability and predictability were extremely urgent [and] prevailed over [the mother's] parental rights.").

➤ **Time matters**

Although terminating a parent's parental rights is a "last resort," the paramount concern is the child's best interest. Albright v. Albright, 437 So. 2d 1003, 1005 (Miss. 1983) ("We reaffirm the rule that the polestar consideration in child custody cases is the best interest and welfare of the child."). Placement in foster care is a temporary remedy awaiting a permanency outcome of reunification, durable legal relative guardianship, durable legal custody, or adoption. ***WHAT IS UNACCEPTABLE IS FOR A CHILD TO LANGUISH IN FOSTER CARE*** because the parents are either unwilling or unable to provide the proper care necessary for the child to become "a responsible, accountable and productive citizen." See Miss. Code Ann. § 43-21-103. Time is a precious commodity that cannot be squandered in securing a permanent and stable home with regard to the health, safety and general welfare of the child:

"We also note that the lower court and DHS gave more time to comply with the service agreement than what the applicable statute allowed. . . . A.E.R. had well over one year to complete the requirements, and in that time she failed to not only complete the requirements, but failed even to make any notable progress toward completion."

In re S.T.M.M., 942 So. 2d 266, 270-71 (Miss. Ct. App. 2006).

See also:

In Interest of A.C., 415 N.W.2d 609, 613 (Iowa 1987) ("There are a number of stern realities faced by a juvenile judge in any case of this kind. Among the most important is the relentless passage of precious time. The crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems. Neither will childhood await the wanderings of judicial process.").

In re Shirley B., 18 A.3d 40, 59-60 (Md. 2011) ("[The mother's] inability to improve her situation, arguably through no fault of her own, left the Children 'languishing in foster care drift' for 28 months, with no end in sight. . . . [Reasonable efforts] cannot be considered in a vacuum, but rather, must be

evaluated against the backdrop of the services available to it. Here, the Department actively tried to connect the mother with services that could potentially assist her in her parental role, only to be thwarted by forces outside its control. . . . [T]he juvenile court did not err in changing the Children's permanency plans from reunification to adoption.").

1502 RECOMMENDING APPOINTMENT OF COUNSEL FOR THE PARENT

Pursuant to Miss. Code Ann. § 93-15-113, at the beginning of the involuntary termination of parental rights hearing, the court shall explain to the parent:

> "(i) The right to counsel;
> (ii) The right to remain silent;
> (iii) The right to subpoena witnesses;
> (iv) The right to confront and cross-examine witnesses; and
> (v) The right to appeal, including the right to a transcript of the proceedings.
> (b) ***THE COURT SHALL THEN DETERMINE WHETHER THE PARENT BEFORE THE COURT IS REPRESENTED BY COUNSEL.*** If the parent wishes to retain counsel, the court shall continue the hearing for a reasonable time to allow the parent to obtain and consult with counsel of the parent's own choosing. If an indigent parent does not have counsel, the court shall determine whether the parent is entitled to appointed counsel ***UNDER THE CONSTITUTION OF THE UNITED STATES, THE MISSISSIPPI CONSTITUTION OF 1890, OR STATUTORY LAW*** and, if so, appoint counsel for the parent and then continue the hearing for a reasonable time to allow the parent to consult with the appointed counsel. The setting of fees for court-appointed counsel and the assessment of those fees are in the discretion of the court."

WHEN IS AN INDIGENT PARENT ENTITLED TO COUNSEL UNDER THE CONSTITUTION OF THE UNITED STATES OR THE MISSISSIPPI CONSTITUTION?

The United States Supreme Court has stated:

> "In sum, the Court's precedents speak with one voice about what 'fundamental fairness' has meant when the Court has considered the right to appointed counsel, and we thus draw from them the presumption that an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty. It is against this presumption that all the other elements in the due process decision must be measured."
>
> Lassiter v. Department of Social Services, 452 U.S. 18, 26-27 (1981).

But, it didn't shut the door on the possibility that "fundamental fairness" might, in some circumstances, require the appointment of counsel to protect a parent's due process rights:

> "The case of *Mathews v. Eldridge, [424 U.S. 319 (1976)]*, propounds three elements to be evaluated in deciding what due process requires, viz.,
>
> > the private interests at stake,
> > the government's interest, and
> > the risk that the procedures used will lead to erroneous decisions.
>
> We must balance these elements against each other, and then set their net weight in the scales against the presumption that there is a right to appointed counsel only where the indigent, if he is unsuccessful, may lose his personal freedom. . . . The dispositive question, which must now be addressed, is whether the three *Eldridge* factors, when weighed against the presumption that there is no right to appointed counsel in the absence of at least a potential deprivation of physical liberty, suffice to rebut that presumption and thus to lead to the conclusion that the Due Process Clause requires the appointment of counsel when a State seeks to terminate an indigent's parental status.
> . . .
> If, in a given case, the parent's interests were at their strongest, the State's interests were at their weakest, and the risks of error were at their peak, it could not be said that the *Eldridge* factors did not overcome the presumption against the right to appointed counsel, and that due process did not therefore require the appointment of counsel. "
>
> Lassiter v. Department of Social Services, 452 U.S. 18, 27-31 (1981).

The Court then deferred that determination to the trial courts:

> "We therefore adopt the standard found appropriate in *Gagnon v. Scarpelli [411 U.S. 778 (1973)]*, and leave the decision whether due process calls for the appointment of counsel for indigent parents in termination proceedings to be answered in the first instance by the trial court, subject, of course, to appellate review."
>
> Lassiter v. Department of Social Services, 452 U.S. 18, 31-32 (1981).

The Mississippi Supreme Court, relying upon the *Lassiter* decision, stated:

> "The United States Supreme Court upheld the decision of the trial court and specifically emphasized that the 'the petition to terminate parental rights contained no allegations of neglect or abuse upon which criminal charges could be based; no expert witnesses testified; the case presented no specially troublesome points of law; [and] the presence of counsel could not have made a determinative

difference for petitioner.'

One of the most important factors to be considered in applying the standards for court appointed counsel is whether the presence of counsel would have made a determinative difference."

K.D.G.L.B.P. v. Hinds County Dep't of Human Services, 771 So. 2d 907, 910-911 (Miss. 2000).

It then held:

"The *Lassiter* decision thus states that appointment of counsel in termination proceedings, ***WHILE WISE***, is not mandatory and therefore should be determined by state courts on a case-by-case basis. . . . Although there is no statute or case law in Mississippi on the question of whether an indigent parent is entitled to counsel at a termination of parental rights proceeding, the Supreme Court in *Lassiter* stated that the appointment of counsel should be determined on a case-by-case basis. In examining the facts of this case, we find that the mother was granted a fair and adequate hearing."

K.D.G.L.B.P. v. Hinds County Dep't of Human Services, 771 So. 2d 907, 910-911 (Miss. 2000).

See also:

J.C.N.F. v. Stone County Dep't of Human Services, 996 So. 2d 762, 772 (Miss. 2008) ("Based on *Lassiter* and *K.D.G.L.B.P.*, this Court concludes that J.C.N.F. was not unconstitutionally deprived of counsel or of due process.").

Williams v. Williams, 69 So. 3d 782, 785 (Miss. Ct. App. 2011) ("After reviewing the record, we find that the evidence supporting the chancellor's decision to terminate Dale and Cathy's parental rights was so overwhelming that the presence of counsel would not have changed the outcome of the trial. As a result, we find that [their] due process rights under the Fourteenth Amendment were not violated by the chancery court when it did not appoint them counsel in the parental rights termination hearing).

Green v. Mississippi Dep't of Human Services, 40 So. 3d 660, 664-65 (Miss. Ct. App. 2010) ("Teresa never mentioned to the chancery court that she lacked the financial means to hire an attorney to represent her. Furthermore, [we find that] the presence of an attorney would not have made a determinative difference in the outcome of the proceeding, as evidenced by the chancellor's denial of the motion to set aside the amended judgment.").

Compare:

> H. Lila Hubert, *In the Child's Best Interests: The Role of the Guardian Ad Litem in Termination of Parental Rights Proceedings*, 49 U. Miami L. Rev. 531, 555 (1994) ("Another unique fact about the termination process in Florida is that indigent parents are held to have a constitutional right to counsel at state expense. This right derives not from the Sixth Amendment's right to counsel, but from the Fourteenth Amendment's guarantee of due process.").

A guardian ad litem is appointed to zealously protect the best interests of the child. That means ***MAKING RECOMMENDATIONS THAT ARE WISE*** for the court to follow. Requesting the appointment of counsel for the parent seems prudent in most circumstances when considering the heavy significance of a termination judgment–i.e., the complete and permanent severance of the parent-child relationship.

See also:

> H. Lila Hubert, *In the Child's Best Interests: The Role of the Guardian Ad Litem in Termination of Parental Rights Proceedings*, 49 U. Miami L. Rev. 531, 554-55 (1994) ("A termination proceeding does not comfortably fall within the usually understood parameters of either a civil or criminal case. It seems best characterized as 'quasi-prosecutorial.' Although the purpose of the action is expressly not to punish the person creating the condition of dependency, the complete and irrevocable termination of the rights of a natural parent to his or her child is undeniably a significant and intrusive exercise of state power.").

IN ANY EVENT, A GUARDIAN AD LITEM SHOULD ALWAYS RECOMMEND THE APPOINTMENT OF COUNSEL FOR A PARENT IF:

- there are allegations of neglect or abuse upon which criminal charges could be based;
- expert witnesses will be called to testify;
- the case presents specially troublesome points of law; *AND/OR*
- the presence of counsel could make a determinative difference in the outcome of the case.

BUT, FIRST AND FOREMOST, THE GUARDIAN AD LITEM MUST ZEALOUSLY PROTECT THE BEST INTERESTS OF THE CHILD:

> "At the beginning of the termination hearing on February 5, 2007, the chancellor asked the mother, who appeared without counsel, if she was prepared to proceed. She first responded "[y]es, sir," but when asked again, she stated "I don't know, sir." The chancellor then asked if she planned on representing herself and she said "[n]o, sir." She explained that she had intended to obtain an attorney through a free service, but that there had been a problem. She added that she had been unable to hire an

> attorney on her own because she depends on Social Security benefits and had been babysitting in order to earn money, but did not have enough money to hire an attorney. However, during the hearing, she testified that she took care of other people's children voluntarily without pay, and had taken time off from babysitting during the month prior to the termination hearing.
>
> The DHS attorney responded that the mother had two months from the December 4, 2006 hearing to obtain an attorney. ***THE CHANCELLOR THEN DECIDED TO PROCEED WITH THE HEARING BECAUSE THE GUARDIAN AD LITEM CLAIMED THAT THE BEST INTEREST OF THE CHILDREN WOULD BE FURTHERED BY PROCEEDING WITH THE HEARING, RATHER THAN DELAYING A DECISION REGARDING PARENTAL RIGHTS.*** The chancellor stated that "I'm going to proceed this morning, because [sic] if it turns out that things are not fair, I will stop it and continue it to a later date.
> . . .
> [This] case did not involve expert testimony, nor did it involve "specially troublesome points of law." Also, this Court finds that the presence of counsel would not have made a determinative difference, although it may have greatly changed the hearing transcript now before this Court. An attorney would have been able to present the mother's testimony in a more persuasive manner or object to inadmissible evidence, ***BUT ONE OF THE BASES ON WHICH THE CHANCELLOR TERMINATED PARENTAL RIGHTS WOULD REMAIN UNAFFECTED BY THE PRESENCE OF COUNSEL***. . . .
> . . .
> Based on *Lassiter* and *K.D.G.L.B.P.*, this Court concludes that J.C.N.F. was not unconstitutionally deprived of counsel or of due process."
>
> J.C.N.F. v. Stone Cty. Dep't of Human Servs., 996 So. 2d 762, 771-72 (Miss. 2008).

BEST PRACTICES is for the guardian ad litem to make a recommendation on the appointment of counsel for the parent either during the course of the child protection proceedings or, at least, shortly after the petition for termination of parental rights has been filed. It certainly is ***NOT WISE*** to ignore the issue until the day of the hearing. Also, the guardian ad litem should make sure that the parent has completed and filed with the court an ***AFFIDAVIT OF SUBSTANTIAL HARDSHIP***. Once the recommendation is made, the court must then address it in its summary review of the case. *See* Smith v. Smith, 206 So. 3d 502, 510 (Miss. 2016).

1503 KEY INQUIRIES ON ABANDONMENT, DESERTION, AND MENTALLY, MORALLY OR OTHERWISE UNFIT

➤ **Does the parent's conduct meet the statutory criteria of abandonment by clear and convincing evidence?**

If the court terminates the parent's parental rights, then the guardian ad litem must be prepared to make recommendations for adoption or other desirable permanency outcome other than reunification. If the court does not terminate the parent's parental rights, then the guardian ad litem must be prepared to make recommendations for reunification or some other desirable permanency outcome less than adoption. Remember, too, that termination of parental rights requires proof by clear and convincing evidence:

§ 93-15-119

> (1) A court hearing a petition under this chapter may terminate the parental rights of a parent when, after conducting an evidentiary hearing, the court finds ***BY CLEAR AND CONVINCING EVIDENCE***:
> (a) (i) That the parent has engaged in conduct constituting abandonment or desertion of the child, as defined in Section 93-15-103, or is mentally, morally, or otherwise unfit to raise the child, which shall be established by showing past or present conduct of the parent that demonstrates a substantial risk of compromising or endangering the child's safety and welfare; and
> (ii) That termination of the parent's parental rights is appropriate because reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome;

See also Miss. Code Ann. § 93-15-103(1)(a) (abandonment defined); -103(1)(d) (desertion defined); -119(1) (setting forth criteria for establishing mentally, morally or otherwise unfit to raise child); -119(2) (defenses to desertion).

In other words, not only must the State prove that the parent has engaged in conduct constituting abandonment, desertion, or mental or moral unfitness as defined under the Mississippi Termination of Parental Rights Law, or applicable case law, *BUT ALSO* that termination "is appropriate because reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome."

See, e.g.:

> *Abandonment may be proved by either a single event or a course of conduct evidencing a desire to abandon the parental role.*
>
> > In re G.Q.A., 771 So. 2d 331, 336 (Miss. 2000) ("[A] parent whose rights are sought to be terminated can be shown to have abandoned the child through one event, or through a course or pattern of conduct evidencing a desire to abandon the parental role.").

Abandonment is manifested by a severance of all ties to the child.

> In re Adoption of Minor Child, 931 So. 2d 566, 577-78 (Miss. 2006) ("Abandonment . . . includes not only the defined criminal offense of abandonment [i.e., § 97–5–1] but also includes 'any conduct by a parent which evinces a settled purpose to forego all duties and relinquish all parental claims to the child.' The test [is whether] under the totality of the circumstances, 'the natural parent has manifested [his] severance of all ties with the child.' . . . [In this case, the mother] has not been totally absent from [the child's] life for any significant period of time . . . to support a finding of either constructive or actual abandonment.").

Desertion is a course of conduct as defined by statutory law.

> Bryant v. Cameron, 473 So. 2d 174, 178 (Miss. 1985) ("'Abandonment' does not necessarily refer to some overall course of conduct as 'desertion' would, but rather 'abandonment' may result from a single decision by a parent, at a particular point in time, where that parent decides to relinquish parental claims.").

Abandonment, desertion, and/or unfitness require proof by clear and convincing evidence.

> Petit v. Holifield, 443 So. 2d 874, 879 (Miss. 1984) ("[The father] does not evince a settled purpose to forego all parental rights and relinquish all parental claim to these children. He does, however, come close and is "teetering" on the brink insofar as his duty to support the children is concerned. [The father] needs to 'tighten his belt' and live a little less comfortably and begin contributing the court-ordered child support for these children. He is hardly an ideal parent . . . [but] we are unable to say that [he] has abandoned or deserted the children or that he is unfit within the meaning of the law.").

Failure to stay current on child support alone is insufficient to prove abandonment or desertion.

> In re Guardianship of Brown, 902 So. 2d 604, 607-08 (Miss. Ct. App. 2004) ("The chancellor [erred] in deciding that [the father] had not abandoned his children but then deciding that he was unfit to care for his children in part because of his failure to stay current on his child support. The Mississippi Supreme Court has previously and consistently held that 'constant arrearages in child support' do not constitute abandonment or desertion.'").

Constructive abandonment.

> Schonewitz v. Pack, 913 So. 2d 416, 421–22 (Miss. Ct. App. 2005) ("[Constructive abandonment] is not 'abandonment' in the traditional sense, of complete avoidance of contact for an extended period of time. But it is voluntary abandonment of parental responsibilities for over a decade in the child's life [where] even occasional [visitation] cannot prevent a finding that the parent [has been] so removed from active participation in a child's life . . . that abandonment has occurred.").

➤ **Are there compelling and extraordinary circumstances for not terminating the parent's parental rights?**

§ 93-15-123

> Notwithstanding any other provision of this chapter, the court may exercise its discretion not to terminate the parent's parental rights in a proceeding under this chapter if the child's safety and welfare will not be compromised or endangered and terminating the parent's parental right is not in the child's best interests based on one or more of the following factors:
>
> (a) The Department of Child Protection Services has documented ***COMPELLING AND EXTRAORDINARY REASONS*** why terminating the parent's parental rights would not be in the child's best interests;
> (b) There is a likelihood that continuing reasonable efforts for achieving reunification will be successful;
> (c) Terminating the parent's parental rights would inappropriately relieve the parent of the parent's financial or support obligations to the child; or
> (d) The child is being cared for by the other parent, or a relative, guardian, or custodian, in a residence not occupied by the abusive or neglectful parent and terminating the parent's parental rights would not expedite the process for obtaining a satisfactory permanency outcome.

Even if abandonment, desertion, or being mentally, morally, or otherwise unfit to raise the child has been shown by clear and convincing evidence, the court may exercise its discretion not to terminate if:

- the child's safety and welfare will not be compromised or endangered; and
- terminating the parent's parental right is not in the child's best interests based upon on of the factors set forth in § 93-15-123(a) through (d).

A guardian ad litem should report to the court (and be ready to testify on) any factors relevant to the hearing, including any compelling and extraordinary reasons for not terminating the parent's parental rights.

➤ **Were reasonable efforts made for reunification?**

Reasonable efforts are not required for certain abusive conduct:

§ 43-21-603

> (7) If the youth court orders that the custody or supervision of a child who has been adjudicated abused or neglected be placed with the Department of Human Services or any other person or public or private agency, other than the child's parent, guardian or custodian, the youth court shall find and the disposition order shall recite that:
> . . .
> (c) ***REASONABLE EFFORTS TO MAINTAIN THE CHILD WITHIN HIS HOME SHALL NOT BE REQUIRED IF THE COURT DETERMINES THAT***:
> (i) The parent has subjected the child to aggravated circumstances, ***INCLUDING, BUT NOT LIMITED TO, ABANDONMENT, TORTURE, CHRONIC ABUSE AND SEXUAL ABUSE***; or
> (ii) The parent has been convicted of murder of another child of that parent, voluntary manslaughter of another child of that parent, aided or abetted, attempted, conspired or solicited to commit that murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of that parent; or
> (iii) The parental rights of the parent to a sibling have been terminated involuntarily; and
> (iv) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that placement of the child in foster care is in the best interests of the child.
> Once the reasonable efforts requirement is bypassed, the court shall have a permanency hearing under Section 43-21-613 within thirty (30) days of the finding.

If reasonable efforts are ordered, then the guardian ad litem should to report to the court (and be ready to testify on) whether "there is a likelihood that continuing reasonable efforts for achieving reunification will be successful." Miss. Code Ann. § 93-15-123(b).

➤ **Are there other grounds for terminating the parent's parental rights?**

Additional grounds for terminating a parent's parental rights are set forth in Miss. Code Ann.§ 93-15-119(1)(b) and Miss. Code Ann. § 93-15-121(a) through (h).

1504 KEY INQUIRIES ON GROUND THAT A PARENT HAS COMMITTED AGAINST THE OTHER PARENT A SEXUAL ACT THAT IS UNLAWFUL UNDER SECTION 97–3–65 OR 97–3–95

§ 93-15-119

> (1) A court hearing a petition under this chapter may terminate the parental rights of a parent when, after conducting an evidentiary hearing, the court finds by clear and convincing evidence:
>
> . . .
>
> (b) That a parent has committed ***AGAINST THE OTHER PARENT A SEXUAL ACT THAT IS UNLAWFUL UNDER SECTION 97-3-65 OR 97-3-95***, or under a similar law of another state, territory, possession or Native American tribe where the offense occurred, and that the child was conceived as a result of the unlawful sexual act. A criminal conviction of the unlawful sexual act is not required to terminate the offending parent's parental rights under this paragraph (b).

See also Miss. Code Ann. § 97-3-65 (statutory rape; forcible sexual intercourse; criminal sexual assault protection orders); Miss. Code Ann. § 97-3-95 (sexual battery defined).

A GUARDIAN AD LITEM SHOULD CONSIDER RECOMMENDING COUNSEL FOR THE PARENT IF A GROUND FOR TERMINATION IS A SEXUAL ACT COMMITTED AGAINST THE OTHER PARENT SINCE:

- the allegations are such that criminal charges could be based,
- expert witnesses will likely testify,
- there may be specially troublesome points of law, and
- the presence of counsel may make a determinative difference.

See K.D.G.L.B.P. v. Hinds County Dep't of Human Services, 771 So. 2d 907, 910-911 (Miss. 2000).

1505 GENERAL INQUIRIES ON GROUNDS UNDER SECTION 93-15-121

➤ **Is reunification desirable?**

Reunification is desirable if the parent demonstrates, within a reasonable period of time, the desire and ability to provide for the essential needs of the child's health, safety, and general welfare. But each case presents its own challenges.

Sometimes there is sufficient progress to warrant an extension of time:

> "[The mother] no doubt has a history of drug abuse and addiction and has been diagnosed as bi-polar. However, testimony was presented to show her pursuit of regular treatment, her dedicated regimen of medication, and her sobriety for several years prior to the hearing. Evidence of these facts included drug screening reports showing her sobriety over the previous several years and improvement with her bi-polar disorder through medication and psychiatric care. . . . [Additionally, she maintained contacts with her daughter by writing her letters twice a week and sending her Christmas presents.] Though [she] may not be fit to be awarded custody, the termination of her parental rights is inappropriate and is not justified from the record before us and the applicable law."
>
> In re V.M.S., 938 So. 2d 829, 837 (Miss. 2006).

And, sometimes not:

> "[The father] has . . . relied on others to take care of his children, . . . has been dependent on medical disability benefits, and . . . has not had a job or income in over a year. [There is] sufficient evidence that [he] suffers from substance abuse or a chemical dependency, which makes him unwilling or unable to provide an adequate permanent home for his children at the present time or in the reasonable near future based upon his established pattern of drug use. [In summary, the father] is a forty-five-year-old man who has not consistently offered to provide reasonably necessary food, clothing, shelter, and treatment for his daughters."
>
> Adoption of M.C. v. M.W., 92 So. 3d 1283, 1288-89 (Miss. Ct. App. 2012).

➤ **Are there less restrictive alternatives?**

Statutes terminating parental rights are subject to strict scrutiny. *See* Chism v. Bright, 152 So. 3d 318, 322 (Miss. 2014). Because termination of parental rights is a complete severance of the parent-child relationship, the burden of proof is by clear and convincing evidence. *See* M.L.B. v. S.L.J., 519 U.S. 102, 121 (1996).

Less restrictive alternatives should always be considered:

> "Just because [the mother] may not be the best choice to be the child's full-time custodial parent certainly does not mean she is unable to care for the child. . . . [She] has demonstrated a desire to be a part of the child's life [by successfully completing a drug rehabilitation program, passing multiple drug tests, participating in a pretrial diversion program, and obtaining gainful employment] which evidences she is not unwilling to care for him. ***WE REITERATE THAT 'TERMINATION OF PARENTAL RIGHTS IS A LAST RESORT.'*** And where it is possible to secure a stable environment for the child without the termination of parental rights, alternatives such as custody and guardianship should be considered."
>
> Doe v. Doe, 2017 WL 499189 (Miss. Ct. App. 2017).

See also:

> In re People ex rel. S. Dakota Dep't of Soc. Servs., 691 N.W.2d 586, 592-93 (S.D. 2004) ("[L]ong term foster care is generally not in a child's best interests. Children have a right to have a stable family environment. Additionally, 'the least restrictive alternative is viewed from the child's point of view.' ***'CHILDREN HAVE A RIGHT TO BE A PART OF A FAMILY AND SHOULD NOT BE REQUIRED TO WAIT FOR PARENTS TO ACQUIRE PARENTING SKILLS THAT MAY NEVER DEVELOP.'*** [The] mother made little, if any, progress in improving her parenting skills. Termination of parental rights was the least restrictive alternative when considering the best interests of the child.").

But, any less restrictive alternatives must be reasonable. Twenty-four hour supervision, or trying an alternative that has already failed, is likely "a bridge too far":

> "All the Social Service workers and the expert witnesses (including Mother's expert) testified that Mother does not have the necessary skills to raise J.Y. . . . Mother's expert suggested only three alternatives to termination of parental rights. The first two alternatives involved 24–hour–a–day supervision of Mother and J.Y. The trial court found these were not viable alternatives because such supervision was not available. The third alternative would merely have involved trying that which had already proved unavailing. The trial court decided termination should not be delayed while Mother tried, yet again, to develop the necessary skills to be a parent. In light of the extensive and unsuccessful efforts already made, the trial court concluded termination was the least restrictive alternative in the best interest of J.Y. We affirm the trial court."
>
> Matter of J.Y., 502 N.W.2d 860, 862-63 (S.D. 1993).

Sometimes relatives are viable alternatives:

> "While the maternal grandmother has been described as 'mentally slow,' 'retarded,' and 'lazy,' which we note were all cursory statements and characterizations made by lay witnesses, the record is completely devoid of any competent lay or medical evidence supporting this finding. In contrast, DHS representatives testified that the maternal grandmother despite her apparent 'mental shortcomings' was not handicapped enough to prevent her caring for the minor child and that ***SHE WAS FULLY CAPABLE OF PROVIDING MINIMAL CARE***, which we note was testified to as meeting the department's standards. Additional inquiry and findings on this matter may also be necessary as well."
>
> N.E. v. L.H., 761 So. 2d 956, 967 (Miss. Ct. App. 2000).

See also:

> V.M. v. State Dep't of Human Res., 710 So. 2d 915, 921 (Ala. Civ. App. 1998). ("[W]e are not satisfied that all viable, less drastic alternatives to the termination of the mother's parental rights have been investigated and considered. The record clearly indicated that the maternal grandmother was interested in being considered as a relative resource and that she had expressed that interest to DHR . . . . Despite that potential resource, . . . DHR had not performed a home evaluation or otherwise investigated the grandmother. . . . [T]he trial court's decision to terminate the mother's parental rights based upon the lack of viable alternatives was plainly and palpably wrong.").

And, sometimes not:

> "During the first six months of her life, [the child] received 13 broken bones and a blunt force liver injury while in the care of her family. It is not in E.M.'s best interest to award custody to her great-aunt. . . . ***IT DEFIES LOGIC TO THINK THAT PARENTS OR RELATIVES WHO HAVE SEVERELY AND PERMANENTLY INJURED [THE CHILD] AND HAVE CAUSED THE DEATH OF HER YOUNGER BROTHER COULD BE TRUSTED TO PROPERLY CARE FOR AND RAISE [HER] WITHOUT FURTHER INCIDENT.*** In light of the abuse she received while staying with relatives previously, it would be a grave error to send this defenseless, 21–month–old child to stay with her great-aunt, especially since [the child's] parents will still be allowed visitation."
>
> In re E.M., 810 So. 2d 596, 599–600 (Miss. 2002).

See also:

> Menniefield v. State Dep't of Human Res., 549 So. 2d 496, 499 (Ala. Civ. App. 1989) ("At trial the court considered the home of the father's uncle as a viable relative resource for [the child]. The facts revealed that the uncle had been twice convicted for drunk driving, that he was divorced with four children of his own, that he lived in a trailer with a male roommate, and that he had had no contact with [the child]. Considering these facts the trial court could correctly conclude that the uncle was not a viable alternative to termination.").
>
> T.G. v. Houston Cty. Dep't of Human Res., 6 So. 3d 1182, 1192 (Ala. Civ. App. 2008) ("[T]he maternal grandmother and her husband . . . were unemployed and subsisted on . . . $1,200 per month. [Further,] the maternal grandmother's husband has emphysema and at times requires the use of an oxygen tank. [Additionally,] the maternal grandmother's two [troubled teenagers] and her 15–month–old grandson were already residing with her [in their two-bedroom house]. . . . [F]our additional children, including one with severe disabilities, would be more than she could handle. Considering all these factors, . . . the maternal grandmother was not a viable alternative to termination . . . .").
>
> Ruffner v. State of Ala., Dep't of Human Res., 518 So. 2d 141, 144 (Ala. Civ. App. 1987) ("The parents further contend that the court did not consider less drastic measures. The record reveals testimony that the files of ***AT LEAST SEVEN FAMILY MEMBERS WERE REVIEWED*** before asking for termination. These family members were not considered a suitable alternative to termination of parental rights. [W]e do not believe that the court was in error in finding that termination of parental rights was the only available solution to the problem presented to it.").

And, other times a placement may look promising in the beginning, but then deteriorates into a disastrous situation:

> "[The mother] failed to fulfil the service agreement. Finding no improvement after monitoring [the mother] for a month, DHS changed its plan to relative placement [with the grandmother]. . . . [That placement] went well at first, but deteriorated [where] the conditions [became] so abysmal [that] the children were placed in an emergency shelter."
>
> In re J.D.H., 734 So. 2d 187, 188 (Miss. Ct. App. 1999).

Thus, any alternative placement should be ***REALISTIC*** and within the statutory limitations:

> "[The child welfare agency] exerted diligent efforts to encourage and strengthen the parental relationship by keeping [the father] informed about his child's special needs, progress and medical condition, arranging

> visitation, providing [the father] with referrals for parenting skills and counselling, and urging [the father] to learn of his daughter's problems. [But the father was utterly un-cooperative or indifferent.] [The father's alternative] plan was not realistic [since] the child's grandmother, who was in her seventies and had had a stroke, was physically unable to care for [his] daughter."
>
> Matter of Tiffany V., 201 A.D.2d 324, 324 (N.Y. App. Div. 1994).

See also:

> May v. Harrison Cty. Dep't of Human Servs., 883 So. 2d 74, 80–82 (Miss. 2004) ("The youth court specifically addressed the alternative placement of durable legal custody during final arguments. [Section] 43–21–609(b) specifically and clearly provides that in order to have the disposition alternative of durable legal custody in cases of abuse or neglect, the child or children must have been in the physical custody of the proposed durable custodians for at least 1 year under the supervision of the [child welfare agency]. [That was not the case under the facts at bar].").
>
> In re K.D.G., 68 So. 3d 748, 754 (Miss. Ct. App. 2011) ("[T]he chancery court properly considered the best interests of the children when rejecting alternatives to termination.").
>
> In re B.M., 679 A.2d 891, 897-98 (Vt. 1996) ("The grandmother was unable to control the behavior of her daughter and had a very volatile continuing relationship with her. [I]n SRS's view, [she would] let the mother back into the lives of the children, [thereby putting] the children in the middle of the volatile relationship. . . . [This analysis is] supported by the evidence . . . .").

➤ **Does the service plan address the underlying problems?**

Every service plan should identify the economic, emotional, mental, and physical problems leading to the loss of custody; prioritize the problems that need attention for reunification to occur; and offer reasonable services to remedy the problems.

As aptly stated by one court:

> "To measure the adequacy of services, it is necessary to learn whether the services go beyond mere matters of form, such as the scheduling of appointments, so as to include real, genuine help to see that all things are done that might conceivably improve the circumstances of the parent and the relationship of the parent with the child."
>
> Matter of Welfare of J.A., 377 N.W.2d 69, 73 (Minn. Ct. App. 1985).

If a service plan doesn't address the underlying problem, then the guardian ad litem should bring the shortcoming to the court's attention as soon as possible. Failure to do so risks an untenable result:

> "Challenges to the plan for reunification should have come when the plan was entered. There is no evidence the parents attempted to raise these issues. We also note the termination is because of mental illness. We recognize a parent suffering from mental illness suffers a disability and may need special accommodations. ***THIS ISSUE, TOO, SHOULD BE RAISED AT THE REMOVAL OR REVIEW HEARING.*** It is too late to challenge the service plan at the termination hearing."
>
> In Interest of L.M.W., 518 N.W.2d 804, 807 (Iowa Ct. App. 1994).

See also:

> In re A.A.G., 708 N.W.2d 85, 91 (Iowa Ct. App. 2005) ("The Department has an obligation to make reasonable efforts toward reunification, but a parent has an equal obligation to demand other, different, or additional services prior to a permanency or termination hearing.").

But a child welfare agency is not required to provide every conceivable service that might improve the home situation. Instead, it is only required to make reasonable efforts:

> "[The parents] are . . . unable to retain or remember from one day to the next what they are told. This applies in the teachings and assistance given by persons put in their home for the purpose of showing them how to care for the child in such ways as the matter of preparing formulas or food and of giving other care. . . . [I]t would seem unreasonable and not for the best interests of the child that professional welfare workers should be furnished to care for this child in the parental home on a twenty-four-hour basis for the many years until the child herself can be self-sufficient."
>
> Matter of C.M., 556 P.2d 514, 519 (Wyo. 1976).

➤ **Does the service plan accommodate special needs and circumstances?**

Reasonable efforts also requires accommodating the special needs and circumstances of the parents and the child.

See, e.g.:

> *Housing assistance.*
>
> In re Natasha M., 800 A.2d 430, 431 (R.I. 2002) ("Mother specifically argues that the department should have provided her with rental assistance so that she could

live independently from father. The record, however, is clear. The department made three separate attempts to provide mother with safe transitional housing. Although the department is responsible for making these reasonable efforts, DCYF does not guarantee success and should not be burdened 'with the additional responsibility of holding the hand of a recalcitrant parent.'").

Transportation:

In re L.M., 99 Cal. Rptr. 3d 350, 354 (Cal. Ct. App. 2009) ("[A] juvenile court may, in an appropriate case, order the [child welfare agency] to financially assist a parent's travel to and from visitation when necessary to promote the goal of returning the minor to parental custody.").

Medications:

In re Juvenile 2006-833, 937 A.2d 297, 302 (N.H. 2007) ("DCYF also provided the [mother] with a prescription card that provided a discount on medications and a list of numerous pharmacies in her area which accept the card. The record is unclear as to whether the [mother] pursued any of the resources referred to her. DCYF, however, did the research for the [mother] on these various programs and provided all the information to her, informing her that it was her responsibility to contact them directly. Taking into consideration DCYF's limitations, regarding both its staff and finances, the efforts made by DCYF in helping the [mother] to obtain financial assistance to pay for her medications were reasonable.").

Special education:

N.E. v. L.H., 761 So. 2d 956, 966 (Miss. Ct. App. 2000) ("The evidence presented at trial, as reflected in the guardian ad litem's report and the various testimonies, indicates that the child suffers from varying behavioral disorders. Furthermore, he is a special education student and clearly has special needs. This should play a role in determining with whom the minor child should be placed.").

Child diagnosed with ADHD and other medical conditions:

In re Welfare of C.S., 225 P.3d 953, 955 (Wash. 2010) ("[The child] has been diagnosed with ADHD, oppositional-defiant disorder, obsessive-compulsive disorder, and sensory integration disorder, and these conditions make him difficult to manage at times. [The foster parent also] had difficulties addressing [the child's] conditions until the State provided her training on how to effectively deal with them and [the child] was put on medication. This combination of training and medication has shown great success. [But the] State did not offer [the mother] this training. [The] termination order must be reversed.").

Child's delicate health:

In re Walter P., 278 Cal. Rptr. 602, 612 (Cal. Ct. App. 1991) ("The parents were counseled over and over again concerning the things they needed to do to safeguard [the child's] delicate health and to provide him with a safe environment. They did these things when under close supervision, proving that they had the ability to do them, but neglected to do them when not so supervised. . . . The mother apparently made good progress in individual counseling, but there is no indication that she completed the counseling program or that she ever enrolled in parenting classes.").

Housekeeping services.

Matter of Welfare of A.R.G.-B., 551 N.W.2d 256, 263 (Minn. Ct. App. 1996) ("[S]ervices were provided to address issues related to the physical environment of [parents'] home; [the parents'] ability to support the children; education [on] proper discipline, nutrition, and hygiene of all family members; medical attention provided to the children; competent and appropriate babysitters for the children; and issues of mental health for both parents. . . . [The parents] argue the county failed to provide housekeeping services as directed by the . . . disposition order. The record shows the county provided services from two housekeepers, both of whom left because of the mother's lack of cooperation, and that [the parents] requested that a third housekeeper not be assigned. . . . ***[REASONABLE EFFORTS] DOES NOT REQUIRE THE COUNTY TO PROVIDE A THIRD HOUSEKEEPER***, when the first two placements failed because [the parents] refused to take advantage of the service.").

➤ **Was the parent cooperative?**

It is the parent's responsibility to utilize the guidance, services, and accommodations offered:

"Here, mother received psychiatric and counseling services from numerous institutions and organizations. . . . Despite this plethora of services, ***MOTHER FAILED TO ACHIEVE APPROPRIATE INSIGHT INTO HER ILLNESS AND REFUSED TO RECOGNIZE HER NEED FOR MEDICATION***, preferring instead to remain in a devastating cycle of violent behavior followed by institutionalization or hospitalization, as recognized by the trial justice. . . . [W]e are satisfied that the department made reasonable efforts toward unification of [the mother] with her children and is not responsible for mother's chronic inability to comply with DCYF's case plans."

In re Joseph S., 788 A.2d 475, 478 (R.I. 2002).

Encouragement, and not deflating sarcasm, will promote a parent's participation:

> "[The mother] never missed a scheduled visit and made persistent attempts to increase her visitation. Following her hospitalization [for treatment of mental illness] and change of caseworkers, however, most of her efforts were rebuffed. Worse yet, ***REBECCA'S DILIGENCE WAS BELITTLED AND HER BEHAVIOR DEMEANED.*** [Q]uite understandably, [she] objected to the foster parents' apparent premature rush for adoption by changing her daughter's name, having the children use the foster family's last name, and referring to the foster parents as 'mommy' and 'daddy.' But her protestations were labelled 'inappropriate' and her 'inability to control herself' was used as justification to deny later visitation. One wonders how a parent 'appropriately' expresses dismay when a seemingly indifferent bureaucracy appears to be railroading his or her children into adoption. Moreover, there is little in the record about the department's efforts to facilitate visitation during her hospitalizations. The record does not disclose whether visitation was attempted but failed due to [the mother's] condition, the lack of suitable facilities, or the distance, or whether the department simply failed to pursue some means of continuing visitation, even if brief or sporadic."
>
> In re Elizabeth R., 42 Cal. Rptr. 2d 200, 209-10 (Cal. Ct. App. 1995).

Moreover, the child welfare agency should not discontinue services except when necessary for ensuring the health, safety or welfare of the child:

> "Despite the fact that the mother, with the assistance of her therapists, took significant steps on her own through psychotherapy and educational and vocational programs to improve her ability to parent, the [child welfare agency] did little or nothing to assist her in these efforts. The [agency's] contention that it was excused from further diligent efforts on the mother's behalf because she was uncooperative is not persuasive. Only under extreme circumstances, ***WHERE THE CHILD'S WELFARE WOULD BE JEOPARDIZED*** to do so, may the agency discontinue its efforts to reunite the parent with the child."
>
> Matter of Erica J., 154 A.D.2d 595, 595-96 (N.Y. App. Div. 1989).

Or, when necessary to protect the personal safety of the service providers:

> "Rather than accept and participate in the services [for anger management and domestic violence], ***[THE FATHER] THREATENED SERVICE PROVIDERS***, causing them to legitimately fear for their own safety. The State cannot be expected to place staff members in physical danger to provide services to a parent. [The father's] was tantamount to a rejection of the services provided to him. [His] own behavior prevented him from

partaking in services to aid reuniting him with his family."

In re M.B., 595 N.W.2d 815, 818 (Iowa Ct. App. 1999).

Discontinuing services without good cause is problematic:

"[The Bureau of Child Welfare] could not . . . simply predetermine that any further efforts on its part to ensure that respondent received appropriate treatment would have been futile. . . . [Its] argument is particularly unconvincing in this instance, where it is conceivable that the [mother's] resistance to psychiatric treatment . . . could stem in part from her existing psychiatric problems."

Matter of Star A., 435 N.E.2d 1080, 1083 (N.Y. 1982).

Absent compelling circumstances, the child welfare agency should always continue services. If the parent chooses not to utilize them, then that becomes a factor for the court to consider at the termination hearing.

See, e.g.,

Substance abuse.

Little v. Norman, 119 So. 3d 382, 395 (Miss. Ct. App. 2013) ("[The mother] was provided with numerous opportunities to address her substance-abuse problem. ***SHE CHOSE NOT TO SEEK FOLLOW-UP CARE AFTER SHE LEFT [THE RECOVERY CENTER]***. She failed or refused to take multiple drug tests. . . . And although she testified that she had not taken any medication, she was under the influence of barbituates during the first day of the hearing. . . . We find no merit to [her] claim that the chancellor erred when he terminated her parental rights . . . .").

Child diagnosed with Turner Syndrome:

In re Valerie G., 34 A.3d 398, 403 (Conn. App. Ct. 2011) ("[A]n expert in child psychology . . . testified that the mother . . . lacked the ability to care for a special needs child such as Valerie [who suffers from Turner Syndrome]. Consistent with this expert testimony, the court noted that ***THE MOTHER'S PARTICIPATION IN MENTAL HEALTH COUNSELING HAD BECOME 'INCREASINGLY SPORADIC'*** . . . and that she had moved to Connecticut with no plans as to how she would support herself, 'apparently relying on her fiance, whom she had accused of violence towards her in the past, and whom she acknowledges has substance abuse issues.' . . . [T]he trial court's adverse determination must be sustained.").

Child diagnosed with myotonic dystrophy:

Matter of Allred, 471 S.E.2d 84, 88 (N.C. Ct. App. 1996) ("[The child] was born prematurely and with myotonic dystrophy. [The mother failed to attend many of the important medical appointments to help her provide for the child's needs. She also refused to accept the advice of social workers and others for the child's proper care.] . . . Psychological testing also showed [that the mother] is highly unlikely to significantly change her behavior [within a reasonable time]. . . . [T]he order terminating [her] parental rights . . . is affirmed.").

Parenting skills:

Matter of Sarah B, 203 A.D.2d 747, 748-49 (N.Y. App. Div. 1994) ("[The agency's] attempt to teach [the mother] parenting skills was met with obstinate refusal to change her ways. She failed to attend all but one service planning session to evaluate her progress and to map further plans to reunite the family. Her constant changes of live-in partners and residences reflected a total indifference to her responsibility to plan for a permanent home for her children. Psychologist Mark Vogel indicated that [the mother] is at a high risk for not comprehending or understanding the complex needs of young children. . . . The record amply justifies [terminating the mother's parental rights].").

Visitation:

Matter of Welfare of D.T.J., 554 N.W.2d 104, 109 (Minn. Ct. App. 1996) ("The mother missed several appointments, particularly scheduled visits with her children. She asserts lack of transportation as the primary reason for her failed attendance, yet several of her missed visits occurred [when] the county [had] provided her with an unlimited-ride bus pass. . . . While the county attempted to enhance the quality of the visits by changing the meeting sites for the visits, the mother continued to attend them only irregularly and eventually stopped attending them altogether. [W]e conclude that [there is] substantial evidence [of] reasonable efforts . . . .").

Domestic violence services:

In re Dominico M., 61 A.3d 612, 614–15 (Conn. App. 2013) ("[The father] failed to follow through with recommended domestic violence services and refused to cooperate with a mental health or substance abuse evaluation. [He] repeatedly denied that there was any domestic violence in his relationship with the children's mother and refused to comply with recommended counseling. . . . [and] did not disclose relevant information [on] his past history of substance abuse or domestic violence. . . We conclude . . . that the court did not err in finding that [he] was unable or unwilling to benefit from reunification efforts and that the department made reasonable efforts to reunify.").

➤ **Was the parent making progress?**

Sometimes a parent may be cooperative, but is simply unable to acquire the skills needed for raising the child. Courts are looking for significant progress toward becoming a responsible care-giver:

> "Unlike many other termination cases, this case is marked by evidence of ***REAL AND STEADY PROGRESS*** by [the mother] in improving her parenting skills in order to provide a good home for her children. We believe the trial court and the court of appeals correctly refused to order the termination of [her] parental rights. Notwithstanding, we are mindful of the trial court's continuing authority to monitor this proceeding to assure that the children's welfare is protected."
>
> In Interest of T.O., 470 N.W.2d 8, 12 (Iowa 1991).

As aptly stated by one court:

> "[I]n assessing rehabilitation, the critical issue is not whether the parent has improved her ability to manage her own life, but rather whether she has gained the ability to care for the particular needs of the child at issue"
>
> In re Shyliesh H., 743 A.2d 165, 174 (Conn. App. 1999).

Partial stability is apt to fall short of the mark:

> "The mother presented evidence that recent treatment for her disorder was having success. But the court could find that her conduct over the seven years, the medical reference to her condition as chronic, and the totality of the evidence set forth above were better predictors of her future conduct. A few months of partial stability do not establish that the parent is capable of maintaining the progress."
>
> In re A.M.L., 527 S.E.2d 614, 617 (Ga. Ct. App. 2000).

Especially, if a relapse could wreak devastation:

> "[T]he mother has evinced an ability to abstain from drug and alcohol abuse while a case plan is in effect [but not] when she has custody of her young child. [Furthermore, she has] a regrettable tendency to drive under the influence and to take illicit drugs, which has caused her to lose custody of her son on three separate occasions. Indeed, [the child] has spent approximately half of his life in foster care. . . . [T]he juvenile court did not err in concluding that reunification services are inappropriate."
>
> In re J.P.V., 582 S.E.2d 170, 172-73 (Ga. Ct. App. 2003).

Once again, time matters.

See, e.g.:

> Moore v. Arkansas Dep't of Human Servs., 9 S.W.3d 531, 534 (Ark. Ct. App. 2000). ("[I]t was [the mother's] failure to notify DHS of her changes of address that caused the interruptions in rehabilitative services offered to her. Further, [her] inability to parent her children for yet another six months to a year and her failure to provide a stable home for the children does not indicate that she was "right on the cusp" of being able to parent her children.").
>
> In re Savanna M., 740 A.2d 484, 489 (Conn. App. Ct. 1999) ("Here, the court found that the [father's] incarceration, lack of personal initiative, mental condition and substance abuse rendered him unable to have visitation with the child or to benefit from reunification during the early years of her life. . . . Even in recent years, ***THE [FATHER] DID NOT OFFER HIMSELF AS A RESOURCE FOR [THE CHILD] UNTIL WELL AFTER THE COMMENCEMENT OF THESE PROCEEDINGS***. We agree with the trial court that there was clear and convincing evidence that the department did everything it reasonably could to reunify the [father] with his daughter, and that it was the conduct of the [father] that led to the failure of those efforts.").

And, the best interests of the child prevails.

See, e.g.:

> R.F. v. Lowndes Cty. Dep't of Human Servs., 17 So. 3d 1133, 1138-39 (Miss. Ct. App. 2009) ("[The mother, who had been diagnosed by a clinical psychologist with a schizoid personality,] contends that the county court erred in failing to consider alternatives to the termination of her parental rights . . . ***[BUT SHE] HAD SEEN [THE CHILD] FOR LESS THAN TWO DAYS IN SIX YEARS***. [The foster parents], who were arguably the only parents that [the child] knew, were ready and willing to adopt him. The guardian ad litem opined that termination of [the mother's] parental rights was in [the child's] best interest. The county court found that . . . it would be . . . 'devastating' to [the child] if [the mother's] parental rights were not terminated. [T]his issue is without merit.").
>
> In re Jorden R., 979 A.2d 469, 483 (Conn. 2009) ("If a parent continues to expose a child to the risk of serious physical injury by associating with a dangerous individual, after the child has been inflicted with a nonaccidental or inadequately explained serious physical injury while in the care of that individual, termination of the parent's rights may be warranted so as to protect the child.").

➤ **Was the parent given an opportunity to sign the service plan?**

The parent should be afforded an opportunity to sign the service agreement:

> "[The mother] had numerous opportunities to sign a service agreement with DHS and comply with its terms, yet she failed to do so. . . . Additionally, the GAL testified that [she] lacked the responsibility to be a successful parent and opined that termination of her parental rights was in the children's best interests."
>
> Brown v. Panola County Dept. of Human Services, 90 So. 3d 662, 666 (Miss. Ct. App. 2012).

ADDITIONALLY, THE CHILD WELFARE AGENCY SHOULD PROVIDE THE PARENT WITH A COPY OF THE SIGNED AGREEMENT.

➤ **Was the parent warned of the consequences for not complying?**

The parent should be warned in writing that failure to comply with the terms and conditions of the service plan could result in the commencement of termination of the parental rights proceedings:

> "The [service] agreements also emphasized that procedures to terminate parental rights would begin if [the parents] did not cooperate. Both [parents] signed the agreements. . . . The record shows that . . . both parents failed to visit or call as often as agreed to and failed to provide any significant financial support. Nor did they obtain a home study to show their home was suitable for placement. Further, [the mother] tested positive for drugs . . . ."
>
> Adams v. Tupelo Children's Mansion, Inc., 185 So. 3d 1070, 1075 (Miss. Ct. App. 2016).

That warning should also clearly state the conduct or behavior expected for reunification to occur:

> "The agreement further stated that if she continued in the patterns of instability in relationships, attaching herself to alcoholic or abusive males, and dependency upon the children to meet her emotional needs, she risked having her parental rights terminated."
>
> Carson v. Natchez Children's Home, 580 So. 2d 1248, 1254 (Miss. 1991).

➤ **Were reasonable efforts made as required by law?**

Unless statutorily excepted, reasonable efforts are not optional.

§ 43-21-105(gg)

> Reasonable efforts' means the exercise of reasonable care and due diligence by the Department of Human Services, the Department of Child Protection Services, or any other appropriate entity or person to use ***APPROPRIATE AND AVAILABLE SERVICES*** to prevent the unnecessary removal of the child from the home or provide other services related to meeting the needs of the child and the parents.

There's an inherent practicality to this standard:

> "[The mother] asserts that although nothing more than a simple referral may be a 'reasonable effort' with regard to an average parent, in light of her limitations, DCF should have made an appointment for her, picked her up, transported her to the doctor, and, in short, taken every conceivable step to ensure that she received counseling. . . . But just as [the mother's] particular needs are factored into the 'reasonable efforts' equation, so too must be the reality that many of the services DCF might ideally have provided were unacceptable to [the mother] or unavailable through the department."
>
> In re William, Susan, & Joseph, 448 A.2d 1250, 1255-56 (R.I. 1982).

See also:

> In re Gabrielle D., 39 A.3d 655, 667 (R.I. 2012) ("[For three years prior to trial,] NRI Community Services had been working with [the father] concerning his depression, his substance abuse issues, and his cognitive impairment. DCYF was aware that [the father] had sought and was regularly receiving those services to remedy both his substance abuse and his mental health issues. [DCYF] . . . did not make any referrals for [the father] because he was making them on his own. ***[I]T WAS NOT NECESSARY FOR DCYF TO PROVIDE DUPLICATIVE SERVICES*** to a parent who was already 'receiv[ing] services to correct the situation which led to the child being placed.'").

➤ **Are there compelling reasons for not terminating a parent's rights?**

Even if a ground for termination of parental rights is proven by clear and convincing evidence, the court may exercise its discretion not to terminate a parent's parental right for compelling and extraordinary reasons that are in the best interests of the child if the child's safety and welfare will not be compromised or endangered .

> ***NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER,*** the court may exercise its discretion not to terminate the parent's parental rights in a proceeding under this chapter if the child's safety and welfare will not be compromised or endangered and terminating the parent's parental right is not in the child's best interests based on one or more of the following factors:
> (a) The Department of Child Protection Services has documented ***COMPELLING AND EXTRAORDINARY REASONS*** why terminating the parent's parental rights would not be in the child's best interests;
> (b) There is a likelihood that continuing reasonable efforts for achieving reunification will be successful;
> (c) Terminating the parent's parental rights would inappropriately relieve the parent of the parent's financial or support obligations to the child; or
> (d) The child is being cared for by the other parent, or a relative, guardian, or custodian, in a residence not occupied by the abusive or neglectful parent and terminating the parent's parental rights would not expedite the process for obtaining a satisfactory permanency outcome.

Guardianships are sometimes a viable alternative in this situation:

> "[W]e take note of [the mother's] assertion, supported by the record, that children over 10 and children who are African-American are less likely to be adopted than their younger or Caucasian counterparts. We also acknowledge [her] concern that the children will be separated, which arises from DSHS's inability to guarantee that [they] will be adopted together. [F]actors of this nature should be considered in assessing whether a guardianship, rather than termination, would be in the best interests of the children involved. . . . [W]e believe guardianships are now more viable as alternatives to termination, and should be fully explored when, as here, the prospects for adoption might be slight and the bulk of the parenting issues can be resolved by the involvement of another responsible adult."
>
> In re Dependency of H.W., 961 P.2d 963, 969 (Wash. Ct. App. 1998).

See also:

> Josh Gupta-Kagan, *Filling the Due Process Donut Hole: Abuse and Neglect Cases Between Disposition and Permanency*, 10 Conn. Pub. Int. L.J. 13, 58-59 (2010) ("Terminating parent-child relationships is especially troublesome for older children and youth, the group that represents . . . a majority of foster children nationally. ***OLDER CHILDREN AND YOUTH ARE MORE LIKELY TO HAVE STRONG RELATIONSHIPS AND ONGOING CONTACT WITH THEIR BIRTH PARENTS, SIBLINGS AND EXTENDED FAMILY MEMBERS.*** Older children have formed a sense of identity dependent on these

relationships. Terminating children's relationships with these individuals can harm their identity, and undermine their adjustment to a new home and long-term wellbeing. . . . Indeed, many states have already recognized the significant importance of youths' connections with their birth families, even when they cannot reunify with their parents. That is precisely the concern underlying guardianship statutes, which allow a child to live with a legally permanent family while maintaining the child's relationship with his birth family.").

➤ **What is in the best interests of the child?**

The best interests of the child are always the paramount consideration. And, "[u]nless proven otherwise, it is presumed that the best interest of the child will be served by remaining with his or her parents." J.J. v. Smith, 31 So. 3d 1271, 1272-76 (Miss. Ct. App. 2010).

But, that presumption may be overcome:

> "Upon determination that there is a statutory ground for termination of parental rights, a court must then consider the best interest and welfare of the child. . . . The chancellor's decision [to allow the foster parents to adopt the children] was based upon the testimony of . . . [all the witnesses, including the guardian ad litem,] . . . that [under their care the children] were well loved, well fed, doing well in school, properly clothed, attending church and extracurricular activities, and happy and thriving."
>
> Adoption of M.C. v. M.W., 92 So. 3d 1283, 1289 (Miss. Ct. App. 2012).

Especially when the parent shows little inclination to work the service plan:

> "[The mother] was given numerous opportunities to clean and sanitize her apartment, but failed to rectify the situation. . . . We, too, agree that parents who devote time and attention to their children, who allow their children to have pets and projects in their home are contributing substantially to their children's emotional development. But that is a much different setting than requiring a child to live in the stench of cat feces and urine. It is also much different than to require a child to live in a home that is strewn with a collection of garbage, clothing, and other general clutter. It is also different than requiring the child to live in a home where the cats defecated along the bathtub where some of the child's clothing was stuck to the feline fecal material. . . . [I]s it really fair to the child to require the child to return to the mother's home as it is presently constituted? We think not."
>
> In Interest of N.M.W., 461 N.W.2d 478, 482 (Iowa Ct. App. 1990).

➤ **What harms or dangers prevent reunification as a possibility?**

When are children unsafe to return home?

> "Whether or not a child is safe depends upon a *threat of danger*, the child's *vulnerability*, and a family's *protective capacity*. . . . Vulnerable children are safe when there are no threats of danger within the family *or* when the parents possess sufficient protective capacity to manage any threats. . . . Children are unsafe when threats of danger exist within the family[,] children are vulnerable to such threats, and parents have insufficient protective capacities to manage or control threats."
>
> Therese Roe Lund & Jennifer Renne, *Child Safety: A Guide for Judges and Attorneys*, A.B.A., 2 (2009).

"***CHILDREN HAVE A RIGHT TO GROW UP WITHOUT FEAR OF ABUSE OR NEGLECT.*** Where a parent has been unable or unwilling to rehabilitate himself or herself within a reasonable time, despite the provision of a reasonable level of social services, termination is generally in the child's best interests." State ex rel. State Office for Servs. to Children & Families v. Farish, 49 P.3d 811, 818 (Or. Ct. App. 2002).

Reunification is not desirable if:

- the parent continues to engage in reckless behavior:

> "These young children were taken into DHS custody because Hall and Brown were not only using meth on a daily basis but also cooking a quantity of meth sufficient to thoroughly contaminate their own apartment and three other units. . . . While Hall subsequently made improvements in her own life, Brown did not. He continued to use drugs and engage in criminal activity. Nonetheless, Hall made a deliberate decision to continue to live with him and to have a relationship with him. She did so despite repeated warnings that the relationship would prevent her from regaining custody of her children."
>
> In re B.A.H., 225 So. 3d 1220, 1241 (Miss. Ct. App. 2016).

- the parent refuses to cooperate in the rehabilitative process:

> "[The child] was temporarily removed from her parents' custody after it was discovered during a medical examination she had ***FIFTEEN BROKEN BONES***. The examining physician concluded the injuries were non-accidental based on their severity and type. . . . [The mother] will not acknowledge the imminent danger of abuse to [the child] under her care. For this reason, she is unable to, and has not, taken any steps to remedy the circumstances which caused the abuse. [C]lear and convincing evidence

supports termination of [the mother's] parental rights . . . ."

In re S.R., 600 N.W.2d 63, 63–65 (Iowa Ct. App. 1999).

- the parent subjects the child to grave danger:

  "Mother had been provided with reunification services on at least two occasions prior to the removal that led to the termination of [her] parental rights. [I]n the present case, the juvenile court initiated a service plan [but] almost immediately after the adoption of the plan, ***[SHE] WAS FOUND WITH HER CHILDREN WANDERING THE STREETS IN THE MIDDLE OF THE NIGHT WHILE . . . HIGH ON METHAMPHETAMINE***. Further, she did not begin the required drug treatment program, nor did she regularly appear for her drug tests. [D]espite being offered meaningful assistance several times over the years, it does not appear that any such plan or services ever altered [her] attitudes and behavior."

  State in Interest of K.S., 266 P.3d 185, 187 (Utah Ct. App. 2011).

- the parent remains oblivious to the child's needs:

  "[The mother] ignored [the child's] needs, did not recognize the negative impact she had on [the child's] life, continued relationships with dangerous men [such as sex offenders and convicted drug dealers], refused to follow Social Services' recommendations, rejected services that were offered to her, only attended four of twenty-four parenting classes, and made only minimal progress over seven months of individual counseling. . . . [The psychologist] believed that her past parenting served as a good predictor of her future behavior, and he was very concerned about whether [her] behavior would ever change. The record establishes [by clear and convincing evidence] that [she] does not have the willingness or ability to change her behavior. "

  In re A.B.,767 N.W.2d 817, 822-23 (N.D. 2009).

1506 SPECIFIC INQUIRIES ON GROUNDS UNDER SECTION 93-15-121

➤ **Severe mental illness or deficiency**

CONSIDERATIONS FOR MENTAL ILLNESS OR DEFICIENCY

"Juvenile and family courts will always have to face difficult issues regarding mentally ill and developmentally delayed parents and their children. Judges should insist that they receive high quality information about each parent's capabilities. The information may come from psychological or psychiatric evaluations, and judges should insist that the evaluator follow the guidelines from the American Psychological Association. Judges should also consider what supports the parent has including relatives and close friends. Often the parent can remain a part of the child's life if others are present in the daily family life. Mentally ill parents deserve an opportunity to demonstrate they can be safe parents." Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* (2014), p. 59 (footnotes omitted).

http://judgeleonardedwards.com/docs/reasonableefforts.pdf

93-15-121

Any of the following, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:
(a) The parent has been medically diagnosed by a qualified mental health professional with a ***SEVERE*** mental illness or deficiency that is unlikely to change in a reasonable period of time and which, based upon expert testimony or an established pattern of behavior, makes the parent unable or unwilling to provide an adequate permanent home for the child;

- **Was the parent medically diagnosed by a qualified mental health professional with a severe mental illness or deficiency?**

To terminate on grounds of a severe mental illness or deficiency requires that the parent be ***MEDICALLY DIAGNOSED*** by a qualified mental health professional. Lay testimony alone is insufficient.

- **Does that condition prevent the parent from providing an adequate permanent home for the child?**

It's not enough that the parent suffers from a severe mental illness or deficiency. Additionally, it must be shown that, despite reasonable efforts, the parent's condition prevents the parent from providing an adequate permanent home for the child.

See, e.g.:

> In re Amanda A., 755 A.2d 243, 246-47 (Conn. App. Ct. 2000) ("[The mother] alleges that because she has had ***'PSYCHOTIC EPISODES WITH HALLUCINATIONS,'*** it is unfair to place any burden on her to seek mental health treatment without 'being guided to it by the appropriate mental health agencies . . .' [The court record] is replete with findings . . . [on] the department's efforts at reunification. There existed various in-home reunification services [to assist the mother] in building a therapeutic support team to deal with her ongoing mental health and drug problems. . . . [T]he department did all it reasonably could do to reunify the [mother] with her children, [but her] conduct . . . led to the failure of those efforts.").

- **Were reasonable efforts made to specifically treat the parent's condition?**

Unless excepted under Miss. Code Ann. § 43-21-603(7)(c), the child welfare agency must make reasonable efforts to prevent the unnecessary removal of the child from the home or provide other services related to meeting the needs of the child and the parents.

> "[Reasonable efforts] is no less applicable in mental-illness-based severances than in others . . . '[T]ermination of the parent-child relationship should not be considered a panacea but should be resorted to only when concerted effort to preserve the relationship fails. This principle does not oblige the State to undertake rehabilitative measures that are futile. It does, however, oblige the State ***TO UNDERTAKE MEASURES WITH A REASONABLE PROSPECT OF SUCCESS***."
>
> Mary Ellen C. v. Arizona Dep't of Econ. Sec., 971 P.2d 1046, 1053 (Ariz. Ct. App. 1999).

Any therapeutic services offered should be based on the medical diagnosis and treatment recommendations of a qualified mental health professional. It is clearly unreasonable to rely on a parent's self-assessment:

> "[W]e explicitly reject the notions that [the mother's] not wanting and not requesting psychiatric counseling are at all relevant in determining whether DCYF made reasonable efforts to achieve reunification. . . . It is unreasonable for DCYF to rely on parents . . . who lack necessary expertise and perspective, and who labor under the burden of

> mental-health challenges, to diagnose their own problems and then conjure up effective treatment strategies."
>
> In re Natalya C., 946 A.2d 198, 204 (R.I. 2008).

If the child welfare agency offers the parent a full range of services consistent with the treatment recommendations of the qualified health professional, then that should be sufficient to satisfy reasonable efforts–even with a brief lapse or delay in arranging for a particular service:

> "Although the [mother] criticizes the department for a temporary lapse in one of the many services offered to her, a brief lapse in a single service does not render the department's services unreasonable."
>
> In re Devon W., 6 A.3d 100, 109 (Conn. 2010).

AT THE VERY LEAST, A PARENT DESERVES A FAIR OPPORTUNITY AT REHABILITATION:

> "The record clearly indicates [the mother's] love for the child and her desire to attempt to improve her parenting skills. The record does not indicate repeated and continued incapacity of [the mother] that cannot or will not be remedied. We cannot and will not condone the permanent removal of a child from a parent under these circumstances."
>
> Matter of M.L.W., 452 A.2d 1021, 1025 (Pa. Super. Ct. 1982).

- **Is the condition unlikely to change in a reasonable period of time?**

As always, the paramount concern is the child's best interest. A "small possibility" for improvement is not very promising:

> "Dr. Storms stated there was a small possibility that the parents could improve but conditions in the home could also worsen with time. Dr. Alford was clearly against returning V.R. to her parents, declaring [the parents] mentally unfit to deal with the complexities of a growing child. Therefore, the evidence presented to the court was sufficient to meet the [statutory] grounds for termination . . . ."
>
> In re V.R., 725 So. 2d 241, 247 (Miss. 1998).

Nor is "might be able to care for the child" when the parent's history shows a lack of motivation to seek consistent therapy and the child has special needs:

> "Both the court-appointed psychiatrist and the psychiatrist [for the mother]. . . testified that she suffers from a personality disorder with paranoid traits, and that she has interpersonal difficulties and problems with controlling her anger. The child's psychologist testified that the child suffers from an 'attention deficit disorder' and . . . requires a structured environment with a high degree of supervision. The opinion of the mother's therapist that the mother 'might' be able to care for her child in the foreseeable future is insufficient . . . in light of the mother's history of abuse and neglect, her history of lack of motivation to seek consistent therapy, and the evidence that her mental illness has rendered her incapable of performing normal parental activities."
>
> Matter of Angel Guardian Home v. Nereida C., 199 A.D.2d 500 (N.Y. App. Div. 1993).

But, there are other times when reunification is likely and very possible if the parent is simply given proper counseling and reasonable support services:

> "Here the testimony of the only expert witness, [a psychologist who evaluated the mother for the court], . . . established that ***WITH PROPER COUNSELING AND SUPPORT, [THE MOTHER'S] CHANCES FOR A NORMAL, FUNCTIONAL LIFE AS WORKER AND HOMEMAKER WERE LIKELY AND VERY POSSIBLE***."
>
> Hroncich v. Dep't of Health & Rehab. Servs., 667 So. 2d 804, 808 (Fla. Dist. Ct. App. 1995).

For long-term therapy, the court should also consider less restrictive alternatives:

> "Dr. Rothe indicates that with the proper psychotherapy, the mother will have the tools she needs to manage her disorder and prevent future psychotic breaks. Clearly, the Department failed to establish here that long-term therapy would not have improved the mother's mental health condition. . . . On remand, the trial court may consider less restrictive alternatives to termination, such as placing the minor child in the long-term custody of the maternal aunt and uncle, and offering the mother a new case plan that addresses the recommendations made by Dr. Rothe."
>
> I.R. v. Dep't of Children & Family Servs., 904 So. 2d 583, 587-88 (Fla. Dist. Ct. App. 2005).

Oftentimes, however, that option is not a workable solution:

> "The maternal grandmother had ten children, two of whom have been previously placed for adoption by the State. While the mother's sister was willing to take the child into her own home, the record reveals that the

> mother's sister was herself a foster child and had been receiving food stamps. The mother's sister has two young children of her own, was unaware of the extent of the mother's psychiatric problems, and was apparently unaware of the child's psychological problems and the consequent necessity for increased care and attention that the child would require. Thus, the trial court could properly conclude that placing the child with these relatives was not a viable alternative."
>
> Cope v. State Dep't of Human Res., 549 So. 2d 982, 985 (Ala. Civ. App. 1989).

- **What is in the child's best interests?**

If a parent's prognosis for rehabilitation is poor, then the risk of harm to the child is the overriding concern:

> "[Dr. Basham] stated that [the] father's personality disorder was relatively untreatable, that it would tend to persist for years, and that it could not likely be mitigated even within two years. [He further testified that the] ***FATHER'S PERSONALITY DISORDER POSED A SIGNIFICANT RISK OF HARM TO DAUGHTER'S EMOTIONAL WELL BEING***, because it contributed to [an] unstable and irresponsible functioning as a parent. In light of that testimony, and the ample evidence that supports it, it is highly improbable that daughter could be integrated into father's home within a reasonable period of time."
>
> State ex rel. State Office for Servs. to Children & Families v. Hammons, 12 P.3d 983, 991 (Or. Ct. App. 2000).

Children deserve a safe and stable environment in their formative years:

> "[T]hese children have suffered for several years [resulting] in the posttraumatic stress syndrome [for] both children. This syndrome has been caused from years of instability, constant moving from place to place, poor living conditions, inadequate supervision and care, and a lack of consistency in their lives. These children . . . need to have a safe stable environment in order to have an opportunity to recover from the emotional damage they have endured. The [doctors'] testimony . . . clearly indicates that these children will continue to suffer harm if their mother's parental rights are not terminated."
>
> In Interest of J.H., 484 N.W.2d 482, 485 (N.D. 1992).

As aptly stated by one court:

> "A child should not be forced to endlessly suffer the parentless limbo of foster care. . . . 'Children simply cannot wait for responsible parenting. ***PARENTING CANNOT BE TURNED OFF AND ON LIKE A SPIGOT. IT MUST BE CONSTANT, RESPONSIBLE, AND RELIABLE.***'"
>
> In Interest of C.D., 524 N.W.2d 432, 435 (Iowa Ct. App. 1994).

But, it's not necessary to shame the parent. Remember, the parent has been medically diagnosed with a ***SEVERE*** mental illness or deficiency. ***IT'S NOT ABOUT FAULT.*** Instead, it's about providing the child with an opportunity to prosper in a loving and caring home:

> "[T]he determinative factors are the circumstances and conditions surrounding the child, not the fault or culpability of the parent. . . . The State has long practiced its role as parens patriae in determining what is in the best interest of neglected or abused children."
>
> Matter of Montgomery, 316 S.E.2d 246, 251-55 (N.C. 1984).

See also:

> In re Brim, 535 S.E.2d 367, 373-74 (N.C. Ct. App. 2000) ("[An expert in general medicine and psychiatry, pediatrics and child development,] testified that . . . [the mother] was diagnosed with borderline and personality disorder, and [had] shown improvement over the course of treatment . . . [But despite] the perceived improvements, [she could not] adequately provide for the needs of [the child]. . . . [The trial court did not abuse its discretion] in . . . concluding that it was in [child's] best interest to terminate [the mother's] parental rights.").
>
> People in Interest of M.H., 683 P.2d 807, 809 (Colo. App. 1984) ("[A]ll the psychiatric and psychological witnesses [were] in agreement . . . that, while the treatment plan had been appropriate, the mother was suffering from a mental illness of such a nature that she was unable to provide reasonable parental care and supervision to [the child], and that she was wholly unlikely, within a reasonable period of time, to be able to care for the ongoing physical, mental, and emotional needs of [the child] . . . This case presents yet another situation wherein a natural mother loves her child, but is unable, through no specific fault of her own, to provide the child with the necessary parental care to enable that child to thrive, grow, and reach maturity.").

➤ **Extreme physical incapacitation**

§ 93-15-121

> Any of the following, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:
> . . .
> (b) The parent has been medically diagnosed by a qualified health professional with an ***EXTREME*** physical incapacitation that is unlikely to change in a reasonable period of time and which, based upon expert testimony or an established pattern of behavior, prevents the parent, despite reasonable accommodations, from providing minimally acceptable care for the child;

- **Has the parent been medically diagnosed by a qualified health professional with an extreme physical incapacitation?**

To terminate on grounds of an extreme physical incapacitation requires that the parent be ***MEDICALLY DIAGNOSED*** by a qualified health professional. Lay testimony alone is insufficient.

- **Does that condition prevent the parent from providing minimally acceptable care for the child?**

It's not enough that the parent suffers from an extreme incapacitation. Additionally, it must be shown that, despite reasonable efforts, the parent's condition prevents the parent from providing minimally acceptable care for the child.

See, e.g.,

> In re S.R.R., 769 S.E.2d 562, 564-66 (Ga. Ct. App. 2015) ("[T]he mother suffers from several disabling health problems, including multiple sclerosis, diabetes, fibromyalgia and lupus. The mother is under continuous medical care for her health issues and she takes several prescription medications to control her symptoms. . . .This Court will not sustain the termination of a mother's right to raise her child, based on either her poverty or her physical disabilities, when neither renders her incapable of caring for her child.").

- **Were reasonable efforts made to specifically treat the parent's condition?**

- **Is the condition unlikely to change in a reasonable period of time?**

If reasonable services and accommodations are offered, then it is the parent's responsibility to utilize them:

> "[T]he magistrate court took into account evidence regarding the possibility of Mother's condition improving in the future. Specifically, [it] noted Dr. Latta's statements that Mother could have been experiencing exacerbations in her multiple sclerosis symptoms . . . . [It] also considered Dr. Latta's testimony that Mother had been experiencing memory and cognition problems for some time . . . . Indeed, these memory and cognition problems were evidenced in Mother's multiple referrals to child protective services . . . ***[BUT THE] MOTHER HAD PREVIOUSLY REFUSED TO TAKE ADVANTAGE OF SUCH SERVICES***. . . . It is not necessary that a child suffer demonstrable harm before a court can terminate the parental relationship. . . . We affirm the judgment of the magistrate court terminating Mother's parental rights."
>
> Idaho Dep't Of Health & Welfare v. Doe, 291 P.3d 39, 42-44 (Idaho 2012).

- **What is in the child's best interests?**

As noted by one commentator:

> "When determining whether or not to terminate parental rights, almost every state requires the courts to weigh the best interests of a child. The best-interest assessment may be difficult when the parent suffers from a mental or physical disability. While the parent may mean well, he or she may simply be unable to care for the child due to his or her mental or physical condition. The court must focus on what is best for the child. Often, the court must decide if the strength of the emotional bond that exists between the parent and the child is more significant than the benefit the child will receive from termination of parental rights. The termination of parental rights is intended to free the child for adoption and a permanent, stable home."
>
> Elizabeth O'Connor Tomlinson, *Litigation of Proceeding for Involuntary Termination of Parental Rights Based on Mental and/or Physical Illness, Disability, or Deficiency of Parent*, 146 Am. Jur. Trials 467 (2016).

WHEN INVESTIGATING THE HOME SITUATION, THE GUARDIAN AD LITEM SHOULD MAKE INQUIRIES INTO WHETHER THE PARENT SUFFERS FROM ANY PHYSICAL DISABILITY NEEDING DIAGNOSIS, TREATMENT, AND/OR ACCOMMODATIONS.

➤ **Habitual alcoholism or other drug addiction**

IS ALCOHOLISM OR DRUG ADDICTION A DISEASE?

Federal and state courts have been reluctant to recognize alcoholism as a disease. *See, e.g.,* Trayner v. Turnage, 485 U.S. 535, 550-51 (1988) ("Indeed, even among many who consider alcoholism a "disease" to which its victims are genetically predisposed, the consumption of alcohol is not regarded as wholly involuntary. See Fingarette, The Perils of Powell: In Search of a Factual Foundation for the "Disease Concept of Alcoholism," 83 Harv.L.Rev. 793, 802-808 (1970)."); Powell v. Texas, 392 U.S. 514, 522 (1968) ("Debate rages within the medical profession as to whether 'alcoholism' is a separate 'disease' in any meaningful biochemical, physiological or psychological sense, or whether it represents one peculiar manifestation in some individuals of underlying psychiatric disorders."); Mississippi Employment Security Commission v. Martin, 568 So. 2d 725, 727 (Miss. 1990) ("The State of Mississippi recognizes alcoholism as a serious problem, but does not label it as "sickness" or "disease"."). But, the United States Supreme Court has depicted drug addiction as a disease. *See* Robinson v. California, 370 U.S. 660, 667 (1962) ("Indeed, [narcotic addiction] is apparently an illness which may be contracted innocently or involuntarily."); Linder v. United States, 268 U.S. 5, 18 (1925) ("[Narcotic addicts] are diseased and proper subjects for [medical] treatment.").

Regardless of the classification, the child welfare agency is required to make "reasonable efforts" of "appropriate and available services" to address the rehabilitative needs of a parent who is suffering from habitual alcoholism or other drug addiction. Ideally, these intervention services should include:

- a screening;
- a clinical assessment;
- an educational component;
- an appropriate referral;
- service coordination and case management; and
- counseling and rehabilitative care.

Further, any inpatient treatment or inpatient detoxification program should be certified by the Department of Mental Health, other appropriate state agency or the equivalent agency of another state. *Compare* Miss. Code Ann. § 9-23-13 (Court intervention services under Alyce Griffin Clarke Intervention Court Act.).

§ 93-15-121

> Any of the following, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:
> . . .
> (c) The parent is suffering from ***HABITUAL*** alcoholism or other drug addiction and has failed to successfully complete alcohol or drug treatment;

- **Is the parent suffering from habitual alcoholism or other drug addiction?**

While this assessment does not require a medical diagnosis by a qualified mental health professional or a qualified health profession, there must be testimony by a competent lay witness or medical professional that establishes this element of proof. Simply showing that a parent's drinking habits are somewhat disruptive to the home environment is likely insufficient:

> "[The court-appointed psychologist] expressly found [the father] did not have a mental disability as defined [by statute]. Instead, [he] based his prediction that reunification services would not be profitable on the father's alcohol consumption and work habits. [But such] conclusions did not warrant the denial of reunification under [the statute]. . . . The father should not have been deprived of the opportunity to attempt to reunify with his children by altering his lifestyle."
>
> In re Rebecca H., 278 Cal. Rptr. 185, 196 (Cal. Ct. App. 1991).

See also:

> A.B. v. Lauderdale Cty. Dep't of Human Servs., 13 So. 3d 1263, 1269 (Miss. 2009) ("Finally, the only evidence before the youth court during the termination proceedings concerned the mother's conduct. There was simply no credible evidence that the father, B.B., was currently using drugs. The only evidence of B.B.'s drug usage was elicited during the neglect hearing and was minimal at best. When asked about B.B.'s criminal record, the deputy sheriff responded, "his permanent history is clean ... but it won't be for long." From the context, it appears that the officer was referring to a pending charge, the same charge against A.B. that later was dropped. Current or recent drug use by either parent was not established by clear and convincing evidence.").

IF THERE ARE INDICATIONS OF HABITUAL ALCOHOLISM OR OTHER DRUG ADDICTION, THEN THE GUARDIAN AD LITEM SHOULD RECOMMEND THAT THE PARENT RECEIVE A SCREENING AND CLINICAL ASSESSMENT.

- **Were reasonable efforts made to treat the parent's alcoholism or drug addiction?**

If termination is sought on the ground of habitual alcoholism or other drug addiction, then the child welfare agency must make reasonable efforts to treat that condition. It is then up to the parent to utilize the services offered:

> "[The mother was] offered a veritable plethora of services, including parent education classes, family preservation services, individual counseling, family therapy, and inpatient and outpatient drug and alcohol treatment. . . . [But the mother] continued to test positive for drugs, continued to maintain an unstable lifestyle, and made only superficial stabs at participating in the court-ordered reunification plan-usually when a court date loomed in the foreseeable future. [The mother's] real problem was not a lack of services available but a lack of initiative to consistently take advantage of the services that were offered."
>
> Angela S. v. Superior Court, 42 Cal. Rptr. 2d 755, 757-58 (Cal. Ct. App. 1995).

See also:

> B.R.M. v. State Dep't of Human Res., 626 So. 2d 646, 648 (Ala. Civ. App. 1993) ("[The] DHR caseworker established a case plan [that] included securing adequate housing, obtaining employment, and utilizing supportive services. ***[T]HE MOTHER ENTERED SEVERAL DRUG REHABILITATION PROGRAMS BUT NEVER COMPLETED ONE, . . . NEVER ATTENDED COUNSELING SESSIONS, AND . . . FAILED TO UTILIZE THE REHABILITATIVE SERVICES [THAT WERE] MADE AVAILABLE TO HER***. . . . Our thorough and careful review of the record discloses no error by the trial court in [terminating] the parental rights of the mother.").
>
> Matter of R.J.F., 443 P.3d 387, 401 (Mont. 2019) ("[T]he Department. . . failed to develop and employ voluntary services and a treatment plan realistically designed to build a bond between Mother and Child and timely assist Mother in addressing her substance use disorder.").

Random drug testing and supervised visitation is not a treatment program rising to the level of reasonable efforts:

> "DHR did not offer the mother any services designed to assist the mother in overcoming her drug problem, in obtaining appropriate housing, or in obtaining employment or steady income. [The] only services DHR offered the mother were supervised visitation, random drug testing, and bus tickets so that she could attend ISP meetings and drug testing. These services

> certainly would have facilitated DHR's ability to monitor the mother and to check her progress if she had been undergoing rehabilitation; however, [they] hardly constitute a fair and serious attempt to cure the mother's substance-abuse, housing, and income problems so that she could quickly and safely reunite with the child."
>
> H.H. v. Baldwin Cty. Dep't of Human Res., 989 So. 2d 1094, 1105–06 (Ala. Civ. App. 2007).

Offering an outpatient program is likely not reasonable efforts if the alcohol and drug counselor had strenuously advocated for residential treatment:

> "[The mother's] counselor and therapist both concluded that residential treatment was necessary to address the chronic alcohol problem that had plagued [the mother]. However, despite the knowledge that traditional out-patient treatment programs were unsuccessful, the agency placed [the mother] back into the same program that had previously failed to address the severity of her problem. . . . Ultimately, [the mother] obtained the funding for and entered into residential treatment without the assistance of those purporting to aid her in reunification with her children. Thus, to conclude that the children could not be returned to [the mother's] care in a reasonable time in light of the agency's deficient coordination and omission of services was clearly erroneous."
>
> In re Rogers II, No. 246085, 2003 WL 21752814 (Mich. Ct. App.).

- **What is in the child's best interest?**

A parent's habitual alcoholism or other drug addiction certainly does not promote a safe, stable, or nurturing environment for the child. Instead, it exposes a child to unacceptable risks and chaotic living situations. A parent's half-hearted attempts at recovery is apt to lead straightway to termination:

> "Given [the mother's] lengthy history of drug abuse, denial of any drug problem, refusal to voluntarily drug test and enter drug treatment, and her reference to her live-in boyfriend as a heroin addict, the court could reasonably determine there was no alternative to removal. . . . [The mother] steadfastly refused to voluntarily drug test or participate in drug treatment in this case. [Although the mother] testified she would participate in court-ordered services, [the] court [reasonably] found [that] she was not a credible witness. . . . [and that] the provision of services would be fruitless and not in the children's best interests."
>
> In re Lana S., 142 Cal. Rptr. 3d 792, 802-05 (Cal. Ct. App. 2012).

Additionally, habitual alcoholism or other drug addiction significantly impairs the parent's ability to provide the child with basic necessities:

> "Both boys received developmental evaluations. [One child], who was 6 years old at the time . . . [was] mildly retarded, socially deprived, and in need of speech therapy and dental care. [The other child], who was 3 years and 9 months old, . . . [had] both mental and language delays and was also in need of dental care. [Although the mother] received monthly social security benefits for the children, they had no toys and were frequently dressed in inappropriate clothing. [Because of] the . . . past neglect [and] the special needs of the children and [that the mother] has made no advancements in confronting and eliminating her problem with alcohol, we are convinced that there was clear, cogent, and convincing evidence of neglect and the probability of its repetition . . . to support the order terminating [her] parental rights."
>
> In re Leftwich, 518 S.E.2d 799, 803 (N.C. 1999).

Essentials for Childhood: Creating Safe, Stable, Nurturing Relationships and Environments for All Children

Young children experience their world through their relationships with parents and other caregivers. Safe, stable, nurturing relationships and environments for children and their caregivers provide a buffer against the effects of potential stressors such as Child Abuse and Neglect (CAN) and other Adverse Childhood Experiences (ACEs) and are fundamental to developing healthy brain architecture.

. . .

Safety, stability, and nurturing are three critical qualities of relationships and environments that make a difference for children as they grow and develop. They can be defined as follows:

- **Safety:** The extent to which a child is free from fear and secure from physical or psychological harm within their social and physical environment.
- **Stability:** The degree of predictability and consistency in a child's social, emotional, and physical environment.
- **Nurturing:** The extent to which children's physical, emotional, and developmental needs are sensitively and consistently met.

www.cdc.gov/violenceprevention/pdf/essentials-for-childhood-framework508.pdf

➤ **Unwilling to provide necessary food, clothing, shelter, or medical care**

§ 93-15-121

> Any of the following, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:
> . . .
> (d) The parent is ***UNWILLING*** to provide reasonably necessary food, clothing, shelter, or medical care for the child; reasonably necessary medical care does not include recommended or optional vaccinations against childhood or any other disease;

- **Substantial financial hardship?**

If poverty is a concern, then the guardian ad litem should request the parent to complete and submit an affidavit of substantial hardship.

- **Is the parent willing to comply with the service plan?**

Poverty alone is not a ground for parental rights:

> "[T]he fact that a mother is "unemployed, without prospects for future employment, and without any stable living arrangements" is not sufficient to terminate parental rights. . . . [T]he juvenile court appears to have totally discounted the fact that despite the hurdles facing the mother in her bleak economic environment, she managed to find a job which gave her enough income to pay her rent and make several substantial child support payments. Accordingly, this is not a case where the "evidence" consisted of merely 'positive promises' from the parent that she would change and rectify past failures so as to avoid termination of her parental rights, and the juvenile court appears to have prematurely discounted the mother's progress toward meeting her goals."
>
> In re C.J.V., 323 Ga. App. 283, 286–87, 746 S.E.2d 783, 787 (2013).

On the other hand, a court may terminate a parent's parental rights if that parent is unwilling to utilize offered services and accommodations for meeting the child's basic needs:

> "Lutheran Family Services provided . . . services designed to help [the mother provide food, clothing and shelter for the child]. [These services] included helping [her] make a budget[,] educating [her on] nutrition [and] how to maintain a clean house, [etc.]. [They] also provided [her] with

> referrals to other agencies for additional services. . . . None of the witnesses, except for [the mother] herself, expressed an opinion that [her] ability to care for [the child] had improved. Indeed, the testimony was [the opposite]. Thus, the State's reasonable efforts have not remedied the situation. [With] the exception of one brief period, [the mother] entirely disregarded the case plan and failed to make any progress toward reunification."
>
> In re S., 2010 WL 2990052 (Neb. Ct. App. 2010).

Cooperation is especially important when there is a child in need of special care:

> "[The father] was not cooperative with the medical staff and attempted to readjust [the child's] ventilator against medical advice. [The mother] continually failed to wash her hands prior to caring for [the child], which exposed [the child] to the risk of a staph infection. She failed to notice when [the child's] ventilator became disengaged. . . . [and] remains unable to put the necessary braces on [the child's] feet. [In addition to an unsanitary home], [t]he parents do not have a telephone or reliable transportation [in case of] an emergency situation. . . . [Psychological] testing revealed [the father] was of borderline intelligence, was impulsive and rebellious, had a history of alcohol abuse and problems with the law. [It] also indicated [the father] was uncooperative and probably unable in ability to cooperate with medical treatment for Tissia. [The mother] was assessed to have borderline intellectual functioning, was suggestible and deferred to the father's judgment. . . . We find the parents were provided adequate reunification efforts and specialized training services [but are] unable to gain the skills necessary to care for [the child]."
>
> In Interest of T.C., 522 N.W.2d 106, 109 (Iowa Ct. App. 1994).

Parenting is a demanding responsibility. As aptly stated by one court:

> "Unrebutted . . . testimony revealed that [the mother] is so profoundly limited in intellectual function that there is serious doubt she can ever acquire the parenting skills necessary to justify reuniting her with G.D.G. [The mother's argument is] that she should retain the status of 'parent', without performing any role whatever in her child's life, while someone else fulfills her parental responsibilities. We find that the statute does not contemplate such an arrangement."
>
> In re G.D.G., 573 A.2d 612, 613-14 (Pa. Super. Ct. 1990).

- **Were reasonable efforts made to assist the parent in providing necessary food, clothing, shelter, or medical care?**

Reasonable efforts may require the child welfare agency to assist the parent in attaining available public financial assistance.

For example,

> Aid to Families with Dependent Children (AFDC)
> Supplemental Nutrition Assistance Program (SNAP) (e.g., food stamps)
> Temporary Assistance for Needy Families (TANF)
> Supplemental Security Income (SSI)
> Social Security Disability Insurance (SSDI)
> Medicaid

But, that isn't a long-term solution toward self-sufficiency in raising the child. A parent needs assistance in finding employment; in attaining adequate housing; and in acquiring parenting skills.

See, e.g.:

> *Housing.*
>
> In re G.S.R., 72 Cal. Rptr. 3d 398, 406 (Cal. Ct. App. 2008) ("Time and again, the social worker pointed to [the father's] inability to afford housing to support her view [that the father] was not interested in obtaining custody of or caring for his sons. This unwarranted logical leap had potentially devastating implications. Instead of crafting a plan to help [him] obtain affordable housing for his family, DCFS recommended termination of services and severance of the parental relationship. The juvenile court adopted those recommendations, without providing Gerardo notice or a meaningful opportunity to address the issue of his fitness to parent. The court's failure to provide these safeguards also prejudiced the boys, who are deprived of an opportunity to develop a relationship with their biological father.").
>
> *Housing.*
>
> Matter of Guardianship & Custody of Verona Jonice N., 177 A.D.2d 115, 116-20 (N.Y. App. Div. 1992) ("[When the mother] asked the caseworker to provide a letter [to] help her obtain section 8 housing, he failed to do so. . . . [Further,] he made no calls . . . to any public welfare agency [for public assistance]. . . . . Adding to the events . . . is the receipt by the agency of a letter [written by the daughter] observing her mother's birthday, and [stating] that she misses her and 'would really like to live as a family again'. . . . Accordingly, the [termination orders are] reversed . . . .").

Parenting skills.

In re Kristin W., 271 Cal. Rptr. 629, 641 (Cal. Ct. App. 1990) (“The problems which led to the children’s removal from petitioner’s home included their poor personal hygiene and absences from school. However, nothing in the reunification plan addressed these problems. Further, except for the dirty condition of petitioner’s home, the problems leading to the dependency could only have been resolved by petitioner having some responsibility for the care of the children. The plan’s limitation on visitation prevented petitioner from demonstrating and improving his skills with respect to the care of the children.”).

Housing.

Matter of Enrique R., 494 N.Y.S.2d 800, 802 (N.Y. Fam. Ct. 1985) ("The problem of adequate housing for the poor is indeed a national social problem that has defied solution. Children trapped in the foster care system because of poor housing are caught in a veritable catch-22 situation. Their parents or family are unable to regain their children without adequate housing and cannot acquire housing without adequate funds. Such funds are not usually available until the children are returned home. Indeed, these children are hostages to the ill fortunes of their families.").

Housing and employment.

Matter of Jamie M., 472 N.E.2d 311, 314 (N.Y. 1984) (“An agency assuredly need not guarantee that parents will no longer be poor or unemployed, but neither can it, without more, simply impose on impoverished parents the usual plan, including the requirement, for return of their child, that they have a means of support and suitable home. . . . [Instead it must] make some attempt to assist parents, with counseling, planning, visitation and the procurement of housing and employment where that is necessary in order to help them overcome the problems that separate them from their children.”).

Housing and employment.

Matter of Jones, 436 N.E.2d 849, 855 (Ind. Ct. App. 1982) (“While the paying of medical bills and food stamps would be reasonable services, here they were not offered in a manner designed to aid the parents in their duties as parents. . . . The evidence does not disclose that any reasonable aid was offered [to assist with housing and employment]. Only directions were given to Joneses to solve their own problems.”).

- **What is in the child's best interests?**

Feelings of affection are not actions. Utilizing offered services to ensure that the child has basic necessities is:

> "At the time DFS intervened, the family was without proper food and clothing, the electricity had been disconnected, and appellant feared imminent eviction. [DFS] attempted to help [the mother] by providing food and housing, securing a placement for [her] and her children at a residential home that taught parenting skills and promoted self-sufficiency, referring her to community service programs, and directing her to psychological counselors. DFS also arranged visits between [the mother] and her children. The income maintenance branch of DFS offered to help [her] apply for general relief, AFDC, food stamps, and heating aid. Despite DFS's efforts, [the mother] left the six-month residential placement program after one week; she missed meetings of the community service programs; her attendance at therapy sessions was minimal; and she failed to complete applications for financial assistance. [The mother] did visit with her children, but she also cancelled visits and failed to see them regularly. . . . [The mother argues] that there was no evidence to support the conclusion that it was in the best interests of the children to terminate her parental rights. In support of her point, [she] cites her love for her children, her efforts to gain self-sufficiency, and her efforts to provide . . . adequate care and protection. Love and good intentions are important considerations, but the controlling factor [is] the best interests of the children. Although the 'best interests of the children' is an imprecise standard which relies on the subjective values of the judge, there was clear, cogent and competent evidence to support the court's decision."
>
> In Interest of A.M.K., 723 S.W.2d 50, 52-54 (Mo. Ct. App. 1986).

See also Miss. Code Ann. § 43-15-13(8) ("The Legislature recognizes that the best interests of the child require that the child be placed in the most permanent living arrangement as soon as is practicably possible.").

➤ **Failed to exercise reasonable visitation or communication**

CONSIDERATIONS ON VISITATION

"Visitation between parents and children is an essential service in the reunification process. Some experts argue that visitation or access is the most important part of any reunification plan. Frequent visiting maintains family relationships, helps families cope with changing relationships, empowers and informs parents, and enhances children's well-being. In addition, it helps families confront reality (the situation in which they find themselves), and it provides a time and place to practice new behaviors. Ongoing contact with the child enhances a parent's motivation to change. Visitation also permits others to assess the parent-child relationship and assist parents learn safe and effective parenting behaviors." Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* (2014), p. 47 (footnotes omitted).

http://judgeleonardedwards.com/docs/reasonableefforts.pdf

§ 93-15-121

> Any of the following, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:
> . . .
> (e) The parent has failed to exercise reasonable visitation or communication with the child;

- **Did the parent exercise reasonable visitation or communication with the child?**

Whether a parent has exercised reasonable visitation or communication depends on the circumstances. Sometimes the parent's shortcoming is evident:

> "[T]he guardian ad litem found that R.L. was a stranger to this four-year-old child [and] had made no contact with the minor child in excess of one year, ..."
>
> R.L. v. G.F., 973 So. 2d 322, 325-26 (Miss. Ct. App. 2008).

But, other times it is questionable (and not rising to a level of clear and convincing proof):

> "The first basis supporting TPR was the youth court's conclusion that Paul did not have contact with the children for more than one year. . . . We find that the youth court erred by basing the termination of Paul's parental rights on this ground as the undisputed testimony at the TPR hearing was that Paul attempted several phone calls to FCDHS in an effort to maintain contact with the children. Also, Paul sent Christmas gifts to Tammy and Ashley through a charitable organization, and sent letters to the children through FCDHS. While no FCDHS employee could corroborate these efforts by way of testimony at the TPR hearing, they could also not positively refute Paul's assertions. Furthermore, all indications are that, had Paul not been incarcerated, he would have continued the care and support that he exhibited prior to incarceration."
>
> In re A.M.A., 986 So. 2d 999, 1013-14 (Miss. Ct. App. 2007).

Another consideration is whether a parent's attempts to visit or communicate with the child has been thwarted by others:

> "Not only was [the mother] denied visitation and custody, but the [court's] order also denied [her] the right to work with DHS 'or to provide any services to her' because of DHS's 'tremendous caseload.' This is clear error based upon the facts presented here. . . . Regardless of its workload, DHS should be required to provide services to [the mother]."
>
> In re T.A.P., 742 So. 2d 1095, 1104-05 (Miss. 1999).

See also:

> In re Julie M., 81 Cal. Rptr. 2d 354, 358-59 (Cal. Ct. App. 1999) ("'By not providing visitation, SSA virtually assured the erosion (and termination) of any meaningful relationship between [the children and the mother].' . . . Giving the children unbridled discretion to control visitation could make them nothing more than pawns in [the father's] efforts 'to hurt the mother for past, real or imagined, wrongs . . . .' Such a visitation order could be misused to punish the mother rather than to protect the children.").
>
> In re Adoption of Syck, 562 N.E.2d 174, 185 (Ill. 1990) ("Circumstances that warrant consideration when deciding whether a parent's failure to personally visit his or her child establishes a lack of reasonable interest, concern or responsibility as to the child's welfare include the parent's difficulty in obtaining transportation to the child's residence, the actions and statements of others that hinder or discourage visitation, ...").

- **Were reasonable efforts made for reasonable visitation or communication with the child?**

Whether the child welfare agency has made reasonable efforts also depends on the circumstances. Sometimes the parent's claims are baseless:

> "[T]his Court is at a loss to understand how B.S.G. can claim that Human Services did not make diligent efforts to reunite her with E.D. According to the record, Human Services made numerous attempts to aid B.S.G. in regaining custody of E.D., consistently from March 2004 until July 2005. However, each time B.S.G. regained custody or visitation with E.D., B.S.G. would abuse drugs and/or leave E.D. for extended periods in the care of relatives, which ultimately placed the responsibility of E.D.'s best interest with the youth court. This cycle continued for over two years, essentially until B.S.G. was incarcerated. Again, this argument is wholly without merit."
>
> B.S.G. v. J.E.H., 958 So. 2d 259, 269 (Miss. Ct. App. 2007).

And, sometimes not:

> "[T]he Agency did not advance the parents' visitation services. In explaining the limited visitation, [the social worker] said she would feel 'uncomfortable' leaving T.J. alone with his parents. Yet [she] described only one incident in more than a year that may have implicated [the child's] safety—when . . . learning to walk, fell and bumped his head. The record shows [that the father] picked his son up, wiped away his tears and followed [the social worker's] advice to put ice on a small lump on [the child's] head. . . . When the Agency limits visitation in the absence of evidence showing the parents' behavior has jeopardized or will jeopardize the child's safety, it unreasonably forecloses family reunification on the basis of the parents' labeled diagnoses, and does not constitute reasonable services."
>
> Tracy J. v. Superior Court, 136 Cal. Rptr. 3d 505, 514 (Cal. Ct. App. 2012).

Also, the child welfare agency should be receptive to changing circumstances:

> "[The juvenile court must] ensure [that] regular parent-child visitation occurs while at the same time providing for flexibility in response to the changing needs of the child and to dynamic family circumstances."
>
> In re S.H., 3 Cal. Rptr. 3d 465, 470-73 (Cal. Ct. App. 2003).

And, to special circumstances:

> "If a convicted criminal is entitled to visitation and an ongoing relationship with his or her children, then surely a hospitalized, mentally ill parent deserves no less. Visitation in both circumstances may or may not be reasonable depending on the rules and regulations of the institutions involved, the condition of the parent, and the distance from the children's placement. The record should clearly reflect . . . the basis upon which a special needs parent is denied the opportunity to maintain visitation and an ongoing relationship with his or her child."
>
> In re Elizabeth R., 42 Cal. Rptr. 2d 200, 210 (Cal. Ct. App. 1995).

- **What is in the child's best interest?**

Quality visitations and communications promote the child's general well-being:

> "It is clear that for several years the [mother] consistently refused to take her visitation and counseling obligations seriously, thus putting, as the court observed, ***'HER OWN NEEDS FIRST AND THOSE OF [THE CHILD] SECOND.'*** While it is true that the [mother] obtained employment and housing, participated in teen mentoring, was not involved in drugs and had no contact with the criminal justice system, her unwillingness to undertake specific steps to develop her parenting skills and bond with her daughter is equally important. [B]oth psychologists noticed that the child exhibited anxiety toward the [mother] and did not want to be in the same room with her in the absence of her foster grandmother. That the mother and child had no real relationship, despite the department's efforts to encourage one for more than three years, is noteworthy. Furthermore, the factual record indicates that the child is a bright, imaginative four year old who needs direction and stimulation, which the respondent does not seem able to provide. . . . We conclude that the court properly found that the [mother] is not prepared to assume a responsible position in the life of her child, that she is not in a position to care for the child's particular needs and that there is no reason to believe that she will be in a position to do so within a reasonable time in the future, despite her belated efforts to seek counseling and visitation."
>
> In re Mariah S., 763 A.2d 71, 81-82 (Conn. App. Ct. 2000).

➤ **Substantial erosion of the relationship between the parent and the child**

CONSIDERATIONS ON STRENGTHENING THE PARENT-CHILD RELATIONSHIP

"Removing a child from parental care presents significant problems for the parent-childrelationship. The child may not understand why the removal took place. The parent may feel guilty about the behavior that resulted in the removal, and the parent-child relationship may suffer. As a part of any reunification plan the agency should exercise diligent efforts to encourage or strengthen the parental-child relationship. . . . Successful family reunification depends in great part on the connection between parent and child as well as the parent's incentive to reunify." Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* (2014), pp. 62-63 (footnotes omitted).

http://judgeleonardedwards.com/docs/reasonableefforts.pdf

§ 93-15-121

Any of the following, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:

. . .

(f) The parent's abusive or neglectful conduct has caused, at least in part, an extreme and deep-seated antipathy by the child toward the parent, or some other substantial erosion of the relationship between the parent and the child;

- **Is there a substantial erosion of the parent-child relationship?**

See, e.g.:

Fuller v. Weidner, 147 So. 3d 380, 382 (Miss. Ct. App. 2014) ("[The father] failed to pay any child support for approximately two years, and only began to pay once [the] termination action [was filed]. We do recognize that "[f]ailure to pay child support without more is insufficient predicate for a finding of abandonment." [But in this case], [the father] had not seen [the child] in two years nor made any serious efforts to do so. . . . ***A SUBSTANTIAL EROSION CAN BE PROVED BY SHOWING A PROLONGED ABSENCE AND LACK OF COMMUNICATION BETWEEN THE PARENT AND THE CHILD.***").

- **Were reasonable efforts made to strengthen the parent-child relationship?**

Failure to provide "reasonable efforts" on issues pertaining to one ground for terminating parental rights may likewise to other grounds. Allowing reasonable visitation and communication is essential for strengthening the parent-child relationship.

See, e.g.:

> De La Oliva v. Lowndes County Dept. of Public Welfare, 423 So. 2d 1328, 1331 (Miss. 1993) ("The proof wholly failed to establish [that the mother] had abandoned her children and was further insufficient to establish, by clear and convincing proof, an extreme and deep-seated antipathy by the child toward [the mother] or some other substantial erosion of the parent and child relationship . . . Most of the antipathy entertained by the child toward [the mother], or erosion of the parent/child relationship was ***LARGELY CONTRIBUTED TO BY WELL-INTENTIONED PEOPLE*** in the welfare department and judicial system's interference in that relationship.").

- **What is in the child's best interest?**

Whether there has been a substantial erosion of the relationship between the parent and the child depends on the circumstances.

See, e.g.:

> In re Adoption of H.H.O.W., 109 So. 3d 1102, 1105-07 (Miss. Ct. App. 2013) ("[The parents] failed to visit [the child] for approximately three years, beginning when the child was only nine months of age. In response, [the parents] point to evidence of communication—they called approximately every two or three weeks—but . . . these attempts had been ineffective in preserving the parent/child relationship. . . . We recognize that in many cases [parents] calling on a regular, if infrequent, basis and sending birthday and Christmas gifts would have been sufficient to prevent a substantial erosion of the parent/child relationship. However, ***THIS CASE TURNS ON THE YOUNG AGE OF THE CHILD . . . AND THE FAILURE OF THE PARENTS TO ESTABLISH A MEANINGFUL RELATIONSHIP DURING HIS FORMATIVE YEARS***. Had [the child] been older with a more firmly established bond to his parents, limited contact may very well have been sufficient to prevent [the] termination of [the parents'] parental rights.").

➤ **Abusive acts making future contacts undesirable**

§ 93-15-121

Any of the following, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:

. . .

(g) The parent has committed an abusive act for which reasonable efforts to maintain the children in the home would not be required under Section 43-21-603, or a series of physically, mentally, or emotionally abusive incidents, against the child or another child, whether related by consanguinity or affinity or not, making future contacts between the parent and child undesirable;

§ 43-21-603

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

. . .

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

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

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

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

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

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

- **Did the parent commit an abusive act for which reasonable efforts are not required?**

- **Did the parent commit a series of physically, mentally, or emotionally abusive incidents against the child or another child that makes future contacts between the parent and child undesirable?**

§ 93-21-3 (Abuse defined)

As used in this chapter, unless the context otherwise requires:
(a) "Abuse" means the occurrence of one or more of the following acts between spouses, former spouses, persons living as spouses or who formerly lived as spouses, persons having a child or children in common, other individuals related by consanguinity or affinity who reside together or who formerly resided together or between individuals who have a current or former dating relationship:
(i) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon;
(ii) placing, by physical menace or threat, another in fear of imminent serious bodily injury;
(iii) Criminal sexual conduct committed against a minor within the meaning of Section 97-5-23;
(iv) Stalking within the meaning of Section 97-3-107;
(v) Cyberstalking within the meaning of Section 97-45-15; or
(vi) Sexual offenses within the meaning of Section 97-3-65 or 97-3-95.

§ 97-3-7 (Simple domestic violence)

(3)(a) When the offense is committed against a current or former spouse of the defendant or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant or a child of that person, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child, a person is guilty of simple domestic violence who:
(i) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another;
(ii) Negligently causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or
(iii) Attempts by physical menace to put another in fear of imminent serious bodily harm.
Upon conviction, the defendant shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not more than six (6) months, or both.

EXPOSING A CHILD TO REPEATED ACTS OF DOMESTIC ABUSE AGAINST THE OTHER PARENT POSSIBLY FITS THIS DESCRIPTION.

CONSIDERATIONS ON DOMESTIC VIOLENCE

"Mothers who are victims of domestic violence face difficult choices. Threats from the abuser, loss of economic support, and love for the abuser may inhibit her desire to leave and care for her child. . . . National policy experts focus on the need for judicial use of the reasonable efforts finding in domestic violence cases." Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* (2014), p. 56 (footnotes omitted).

http://judgeleonardedwards.com/docs/reasonableefforts.pdf

A parent who commits acts of domestic abuse may also have a severe mental illness:

> "The mother testified that ***THE FATHER HAD BEATEN HER THROUGHOUT THEIR MARRIAGE IN THE PRESENCE OF THE CHILDREN***; that the father was incapable of caring for the children because of his inability to control anger; that she feared the father's beatings; that early in their marriage he threatened her life with a machete; that more recently he threatened her life with a butcher knife; that she feared for the children because the father twice hit V.B. by striking her as she held the infant in her arms; that he spanked the children for not sleeping when told to nap; and that he used excessive force in spanking the children. . . . ***[T]HE FATHER'S TREATING MENTAL HEALTH COUNSELOR . . . TESTIFIED THAT, ALTHOUGH THE FATHER HAD BEEN DIAGNOSED WITH INTERMITTENT EXPLOSIVE DISORDER, HE BELIEVED THAT DEPRESSION WAS ALSO PRESENT***. He also opined that treatment would take two to three years; that relapse was a possibility; and that he did not recommend the children be returned to the father any earlier than a year from the time of the hearing. And, while the father testified he would never hurt the children in the future despite his difficulties with anger, '[t]he decision as to a child's future must rest on more than positive promises which are contrary to negative past fact.' . . . [T]he juvenile court did not err in approving the nonreunification plan."
>
> In re U.B., 540 S.E.2d 278, 280-81 (Ga. Ct. App. 2000).

See also:

> In re David G., 909 N.Y.S.2d 891, 900 (N.Y. Fam. Ct. 2010) ("Even ACS has at times indicated an understanding that accusing a battered woman of neglect is bad policy. . . . [T]here is a growing consensus that helping the non-offending parent protect herself and her children and holding the offender accountable is the preferred strategy for obtaining child safety and reducing future risk.").

Excessive discipline might also constitute an abusive act under this ground:

> "[The father] implemented excessive disciplinary methods on [his step-daughters]. . . . The girls showed signs of strong anxiety and emotional reactions to the use of [his] parenting and discipline techniques. [He] would use ice packs, cold showers and spray the girls with a hose to control their behavior. . . . Both girls told social workers that [he] locked them in the garage or outside in the dark. [The father] stated he would implement harsher discipline techniques on [his son] because he was a boy. . . . [The father's] actions toward the girls and his inability to acknowledge the excessive nature of his discipline techniques placed [his seven-month old son] at risk of abuse . . . [and unable] to defend himself from such methods of discipline."
>
> In re Cole C., 95 Cal. Rptr. 3d 62, 75-76 (2009) (Cal. Ct. App. 2009).

A series of physically, mentally, or emotionally abusive incidents against one child is sufficient grounds for terminating the parent's parental rights to the other children in the home.

> In re H.D.H., 979 So. 2d 6, 12 (Miss. Ct. App. 2008) ("[W]e agree with DHS's argument that abuse of one child is enough under [the statute] to terminate H.D.H.'s parental rights to all three children.").

- **Were reasonable efforts made for reunification?**

Offering a vast array of "appropriate and available" services that address the abusive conduct is likely sufficient:

> "[T]he court ordered specific steps to facilitate the return of the child to the respondent, which included parenting aid services, parenting classes, psychological evaluations, anger management, reunification service through Casey Family Services, education and vocational assistance through Connecticut Works and domestic violence counseling. . . . Our review of the record reveals that the evidence credited by the court supports this finding. The respondent failed to attend or to complete numerous treatment and counseling programs offered to her. She had been unable to make progress in improving her parenting skills, continued to be

involved in domestic violence with the father, and failed to obtain stable housing and employment. The court's finding, by clear and convincing evidence, that the respondent failed to achieve sufficient personal rehabilitation was not clearly erroneous."

In re Anthony A., 963 A.2d 1057, 1061-62 (Conn. App. Ct. 2009).

Sometimes reunifications services must wait until the parent shows a willingness to work on resolving other rehabilitative issues:

"Because of the ***HISTORY OF DOMESTIC VIOLENCE IN THE HOME***, the juvenile court ordered Father to have no contact with the children or their mother after the children's removal. However, the court granted supervised visitation privileges to Father on the condition that he provide clean drug screens according to the service plan. The service plan was to be expanded once Father had demonstrated his commitment to the initial portions of that plan. Because ***FATHER DID NOT PRODUCE EVEN ONE CLEAN DRUG SCREEN DURING THE TIME REUNIFICATION SERVICES WERE AVAILABLE***, however, the no contact order between Father and his children remained in place the entire time, and actual reunification services were never extended. Under the circumstances, Father could not have successfully argued that DCFS failed to make 'reasonable efforts' to provide services to him."

State ex rel. M.C., 82 P.3d 1159, 1166 (Utah 2003).

- **What is in the child's best interest?**

"Once it has been determined that clear and convincing evidence exists as a basis for the termination of parental rights . . . the issue becomes whether termination is in the best interests of the child." S.R.B.R. v. Harrison Cty. Dep't of Human Servs., 798 So. 2d 437, 443 (Miss. 2001). Safety, stability, and nurturing are important factors for the court to consider when determining whether reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:

See, e.g.:

"In assessing the [parent's] rehabilitation, the court found that [the parents] continued to miss appointments, abuse substances, and engage in criminal activity. . . . ***THE COURT ALSO 'BALANCED [SARAH'S] INTRINSIC NEED FOR STABILITY AND PERMANENCY AGAINST THE POTENTIAL BENEFIT OF MAINTAINING A CONNECTION WITH HER BIOLOGICAL PARENTS.'*** The record amply supports the court's determination that termination of the respondents' parental rights was in Sarah's best interest. Therefore, we conclude that . . . the department made reasonable efforts to reunite the family, that the

respondents lacked the ability to assume a responsible position in Sarah's life within a reasonably foreseeable time and that it was in the best interest of the child to terminate the parental rights of the respondents."

In re Sarah S., 955 A.2d 657, 664-65 (Conn. App. Ct. 2008).

➤ **Criminal convictions against any child**

§ 93-15-121

Any of the following, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:
. . .
(h) (i) The parent has been convicted of any of the following offenses against any child:
1. Rape of a child under Section 97-3-65;
2. Sexual battery of a child under Section 97-3-95(c);
3. Touching a child for lustful purposes under Section 97-5-23;
4. Exploitation of a child under Sections 97-5-31 through 97-5-37;
5. Felonious abuse or battery of a child under Section 97-5-39(2);
6. Carnal knowledge of a step or adopted child or a child of a cohabitating partner under Section 97-5-41; or
7. Human trafficking of a child under Section 97-3-54.1; or
(ii) The parent has been convicted of:
1. Murder or voluntary manslaughter of another child of the parent;
2. Aiding, abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of the child or another child of the parent; or
3. A felony assault that results in the serious bodily injury to the child or another child of the parent.

- **Was the parent convicted of any of the listed offenses?**

- **Were reasonable efforts required?**

- **If not, then are there documented and compelling reasons why terminating the parent's parental rights would not be in the child's best interests?**

See also Miss. Code Ann. § 93-15-123 (Court discretion not to terminate).

1507 EVIDENTIARY CONSIDERATIONS

➤ **Mississippi Rules of Evidence are applicable**

MRE 101 (Scope; Definitions)

> These rules govern proceedings in the courts of the State of Mississippi to the extent and with the exceptions stated in rule 1101.

MRE 1101 (Applicability of the Rules)

> Rules Inapplicable. Except for the rules pertaining to privileges, these rules do not apply in the following situations:
> (1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a). . . .
> (3) Miscellaneous Proceedings . . . probable cause hearings in . . . youth court cases; ... disposition hearings; granting or revoking probation; issuance of warrants for arrest, . . . and search warrants; and proceedings with respect to release on bail or otherwise.

The Mississippi rules of Evidence may be accessed on the State Mississippi Judiciary web site at: https://courts.ms.gov/research/rules/rules.php

Rules that might be of particular interest to guardians ad litem include (among others):

MRE 402 (General Admissibility of Relevant Evidence)

> Relevant evidence is admissible unless any of the following provides otherwise: the United States Constitution; the Mississippi Constitution; or these rules. Irrelevant evidence is not admissible.

MRE 701 (Opinion Testimony by Lay Witnesses)

> If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

MRE 702 (Testimony by Expert Witnesses)

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;
(c) the testimony is the product of reliable principles and methods; and
(d) the expert has reliably applied the principles and methods to the facts of the case.

MRE 802 (The Rule Against Hearsay)

Hearsay is not admissible except as provided by law. The words "as provided by law" include other rules prescribed by the Mississippi Supreme Court."

Rule 803 (Exceptions to the Rule Against Hearsay – Regardless of Whether the Declarant Is Available as a Witness)

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:
(1) Present Sense Impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.
(2) Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.
. . .
(25) Tender Years Exception. A statement by a child of tender years describing any act of sexual contact with or by another is admissible if: (A) the court – after a hearing outside the jury's presence – determines that the statement's time, content, and circumstances provide substantial indicia of reliability; and (B) the child either: (i) testifies; or (ii) is unavailable as a witness, and other evidence corroborates the act.

➤ **Guardian ad litem to testify on relevant matters**

A guardian should be prepared to testify on the present health, education, estate and general welfare of the child. *See* In re M.J.S.H.S., 782 So. 2d 737, 741 (Miss. 2001).

See also:

In re D.J.L., 824 So. 2d 617, 623 (Miss. 2002) ("[In termination of parental rights] cases the guardian [ad litem] must submit a written report to the court during the hearing, or testify and thereby become available for cross-examination by the natural parent.").

In re S.N.C., 755 So. 2d 1077, 1082 (Miss. 2000) ("[T]here is no requirement that the [judge] defer to the findings of the guardian ad litem . . . however, [the judge] shall include at least a summary review of the qualifications and recommendations of the guardian ad litem in the court's findings of facts and conclusions of law.").

1508 DIFFERENCES BETWEEN DURABLE LEGAL CUSTODY AND TERMINATION OF PARENTAL RIGHTS

Durable legal custody:

- Durable legal custody is pursuant to § 43-21-609;
- Standard of proof is by a preponderance of the evidence;
- Natural parents retain residual rights and responsibilities, e.g., supervised visitations if certain conditions are satisfied;
- Subject to further review and modification, i.e., youth court retains jurisdiction, but annual dispositional review not required or precluded;
- DHS released from any oversight or monitoring responsibilities, and relieved of physical and legal custody and supervision of the child.

Termination of parental rights:

- Terminating parental rights is pursuant to § 93-15-101 et seq.;
- Standard of proof is by clear and convincing evidence;
- Natural parents do not retain residual rights or responsibilities;
- Not subject to further review and modification, i.e., permanent;
- Once child placed in custody of some suitable person, agency or institution, any subsequent adoption petition is filed in chancery court.

See U.R.Y.C.P. 4, 28(d); Miss. Code Ann. §§ 43-21-105(y), -609(b), -613(3)(d), and 93-15-101 et seq.; In re T.A.P., 742 So. 2d 1095, 1103 (Miss. 1999) ("[T]ermination of child custody and visitation rights does not, in and of itself, terminate parental rights.").

1509 TERMINATION OF PARENTAL RIGHTS CHECKLIST

Guardians ad litem should always consider involuntary termination of parental rights as a possibility anytime a child has been taken into custody. *See* Miss. Code Ann. §§ 93-15-101 to -133.

§ 43-21-105(gg)

"Reasonable efforts" means the exercise of reasonable care and due diligence by the Department of Human Services, the Department of Child Protection Services, or any other appropriate entity or person to use appropriate and available services to prevent the unnecessary removal of the child from the home or provide other services related to meeting the needs of the child and the parents.

Key inquiries for abandonment, desertion, fitness to parent, or having committed against the other parent a sexual act that is unlawful under section 97–3–65 or 97–3–95:

- Does the parent's conduct meet the statutory criteria by clear and convincing evidence?
- If so, are there compelling and extraordinary circumstances for not terminating the parent's parental rights?
- Were reasonable efforts made for reunification?
- Are there other grounds for terminating the parent's parental rights?

Key inquiries on the grounds for involuntary TPR under section 93–15–121:

- Severe mental illness or deficiency? Extreme incapacitation? Habitual alcoholism or other drug addiction? Were reasonable efforts made to specifically address the condition?
- Substantial financial hardship?
- Have reasonable efforts been made to assist the parent in providing necessary food, in finding gainful employment, in attaining adequate housing, in making the home safe and sanitary, and/or in accommodating visitation or communication with the child?
- Is there abusive or neglectful conduct that has caused a substantial erosion of the relationship between the parent and the child?
- Is reunification possible within a reasonable period of time?
- Has the parent been warned of the consequences for not complying with the terms and conditions of the service plan? Was the parent given a copy of the service plan?
- Did the service plan accommodate special needs?
- Has the parent been cooperative? Has the parent made progress?
- Are there less restrictive alternatives?
- Are there compelling and extraordinary circumstances for not terminating the parent's parental rights?
- Are there other grounds for terminating the parent's parental rights?
- What is in the child's best interest?
- What specific harms or dangers prevent reunification as a possibility?

ADDITIONAL FINDINGS IF TERMINATION IS GRANTED

"When termination of parental rights is granted, the following additional findings addressing the plans to finalize a permanent placement should be made in a separate entry:

- What is being done to ensure that reasonable efforts to find an adoptive home and to finalize a permanent placement are being made, with specific steps and timeframes that are to be met;
- A description of any special factors or conditions of the child that are identified as special needs, what services will be provided to address these needs, and who is responsible for providing each service;
- The date and time of the next review hearing."

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 358 (2016).

CHAPTER 16

PARENTAL REPRESENTATION

1600 WHEN A PARENT IS ENTITLED TO THE APPOINTMENT OF COUNSEL

- **In youth court proceedings**
- **In termination of parental rights proceedings**

1601 REASONS FOR RECOMMENDING THE APPOINTMENT OF COUNSEL

1602 EFFECTIVE REPRESENTATION OF PARENTS

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1600 WHEN A PARENT IS ENTITLED TO THE APPOINTMENT OF COUNSEL

➤ **In youth court proceedings**

U.R.Y.C.P. 24

> **(4) Verifying information and explaining procedures and rights**. At the beginning of each adjudicatory hearing, the court shall: verify the name, age and residence of the child who is the subject of the cause and ascertain the relationship of the parties, each to the other; ascertain whether all necessary parties are present and identify all persons participating in the hearing; ascertain whether the notice requirements have been complied with and, if not, whether the affected parties intelligently waived compliance of the notice requirements in accordance with section 43-21-507 of the Mississippi Code; explain to the parties the purpose of the hearing and the possible dispositional alternatives thereof; and explain to the parties:
> (i) ***THE RIGHT TO COUNSEL***;
> (ii) the right to remain silent;
> (iii) the right to subpoena witnesses;
> (iv) the right to confront and cross-examine witnesses; and
> (v) the right to appeal, including the right to a transcript of the proceedings.
>
> ***THE COURT SHOULD THEN ASCERTAIN WHETHER THE PARTIES BEFORE THE COURT ARE REPRESENTED BY COUNSEL. IF THE PARTY WISHES TO RETAIN COUNSEL, THE COURT SHALL CONTINUE THE HEARING FOR A REASONABLE TIME TO ALLOW THE PARTY TO OBTAIN AND CONSULT WITH COUNSEL OF THE PARTY'S OWN CHOOSING.*** If an indigent child does not have counsel, the court shall appoint counsel to represent the child and shall continue the hearing for a reasonable time to allow the child to consult with the appointed counsel.
>
> Any person found by the youth court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel, which shall include the foster parent(s) and the residential child caring agency providing care for the child. The court may exclude the attendance of a child from an adjudication hearing in neglect and abuse cases with consent of the child's guardian ad litem or legal counsel.

Rule 24 requires that the court at the beginning of the adjudication hearing advise the parents of their right to retain counsel. Failure of the court to make this advisement is likely reversible error.

See, e.g.:

> In re E.K., 249 So. 3d 377, 384 (Miss. 2018) ("Under Section 43-21-201, [the mother] had the right to representation of counsel. The same section places a duty upon the youth court to insure that [parent] is aware of [that] right. Clearly indicating the importance of [a parent's] right to representation, Section 43-21-557 reiterates the youth court's duty to make sure that [the parent] understands [the] right to counsel.").
>
> In re N.W., 978 So. 2d 649, 655 (Miss. 2008) ("We have found such noncompliance with [section 43-21-557(1)] requirements to be reversible error.").
>
> In re I.G., 467 So. 2d 920, 922 (Miss. 1985) ("Both the statute covering youth court adjudicatory hearings [§ 43-21-557] and the statute governing youth court proceedings generally [§ 43-21-201], impose a mandatory duty upon the judge to ascertain whether each party is represented by counsel and, if not, to inform him of his right to counsel. These statutes do not, however, provide for the appointment of counsel for the parents.").

HOWEVER, it doesn't require the court to appoint counsel for the parent(s). That determination is made on a *CASE-BY-CASE BASIS* consistent with constitutional law.

See, e.g.:

> Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N.C., 452 U.S. 18, 27 (1981) (quoting Stanley v. Illinois, 405 U.S. 645, 651 (1972) ("[A] parent's desire for and right to 'the companionship, care, custody[,] and management of his or her children' is an important interest that 'undeniably warrants deference and, absent a powerful countervailing interest, protection.'").
>
> Pritchett v. Pritchett, 161 So. 3d 1106, 1110-11 (Miss. Ct. App. 2015) ("[The Supreme Court in *Lassiter*] stated that '[i]nformed opinion has clearly come to hold that an indigent parent is entitled to the assistance of appointed counsel[,] not only in parental termination proceedings, but also in dependency and neglect proceedings [.]' But [it] ultimately left the decision on whether to appoint counsel to be decided on a case-by-case basis by the state.").

See also:

> U.R.Y.C.P. 32(a)(6) ("Conduct of the commitment hearing. At the beginning of the commitment hearing, the court shall explain to the child and parties: the right to counsel; the right to remain silent; the right to subpoena witnesses; the right to confront and cross-examine witnesses; and the right to appeal, including the right to a transcript of the proceedings.").

IRRESPECTIVE, a guardian ad litem's role is to protect the best interests of the child, which are best served when:

- the parent's due process rights are safeguarded;
- reasonable efforts are made to prevent the unnecessary removal of the child from the home or provide other services related to meeting the needs of the child and the parents.

Additionally, under the Mississippi Youth Court Law, parents are the preferred care-givers for their children. *See* Miss. Code Ann. § 43-21-103; *see also* U.R.Y.C.P. 3(c) ("These rules shall be interpreted and applied in keeping with the philosophy expressed in section 43-21-103 of the Mississippi Code.").

THEREFORE, THE BEST PRACTICE IS FOR THE GUARDIAN AD LITEM TO RECOMMEND THAT THE COURT APPOINT AN ATTORNEY FOR AN INDIGENT PARENT WHENEVER IT IS IN THE BEST INTERESTS OF THE CHILD.

It certainly would not be in the best interests of the child if a later termination of parental rights judgment was reversed for failure to appoint counsel for the parent in the earlier child protection proceedings. That is apt to cause an intolerable delay in attaining a desirable permanency outcome.

See, e.g.:

> K.D.G.L.B.P. v. Hinds County Department of Human Services, 771 So.2d 907, 910 (Miss. 2000) ("One of the most important factors to be considered in applying the standards for court appointed counsel is whether the presence of counsel would have made a determinative difference.").
>
> Mississippi Standards for Guardians Ad Litem in Child Protection and Termination of Parental Rights Proceedings ("Competent, diligent, confidential, and professionally ethical conduct is essential for protecting the health, safety, and welfare of the child and for achieving a successful permanency outcome.").

A guardian ad litem's recommendation for parental representation brings the issue to the forefront by:

- requiring the court to address the recommendation in its summary.
- making a record of the recommendation for appeal.

See, e.g.:

> In re L.D.M., 848 So. 2d 181, 183 (Miss. 2003) ("Here, the youth court did not address the guardian ad litem's recommendations while it obviously disagreed with them by its decision to return the child to the mother. Because the youth

court did not discuss the guardian ad litem's recommendations, its order must be vacated and this case remanded for further proceedings.").

S.N.C. v. J.R.D., 755 So. 2d 1077, 1082 (Miss. 2000) ("[A] chancellor shall include at least a summary review of the qualifications and recommendations of the guardian ad litem in the court's findings of fact and conclusions of law. Further, [when] a chancellor's ruling is contrary to the recommendation of a statutorily required guardian ad litem, the reasons for not adopting the guardian ad litem 's recommendation shall be stated by the court in the findings of fact and conclusions of law.").

FURTHERMORE, AS AN ARM OF THE COURT, a guardian ad litem should make recommendations that ensure fairness and efficiency in the proceedings.

See, e.g.:

Miriam C. Meyer-Thompson, *Wanted: Forever Home Achieving Permanent Outcomes for Nevada's Foster Children*, 14 Nev. L.J. 268, 300 (2013) ("Zealous representation of parents is essential for a well-functioning child welfare system.").

➤ **In termination of parental rights proceedings**

§ 93-15-113

(2)(a) At the beginning of the involuntary termination of parental rights hearing, the court shall determine whether all necessary parties are present and identify all persons participating in the hearing; determine whether the notice requirements have been complied with and, if not, determine whether the affected parties intelligently waived compliance with the notice requirements; explain to the parent the purpose of the hearing, the standard of proof required for terminating parental rights, and the consequences if the parent's parental rights are terminated. The court shall also explain to the parent:
(i) ***THE RIGHT TO COUNSEL***;
(ii) The right to remain silent;
(iii) The right to subpoena witnesses;
(iv) The right to confront and cross-examine witnesses; and
(v) The right to appeal, including the right to a transcript of the proceedings.
(b) The court shall then determine whether the parent before the court is represented by counsel. If the parent wishes to retain counsel, the court shall continue the hearing for a reasonable time to allow the parent to obtain and consult with counsel of the parent's own choosing. If an indigent parent does not have counsel, the court shall determine whether the parent is entitled to appointed counsel ***UNDER THE CONSTITUTION OF THE UNITED STATES, THE MISSISSIPPI CONSTITUTION OF 1890, OR STATUTORY LAW*** and, if so,

appoint counsel for the parent and then continue the hearing for a reasonable time to allow the parent to consult with the appointed counsel. The setting of fees for court-appointed counsel and the assessment of those fees are in the discretion of the court.

AGAIN, IT'S DETERMINED ON A CASE BY CASE BASIS PURSUANT TO CONSTITUTIONAL STANDARDS.

See e.g.:

Blakeney v. McRee, 188 So. 3d 1154, 1163 (Miss. 2016) ("But it is outside our authority to decide whether, as a matter of public policy, all indigent parents in Mississippi should be entitled to appointed counsel in termination proceedings. [W]e find that the Mississippi Legislature is the proper authority to address this important issue, as any public-policy determinations of the law are vested exclusively in the legislative branch of government.").

K.D.G.L.B.P. v. Hinds County Department of Human Services, 771 So.2d 907, 910 (Miss. 2000) ("One of the most important factors to be considered in applying the standards for court appointed counsel is whether the presence of counsel would have made a determinative difference.").

Green v. Mississippi Dept. of Human Services, 40 So.3d 660, 664 (Miss. Ct. App. 2010) ("[R]elying on the United States Supreme Court's holding in Lassiter [452 U.S. 18 (1981)], our supreme court stated that the appointment of counsel in termination proceedings is wise but not mandatory, and courts should determine the need for court-appointed counsel on a case-by-case basis.").

Comment to Rule 1.2 of the Mississippi Rules of Professional Conduct ("Legal representation should not be denied to people who are unable to afford legal services, ...").

Children's Justice Commission Report, Appendix I ("Review of law relevant to establishing a statutory right to legal counsel in youth court for indigent parents facing termination of parental rights or loss of custody") (October 2013) https://courts.ms.gov/research/reports/ChildrensJusticedoc.pdf

Children's Justice Commission Report, Appendix II ("Review of Case Law Relevant to Court-Appointed Counsel for Indigent Parents in Cases involving Termination of Parental Rights or loss of Permanent Custody In Current MS Youth Court Structure") (October 2013) https://courts.ms.gov/research/reports/ChildrensJusticedoc.pdf

1601 REASONS FOR RECOMMENDING THE APPOINTMENT OF COUNSEL

Why can't a guardian ad litem who is an attorney both zealously protect the best interests of the child and serve as an advocate for the parent? *IT'S BECAUSE THERE ARE CONFLICTS GALORE!*

FIRST OF ALL, there's the Mississippi Rules of Professional Conduct. Below are a few provisions of those rules that would be very difficult to overcome:

> **Rule 1.2 Scope of Representation**
> (a) A lawyer shall abide by a client's decisions concerning the objectives of representation, . . . , and shall consult with the client as to the means by which they are to be pursued.
>
> **Rule 1.4 Communication**
> (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
>
> **Rule 1.6 Confidentiality of Information**
> (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).
>
> **Rule 3.7 Lawyer as Witness**
> (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:
> (1) the testimony relates to an uncontested issue;
> (2) the testimony relates to the nature and value of legal services rendered in the case; or
> (3) disqualification of the lawyer would work substantial hardship on the client.

A primary role of a guardian ad litem is being prepared to testify on the present health, safety, and well-being of the child. *See* M.J.S.H.S. v. Yalobusha Co. Dep't. of Human Servs., 782 So. 2d 737, 741 (Miss. 2001). Also, a guardian ad litem, as an arm of the court, must report to the court any statements affecting the health, safety, or welfare of the child. *See* U.R.Y.C.P. 13(c).

SECONDLY, there's the Mississippi Code of Judicial Conduct.

Canon 3C.(2) provides:

> "A judge shall require staff, court officials and others subject to the judge's direction and control ***TO OBSERVE THE STANDARDS OF FIDELITY AND DILIGENCE THAT APPLY TO THE JUDGE*** and to refrain from manifesting bias or prejudice in the performance of their official duties."

A guardian ad litem is an *ARM OF THE COURT* who is subject to the judge's direction and control .

THIRDLY, the duties of each are often vastly different.

- A guardian ad litem zealously protects the best interests of the child. An attorney zealously represents the parent's preferences.

  See also:

  > U.R.Y.C.P. 13(c) ("When conducting an investigation under this rule, the guardian ad litem shall inform the child and the parent(s), guardian(s), or custodian(s) that the role of the guardian ad litem is to act as an arm of the court in protecting the interest of the child, ***AND NOT AS THE PARTIES' ATTORNEY***, and that any statements made to the guardian ad litem affecting the health, safety, or welfare of the child will be reported to the court.").

- A guardian ad litem protects the best interests of the child and investigates the case pursuant to the court's order. An attorney represents the client and investigates the case through discovery procedures, which are only available to the parties. *See* U.R.Y.C.P. 15.

  See also:

  > R.L. v. G.F., 973 So. 2d 322, 325 (Miss. Ct. App. 2008) ("The role of the guardian ad litem is to act as a representative of the court and to assist the court in protecting the interests of an incompetent person by investigating and making recommendations to the court.").

- A guardian ad litem makes reports and recommendations directly to the court. An attorney makes motions, which requires serving a copy thereof upon each of the parties. *See* U.R.Y.C.P. 15; Miss. Code Ann. § 43-21-613.

- The Mississippi Youth Court Law allows "any party" to file a written motion for a rehearing of a referees order. *See* Miss. Code Ann. § 43-21-111. A guardian ad litem is not a party to the action.

- A guardian ad litem who is not an attorney is prohibited from examining or cross-examining witnesses. That would constitute the unlawful practice of law. *See* Miss. Code Ann. § 73-3-55. A guardian ad litem who is an attorney should not examine or cross-examine witness if it would create an appearance of impropriety. It might be permissible for a judge to allow the guardian ad litem who is an attorney to ask questions to clarify a witness's testimony. But, to allow the guardian ad litem who is an attorney to ask questions that appear prosecutorial is fraught with ethical concerns. An attorney, of course, may examine and cross-examine witnesses as allowed by the Mississippi Uniform Rules of Youth Court Practice and the Mississippi Rules of Evidence.

  See also:

  > In re J.T., 188 So. 3d 1192, 1202 (Miss. 2016) ("We also affirm that, except where specifically superseded by a youth-court-specific rule, the Mississippi Rules of Evidence apply with full force and effect to youth-court adjudications.").
  >
  > S.G. v. D.C., 13 So. 3d 269, 282 (Miss. 2009) ("Chancellors should not (as happened in this case) appoint a guardian ad litem to serve in the dual role of advisor to the court and lawyer for the child.").

LASTLY, it's a best practice.

See, e.g.:

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* 43 (2016) ("Because fundamental rights of the child–***AS WELL AS THE PARENTS***–are at stake in these proceedings, best practice calls for the appointment of an attorney who will advocate the child's position from the very beginning of the case.").

Kathleen A. Bailie, *The Other "Neglected" Parties in Child Protective Proceedings: Parents in Poverty and the Role of the Lawyers Who Represent Them*, 66 Fordham L. Rev. 2285, 2294 (1998) ("[P]oor parents involved in child protective proceedings are in more dire need of effective and competent legal representation today than ever before. [W]ith less time in which to effect significant changes in their lives, parents in poverty need effective advocacy at all stages of child protective proceedings.").

1602 EFFECTIVE REPRESENTATION OF PARENTS

Effective parental representation requires competent legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

> "National experts state that before accepting representation in a juvenile dependency case attorneys should be familiar with the following:
> 1. The causes and available treatment for child abuse and neglect.
> 2. The local child welfare agency's procedures for complying with reasonable efforts requirements.
> 3. The child welfare and family preservation services available in the community and the problems they are designed to address.
> 4. The structure and functioning of the child welfare agency and court systems, the services for which the agency will routinely pay, and the services for which the agency either refuses to pay or is prohibited by state law or regulation from paying.
> 5. Local experts who can provide attorneys with consultation on the reasonableness and appropriateness of efforts made to maintain the child in the home. Early appointment, long-term assignments to the juvenile dependency docket, reasonable caseloads, and adequate training are critical if attorneys are to be effective in their representation of parents and children.**"**
>
> Judge Leonard Edwards, *Reasonable Efforts: A Judicial Perspective* 86-87 (2014). http://judgeleonardedwards.com/docs/reasonableefforts.pdf

See also:

> Appendix E "Mississippi Certification Standards for Performance of Attorneys Representing Parents in Child Protection or Termination of Parental Rights Proceedings in Youth Court."
>
> Family Justice Initiative, *Attributes of High-Quality Legal Representation for Children and Parents in Child Welfare Proceedings* (2018).
>
> https://www.americanbar.org/groups/public_interest/child_law/project-areas/family-justice-initiative/resources

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CHAPTER 17

INDIAN CHILD WELFARE ACT

1700 COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

1701 INDIAN TRIBE JURISDICTION OVER INDIAN CHILD CUSTODY PROCEEDINGS

1702 DEFINITIONS UNDER THE INDIAN CHILD WELFARE ACT

1703 FOSTER CARE PLACEMENT OR TERMINATION OF PARENTAL RIGHTS PROCEEDINGS INVOLVING AN INDIAN CHILD

1704 PARENTAL RIGHTS AND VOLUNTARY TERMINATION UNDER THE INDIAN CHILD WELFARE ACT

1705 KEY DECISIONS IN ICWA CASES

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1700 COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

U.R.Y.C.P. 7

> (a) Federal laws requiring compliance. These rules require compliance with federal laws which impact funding for cases within the jurisdiction of the youth court, including: . . .
>
> (6) Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et seq.

Advisory Note to Rule 7(a)(6)

> *Child custody proceedings involving an Indian child shall be in compliance with the Indian Child Welfare Act, which is in keeping with the policy of the United States of America "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs." 25 U.S.C. § 1902 (2011).*

§ 93-15-125

> In any proceeding under this chapter, where the court knows or has reason to know that an Indian child is involved, the court must comply with the Indian Child Welfare Act (25 USCS Section 1901 et seq.) in regard to notice, appointment of counsel, examination of reports or other documents, remedial services and rehabilitation programs, and other protections the act provides. Additionally, no termination of parental rights may be ordered in the proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the Indian child by the parent is likely to result in serious emotional or physical damage to the Indian child.

See also Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 49-50 (1989) (""[I]t is clear that Congress' concern over the placement of Indian children in non-Indian homes was based in part on evidence of the detrimental impact on the children themselves of such placements outside their culture.").

1701 INDIAN TRIBE JURISDICTION OVER INDIAN CHILD CUSTODY PROCEEDINGS

25 U.S.C.A. § 1911

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

1702 DEFINITIONS UNDER THE INDIAN CHILD WELFARE ACT

25 U.S.C.A. § 1903

For the purposes of this chapter, except as may be specifically provided otherwise, the term–

(1) "child custody proceeding" shall mean and include–

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 1606 of Title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a

member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) “Indian custodian” means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) “Indian organization” means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of Title 43;

(9) “parent” means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) “reservation” means Indian country as defined in section 1151 of Title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) “Secretary” means the Secretary of the Interior; and

(12) “tribal court” means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

1703 FOSTER CARE PLACEMENT OR TERMINATION OF PARENTAL RIGHTS PROCEEDINGS INVOLVING AN INDIAN CHILD

25 U.S.C.A. § 1912

(a) Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts

have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

See also:

Brackeen v. Haaland, 994 F.3d 249, 319-20 (5th Cir. 2021) ("[W]e conclude that 'to the extent of any conflict' between the rights created by ICWA and state law, state courts are obliged to honor those rights by applying ICWA's substantive evidentiary standards for foster care placement and parental termination orders, 25 U.S.C. § 1912(e)-(f), as well as the federal law's child placement preferences, *id.* § 1915(a)-(b). . . . The State Plaintiffs . . . generally use the far less stringent 'best interests of the child' analysis and 'clear and convincing' evidentiary standard. Consequently, as between these differing standards, state courts are compelled to employ ICWA's heightened protections in proceedings involving Indian children.").

1704 PARENTAL RIGHTS AND VOLUNTARY TERMINATION UNDER THE INDIAN CHILD WELFARE ACT

25 U.S.C.A. § 1913

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

1705 KEY DECISIONS IN ICWA CASES

- **Does the Indian Child Welfare Act [ICWA] apply?**

  See, e.g.:

  Adoptive Couple v. Baby Girl, 570 U.S. 637, 649 (2013) ("[W]hen, as here, the adoption of an Indian child is voluntarily and lawfully initiated by a non-Indian parent with sole custodial rights, the ICWA's primary goal of preventing the unwarranted removal of Indian children and the dissolution of Indian families is not implicated.").

  Nielson v. Ketchum, 640 F.3d 1117, 1124-25 (10th Cir. 2011) ("Based on the definition of 'Indian child' provided in the ICWA, we conclude that C.D.K. was not an 'Indian child' at the time of the adoption proceedings for ICWA purposes, and so the procedural safeguards provided for in the ICWA did not apply to the relinquishment hearing and adoption proceedings.").

  In re Francisco D., 230 Cal. App. 4th 73, 83-84 (2014) ("Here, the evidence indicates that Francisco is not a member of an Indian tribe, nor is he the biological child of a member of a tribe. Thus, Francisco cannot satisfy the definition of an Indian child. Based on the plain language of the statute, ICWA is inapplicable to his dependency case, regardless of adoptive Mother's own Indian tribal membership.").

- **Were ICWA notification requirements met?**

  See, e.g.:

  In re G.S.R., 159 Cal. App. 4th 1202, 1216 (2008) ("The purpose of ICWA notification requirements is to give tribes the opportunity to investigate and determine whether a child is an Indian child, and to advise the tribe of the pending proceeding and its right to intervene. The failure to give any or proper ICWA notice will foreclose a tribe's ability to participate. To that end, notice requirements are strictly construed and DCFS and the court have a continuing duty of inquiry until such time as the court finds a child is not an Indian child.").

  In re Dependency of J.A.F., 278 P.3d 673, 680–81 (Wash. Ct. App. 2012) ("Both parents assert that DSHS failed to follow ICWA's notice procedures, which require the State to alert the appropriate tribe and, in some cases, the Bureau of Indian Affairs (BIA) when a dependency proceeding involves an 'Indian child.' [In this case] DSHS . . . notified the BIA of the termination action, and the BIA responded that V.F., E.F., and J.F. were not 'Indian children.' Because the State notified the BIA, it fulfilled its obligation under the ICWA. We therefore reject this claim.").

In re Welfare of L.N.B.-L., 237 P.3d 944, 956-57 (Wash. Ct. App. 2010) ("The parents' argument that ICWA required the Department to notify the Squamish Nation of the termination proceedings fails because the Squamish Nation is not a federally recognized tribe. Under ICWA, 'where the court knows or has reason to know that an Indian child is involved,' the Department must notify 'the Indian child's tribe' of pending termination proceedings and the tribe's right to intervene 25 U.S.C. § 1912(a).").

- **Did the service plan identify the economic, emotional, mental, and physical problems leading to the loss of custody?**

  See, e.g.:

  In re Riva M., 286 Cal. Rptr. 592, 599 (Cal. Ct. App. 1991) ("[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult (such as helping to provide transportation and offering more intensive rehabilitation services where others have failed).").

  Barbara Atwood, *The Voice of the Indian Child: Strengthening the Indian Child Welfare Act Through Children's Participation*, 50 Ariz. L. Rev. 127, 143–44 (2008) ("A growing number of tribes have established tribal Court Appointed Special Advocate ("CASA") programs to provide volunteer advocacy for abused or neglected Indian children. These explicit protections of the child's right of participation reflect the central place that children commonly occupy in tribal cultures.").

- **Were the "active efforts" made?**

  See, e.g.:

  Thea G. v. State, Dep't of Health & Soc. Servs., Off. of Children's Servs., 291 P.3d 957, 961 (Alaska 2013) ("A trial court's determination that OCS made active, but unsuccessful, efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of an Indian family presents a mixed question of fact and law.").

  Dashiell R. v. State, Dep't of Health & Soc. Servs., Off. of Children's Servs., 222 P.3d 841, 849 (Alaska 2009) ("As opposed to passive efforts such as simply developing a plan for the parent to follow, active efforts require that the state actually help the parent develop the skills required to keep custody of the children.").

Sandy B. v. State, Dep't of Health & Soc. Servs., Off. of Children's Servs., 216 P.3d 1180, 1188 (Alaska 2009) ("Although there is 'no pat formula ... for distinguishing between active and passive efforts,' we have recognized that what is critical is OCS's involvement with a parent after it has drawn up the parent's case plan. OCS makes active efforts to reunite a family when it helps the parents develop the resources necessary to satisfy their case plans, but its efforts are passive when it requires the parents to perform these tasks on their own.").

A.A. v. State, Dep't of Fam. & Youth Servs., 982 P.2d 256, 261 (Alaska 1999):

"Although ICWA does not define 'active efforts,' this court has cited approvingly one commentator's distinction between active and passive efforts:

> 'Passive efforts are where a plan is drawn up and the client must develop his or her own resources towards bringing it to fruition. Active efforts, the intent of the drafters of the Act, is where the state caseworker takes the client through the steps of the plan rather than requiring that the plan be performed on its own. For instance, rather than requiring that a client find a job, acquire new housing, and terminate a relationship with what is perceived to be a boyfriend who is a bad influence, the Indian Child Welfare Act would require that the caseworker help the client develop job and parenting skills necessary to retain custody of her child.'
>
> Craig J. Dorsay, *The Indian Child Welfare Act and Laws Affecting Indian Juveniles Manual* 157–58 (1984)."

People ex rel. A.R., 310 P.3d 1007, 1015 (Colo. App. 2012) ("The record shows that the department (1) arranged and supervised visits both at mother's apartment and the library, (2) rescheduled visits to accommodate mother's schedule, (3) referred mother for a substance abuse and neuropsychological evaluation, (4) provided a home-based therapist, (5) gave mother vouchers and bus passes, (6) provided resources for obtaining housing, and (7) arranged for participation in the Nurturing Parent program and attempted to obtain services from parents and teachers. Therefore, we conclude that the record supports the court's determination that the department's actions met the requisite standard with regard to mother.").

In re D.S.B., 300 P.3d 702, 705 (Mont. 2013) ("[A] parent's incarceration may limit the remedial and rehabilitative services that the State can make available to the parent to prevent the breakup of the Indian family. That is not to say that the State's obligation to make 'active efforts' is excused if a parent is incarcerated, but we will not fault the State if its efforts are curtailed by the parent's own criminal behavior.").

- **Were the parents cooperative?**

  See, e.g.:

  Long v. State, Dep't of Hum. Res., 527 So. 2d 133, 135 (Ala. Civ. App. 1988) ("The record clearly reveals that DHR offered or provided numerous services [in compliance with section 1912(d)], i.e. day care services for the children, assistance in locating housing, foster care, legal services referral, clothing and food orders, counseling sessions, and mental health referrals [to prevent the breakup of the family], which were either rejected out of hand or were never completed by the parents. These efforts by DHR extended over a period of several years.").

  Wilson W. v. State, 185 P.3d 94, 101 (Alaska 2008) ("If a parent has a long history of refusing treatment and continues to refuse treatment, OCS is not required to keep up its active efforts once it is clear that these efforts would be futile.").

  People ex rel. A.V., 297 P.3d 1019, 1022 (Colo. App. 2012) ("[A]ctive efforts under the ICWA does not mean persisting with futile efforts. Thus, the Department is not required to provide active efforts to a parent who voluntarily absents himself or herself from a proceeding and cannot be located. The court may also consider a parent's unwillingness to participate in treatment as a factor in determining whether the Department made active efforts.").

  People ex rel. K.D., 155 P.3d 634, 637 (Colo. App. 2007) ("A denial of services is not inconsistent with the 'active efforts' requirement of the ICWA 'if it is clear that past efforts have met with no success.' Although the state must make 'active efforts' under the ICWA, it need not "persist with futile efforts.'").

  In re Welfare of Children of J.B., 698 N.W.2d 160, 173 (Minn. Ct. App. 2005) ("Father's failure to timely participate in the proceedings and the unreasonable restrictions he put on his receipt of proffered services render defective his argument that the county failed to make the active efforts to avoid the breakup of the Indian family required by 25 U.S.C. § 1912(d) (2000).").

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CHAPTER 18

APPEALS

1800 REHEARING OF REFEREE'S ORDER

1801 APPELLATE PROCEDURES FROM FINAL ORDERS OR DECREES

1802 PERSONS WITH STANDING TO APPEAL

1803 MISSISSIPPI RULES OF APPELLATE PROCEDURE

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1800 REHEARING OF REFEREE'S ORDER

U.R.Y.C.P. 36

Procedures for a rehearing of a referee's order shall be pursuant to section 43-21-111(5) of the Mississippi Code.

§ 43-21-111

(5) An order entered by the referee shall be mailed immediately to all parties and their counsel. A rehearing by the judge shall be allowed ***IF ANY PARTY FILES A WRITTEN MOTION FOR A REHEARING OR ON THE COURT'S OWN MOTION*** within three (3) days after notice of referee's order. The youth court may enlarge the time for filing a motion for a rehearing for good cause shown. Any rehearing shall be upon the record of the hearing before the referee, but additional evidence may be admitted in the discretion of the judge. A motion for a rehearing shall not act as a supersedeas of the referee's order, unless the judge shall so order.

1801 APPELLATE PROCEDURES FROM FINAL ORDERS OR DECREES

U.R.Y.C.P. 37

Appeals from ***FINAL ORDERS OR DECREES*** of the court shall be pursuant to the Mississippi Rules of Appellate Procedures.

Advisory Note to Rule 37

Only the initials of the child shall appear on the record on appeal. See In re R.R.B., 394 So. 2d 907, 908 (Miss. 1981) ("[Section 43-21-651] is mandatory that nowhere on the records of this Court or the appellate records or briefs or other proceedings should the minor's name appear, only his or her initials."). . . . In reviewing an adjudication of abuse or neglect, the appellate court will not reverse unless, considering all of the evidence before the youth court in the light most favorable to the State, reasonable persons could not have found by a preponderance of the evidence that the child was abused or neglected. See In re M.R.L., 488 So. 2d 788, 791 (Miss. 1986). ***THE RIGHT TO APPEAL IN FORMA PAUPERIS ATTACHES IF A FUNDAMENTAL RIGHT IS AT ISSUE.*** *See M.L.B. v. S. L.J., 519 U.S. 102, 107 (1996) ("[J]ust as a State may not block an indigent petty offender's access to an appeal afforded others, [a State] may not deny [a parent], because of her poverty, appellate review of the sufficiency of the evidence on which the trial court found her unfit to remain a parent."); cf. In re J.R.T., 749 So. 2d 105, 110 (Miss. 1999) ("The state's judicial*

process had not been invoked to sever or alter the parents' fundamental rights. If there had been a termination of the parental relationship, then substantive and procedural due process would have required that the parents be afforded the right of appellate review.").

§ 43-21-651

> (1) ***THE COURT TO WHICH APPEALS MAY BE TAKEN FROM FINAL ORDERS OR DECREES OF THE YOUTH COURT SHALL BE THE SUPREME COURT OF MISSISSIPPI.*** In any case wherein an appeal is desired, written notice of intention to appeal shall be filed with the youth court clerk within the time, and costs in the youth court and the filing fee in the Supreme Court shall be paid, as is otherwise required for appeals to the Supreme Court. If the appellant shall make affidavit that he is unable to pay such costs and filing fee, he shall have an appeal without prepayment of court costs and filing fee. Only the initials of the child shall appear on the record on appeal.
> (2) The pendency of an appeal shall not suspend the order or decree of the youth court regarding a child, nor shall it discharge the child from the custody of that court or of the person, institution or agency to whose care such child shall have been committed, unless the youth court or Supreme Court shall so order. If appellant desires to appeal with supersedeas, the matter first shall be presented to the youth court. If refused, the youth court shall forthwith issue a written order stating the reasons for the denial, which order shall be subject to review by the Supreme Court. If the Supreme Court does not dismiss the proceedings and discharge the child, it shall affirm or modify or reverse the order of the youth court and remand the child to the jurisdiction of the youth court for placement and supervision in accordance with its order, and thereafter the child shall be and remain under the jurisdiction of the youth court in the same manner as if the youth court had made the order without an appeal having been taken.
> (3) Appeals from the youth court shall be preference cases in the Supreme Court.

§ 93-15-133

> Appeal from a ***FINAL JUDGMENT ON THE TERMINATION OF PARENTAL RIGHTS*** under this chapter shall be to the Supreme Court of Mississippi pursuant to the Mississippi Rules of Appellate Procedure.

See also:

> In re M.E.V., 120 So. 3d 405, 406-07 (Miss. 2013) ("Direct appeals of a lower court's decision "lie only from a final judgment." Section 43–21–651, which governs appeals from youth courts, contemplates appeals of final judgments only. . . . Generally, a judgment is final "if it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." . . . The [court] granted legal and physical custody to C.V. on a trial basis only and pending the results of a home study. [Its] order fell well short of ending the litigation on the merits.").

1802 PERSONS WITH STANDING TO APPEAL

It would appear that only parties to the action, or persons with a substantial interest in the outcome of the proceedings, have standing to appeal.

See, e.g.:

> In re Snodgrass, 692 So. 2d 85, 87 (Miss. 1997) ("Clearly, the appellants, who were not the child's guardians when the ruling at issue was made by the chancellor, lack standing to appeal that ruling.").
>
> In re T.L.C., 566 So. 2d 691, 695 (Miss. 1990) ("[S]everal sections of the Youth Court Act recognize the parent or guardian of the child as a party to the proceedings by requiring that they be provided with notice . . . [and that] while these statutes do not grant a right of appeal, they do recognize the substantial interest a parent has in the outcome of the proceedings, whatever their nature: the continued custody of their child.").

A guardian ad litem is not a party to the action and, arguably, does not have ***SUBSTANTIAL INTEREST*** in the outcome of the proceedings. *But see* M.R.A.P. 29 (Brief of an Amicus Curiae).

1803 MISSISSIPPI RULES OF APPELLATE PROCEDURE

The Mississippi Rules of Appellate Procedure may be accessed on the State of Mississippi Judiciary website under "Research" by scrolling and clicking "Rules." Rules provisions that might be of particular interest to guardians ad litem are cited below:

M.R.A.P. 1 (Scope of Rules)

These rules govern procedure in appeals to the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi, and proceedings on petitions for writs or other relief which the Supreme Court or the Court of Appeals or a justice of the Supreme Court or judge of the Court of Appeals is empowered to grant. When these rules provide for the making of a motion in the trial court, the procedure for making such motion shall be in accordance with the practice of the trial court.

M.R.A.P. 2 (Penalties for Noncompliance with Rules; Suspension of Rules)

(c) Suspension of Rules. ***IN THE INTEREST OF EXPEDITING DECISION, OR FOR OTHER GOOD CAUSE SHOWN***, the Supreme Court or the Court of Appeals may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction. The time for taking an appeal under Rules 4 or 5 may be extended in criminal and post-conviction cases, but not in civil cases.

M.R.A.P. 5 (Interlocutory Appeal by Permission)

(a) Petition for Permission to Appeal. An appeal from an interlocutory order may be sought if a substantial basis exists for a difference of opinion on a question of law as to which appellate resolution may:
(1) Materially advance the termination of the litigation and avoid exceptional expense to the parties; or
(2) ***PROTECT A PARTY FROM SUBSTANTIAL AND IRREPARABLE INJURY***; or
(3) Resolve an issue of general importance in the administration of justice.
Appeal from such an order may be sought by filing a petition for permission to appeal with the clerk of the Supreme Court within 21 days after the entry of such order in the trial court with proof of service on the trial judge and all other parties to the action in the trial court.

Note: Rule 37 of the Mississippi Rules of Youth Court Practice provides: "Appeals from final orders and decrees of the court shall be pursuant to the Mississippi Rules of Appellate Procedures." Therefore, it would appear that M.R.A.P. 5 is not applicable to child protection proceedings.

But, what if a youth court's decision on a child's placement puts that child in grave risk of imminent danger? Perhaps, this rule is a last resort for averting a tragedy.

See also:

> Josh Gupta-Kagan, *Filling the Due Process Donut Hole: Abuse and Neglect Cases Between Disposition and Permanency*, 10 Conn. Pub. Int. L.J. 13, 29 (2010) ("Among states that do not permit parties to appeal permanency hearing orders, the most frequent analysis is that such decisions are not final orders, thus appellate courts lack jurisdiction over appeals of these orders. The policy concern animating this approach is that taking the time to appeal such plans makes little sense when trial courts face strict federal law timelines for moving towards permanency.").

M.R.A.P. 6 (Counsel on Appeal in Criminal Cases and Proceedings In Forma Pauperis in Criminal Cases)

Note: Child protection proceedings and termination of parental rights proceedings are civil actions. *But see* In re J.R.T., 749 So. 2d 105, 110 (Miss. 1999); M.L.B. v. S. L.J., 519 U.S. 102, 107 (1996) (affirming a parent's right to proceed in forma pauperis if a fundamental right is at issue).

M.R.A.P. 10 (Content of the Record on Appeal)

(b)(2) Inclusion of Relevant Evidence. In cases where the defendant has received the death sentence, the entire record shall be designated. In any other case, if the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record ***A TRANSCRIPT OF ALL EVIDENCE RELEVANT*** to such finding or conclusion.

Note: A transcript of "all evidence relevant to the trial court's findings and conclusions" is what the appellate court will be considering in reaching its decision. Therefore, it is crucial to make a complete record at the trial level.

See, e.g.:

> In re J.D.W., 881 So. 2d 929, 931-32 (Miss. Ct. App. 2004) ("The clear conclusion is that this Court must reverse this case. The issues raised by the appellant have not been addressed and there is definitely an insufficient record. Neither the referee's order nor the order of the youth court provides us with any support for the adjudication of the appellant as a delinquent.").

Natural Father v. United Methodist Children's Home, 418 So. 2d 807, 809 (Miss. 1982) (The general rule is that questions not raised at the trial level will not be considered here as grounds for reversal. However, the general rule is not without exception. . . . [W]here the basic issue involves the rights and destiny of small children, we now conclude that we should face the constitutional question even though not raised at the trial level.").

M.R.A.P. 16 (Jurisdiction of the Supreme Court and the Court of Appeals; Assignment of Cases to the Court of Appeals)

(a) Jurisdiction of the Supreme Court. The Supreme Court shall have such jurisdiction as is provided by Constitution and statute. All appeals from final orders of trial courts shall be filed in the Supreme Court and the Supreme Court shall assign cases, as appropriate, to the Court of Appeals.

M.R.A.P. 17 (Review in the Supreme Court Following Decision by the Court of Appeals)

(a) ***DECISIONS OF COURT OF APPEALS REVIEWABLE BY WRIT OF CERTIORARI***. A decision of the court of appeals is a final decision which is not reviewable by the supreme court except on writ of certiorari. Review on writ of certiorari is not a matter of right, but a matter of judicial discretion. The Supreme Court may grant a petition for writ of certiorari on the affirmative vote of four of its members and may, by granting such writ, review any decision of the Court of Appeals. Successive review of a decision of the Court of Appeals by the Supreme Court will ordinarily be granted only for the purpose of resolving substantial questions of law of general significance. ***REVIEW WILL ORDINARILY BE LIMITED TO:***

(1) cases in which it appears that the Court of Appeals has rendered a decision which is in conflict with a prior decision of the Court of Appeals or published Supreme Court decision;

(2) cases in which it appears that the Court of Appeals has not considered a controlling constitutional provision;

(3) cases which should have been decided by the Supreme Court because:

(i) the statute or these rules require decision by the Supreme Court, or

(ii) they involve ***FUNDAMENTAL ISSUES OF BROAD PUBLIC IMPORTANCE*** requiring determination by the Supreme Court.

Notwithstanding the presence of one or more of these factors, the Supreme Court may decline to grant a petition for certiorari for review of the decision of the Court of Appeals. The Court may, in the absence of these factors, grant a writ of certiorari.

M.R.A.P. 23 (Call and Order of Docket)

(a) Civil Cases. ***EXCEPT AS MAY BE PROVIDED BY SPECIAL ORDER***, all civil cases will be submitted in the order in which they stand on the docket.
(b) Criminal Cases. Criminal cases may be set for call on any day when the Supreme Court or the Court of Appeals is sitting, and in such numbers as it may designate.
(c) Oral Argument. All cases, civil and criminal, where oral argument is not granted, will be submitted when they are reached on the docket, without the necessity of the cases being called and without notice to the lawyers or litigants.
(d) Decisions. The minutes of the Supreme Court shall be signed and announcement of decisions shall be made on each Thursday when the Court is sitting. The minutes of the Court of Appeals shall be signed and announcement of decisions shall be made monthly or more often as the Court of Appeals deems necessary.

Comment to Rule 23

Rule 23 follows the longstanding practices of the Supreme Court as to the order and call of the docket. A civil case may be expedited only by special order, while expedition in hearing a criminal case requires no such order. Normally, upon motion, the Supreme Court will enter an order expediting a case where preference is granted by statute. The statutes grant preference in certain civil cases, including . . . ***APPEALS FROM YOUTH COURT***, Miss. Code Ann. § 43-21-651 (1972).

M.R.A.P. 29 (Brief of an Amicus Curiae)

(a) Grounds for Filing. A brief of an amicus curiae may be filed only by leave of the appropriate appellate court, ***EXCEPT THAT LEAVE SHALL NOT BE REQUIRED*** when the brief is presented by the state and sponsored by the Attorney General ***OR BY A GUARDIAN AD LITEM WHO IS NOT OTHERWISE A PARTY TO THE APPEAL***. A motion for leave shall demonstrate that (1) amicus has an interest in some other case involving a similar question; or (2) counsel for a party is inadequate or the brief insufficient; or (3) there are matters of fact or law that may otherwise escape the court's attention; or (4) the amicus has substantial legitimate interests that will likely be affected by the outcome of the case and which interests will not be adequately protected by those already parties to the case.
(b) How and When Filed. A motion for leave to file an amicus brief shall be filed no later than seven (7) days after filing of the initial brief of the party whose position the amicus brief will support. The motion must be accompanied by the proposed brief of amicus curiae which shall be a concise statement not to exceed 15 pages. The party filing the motion shall also file with the motion a brief stating why the motion satisfies the requirements of Rule 29(a).
(c) Response to Motion. An opposing party who does not object to the motion for

leave may respond to the amicus brief in the opposing party's response or reply brief pursuant to Rule 28(c) or 28(d). An opposing party who objects to the motion for leave shall file a response in opposition within seven (7) days pursuant to Rule 27 stating why the requirements of Rule 29(a) have not been met. For the purpose of Rule 31(a), the time for filing the next brief will run from the date the appropriate court enters an order on the motion for leave.

(d) Oral Argument. A motion of amicus curiae to participate in oral argument will be granted only for extraordinary reasons.

Appendix A

GLOSSARY

Abandonment

Termination of Parental Rights Law. Any conduct by the parent, whether consisting of a single incident or actions over an extended period of time, that evinces a settled purpose to relinquish all parental claims and responsibilities to the child. It may be established by showing:
(i) For a child who is under three (3) years of age on the date that the petition for termination of parental rights was filed, that the parent has deliberately made no contact with the child for six (6) months;
(ii) For a child who is three (3) years of age or older on the date that the petition for termination of parental rights was filed, that the parent has deliberately made no contact with the child for at least one (1) year; or
(iii) If the child is under six (6) years of age, that the parent has exposed the child in any highway, street, field, outhouse, or elsewhere with the intent to wholly abandon the child. *Miss. Code Ann. § 93-15-103(a).*

Abused child

Youth Court Law. A child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused, upon the child, sexual abuse, sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment. However, physical discipline, including spanking, performed on a child by a parent, guardian or custodian in a reasonable manner shall not be deemed abuse under this section. It also means a child who is or has been trafficked within the meaning of the Mississippi Human Trafficking Act by any person, without regard to the relationship of the person to the child. *Miss. Code Ann. § 43-21-105(m).*

Adjudication hearing

Youth Court Rules. A hearing conducted pursuant to Rule 24 of the Uniform Rules of Youth Court Practice to determine whether a child is a delinquent child, a child in need of supervision, an abused child or a neglected child. *U.R.Y.C.P. 24.*

Agency

Child welfare. A residential child-caring agency or a child-placing agency. *Miss. Code Ann. § 43-15-103(a).*

Alcoholic

Public Health. Any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of such beverages, or any person who, while chronically under the influence of alcoholic beverages, endangers public morals, health, safety or welfare. *Miss. Code Ann. §§ 41-30-3(f) and 41-31-1(a).*

Alcoholic beverage

Public Health. Alcoholic spirits, liquors, wines, beer, and every liquid or fluid, patented or not, containing alcoholic spirits, wine or beer, which is capable of being consumed by human beings and produces or results in intoxication in any form or degree. *Miss. Code Ann. § 41-31-1(b).*

Alcoholism

Public Health. Any condition of abnormal behavior or illness resulting directly or indirectly from the chronic and habitual use of alcoholic beverages. *Miss. Code Ann. § 41-31-1(c).*

Applicant

Child Welfare. Any person who is being considered for employment or as a volunteer by a child care service employer. *Miss. Code Ann. § 43-15-301(c).*

Assessment

Youth Court Law. An individualized examination of a child to determine the child's psychosocial needs and problems, including the type and extent of any mental health, substance abuse or co-occurring mental health and substance abuse disorders and recommendations for treatment. The term includes, but is not limited to, a drug and alcohol, psychological or psychiatric evaluation, records review, clinical interview or the administration of a formal test and instrument. *Miss. Code Ann. § 43-21-105(bb).*

Assistance

Temporary Assistance to Needy Families. Payment, including vendor or "in kind" payment to a TANF recipient, with respect to a dependent child or children paid to caretaker relatives or to other approved persons, agencies, associations, corporations or institutions providing medical or foster care, maintenance, work or training programs as authorized by the federal Social Security Act, as amended, to strengthen family life through services to children, foster care for children, work programs and services aimed at restoring individuals to independence and self-support; administrative costs, physical examinations, day care or child care arrangements essential to work programs. *Miss. Code Ann. § 43-17-3(e).*

Caretaker relative

Temporary Assistance to Needy Families. A person who is providing care to a child qualified for and receiving assistance and who is the child's father, mother, grandfather, grandmother, brother, sister, uncle, aunt or any blood relative, including those of half-blood, and including first cousins or first cousins once removed, nephews, or nieces, and persons of preceding generations as denoted by the prefix of grand, great, or great-great, including great-great-great-grandparents, stepfather, stepmother, stepbrother and stepsister, persons who legally adopt a child or his parent, as well as the natural and other legally adopted children of such persons, and spouses of any persons named in the above groups. For the purposes of this chapter, all such relatives shall qualify as such whether the relationship be acquired by birth or adoption, and neither divorce nor death shall terminate any such relationship. *Miss. Code Ann. § 43-17-3(d).*

Certified private treatment facility

Public Health. Any private facility, service or program approved by the division providing treatment or rehabilitation services for alcoholics and drug addicts, including, but not limited to, detoxication centers, licensed hospitals, community or regional mental health facilities, clinics or programs, halfway houses, and rehabilitation centers. *Miss. Code Ann. § 41-30-3(g).*

Certified public treatment facility

Public Health. Any center, facility, service or program approved by the division owned and operated or sponsored and operated by any federal, state or local governmental entity and which provides treatment and rehabilitation services for alcoholics or drug addicts. *Miss. Code Ann. § 41-30-3(h).*

Child

Youth Court Law. A person who has not reached his eighteenth birthday. A child who has not reached his eighteenth birthday and is on active duty for a branch of the armed services or is married is not considered a "child" or "youth" for the purposes of the Mississippi Youth Court Law. *Miss. Code Ann. § 43-21-105(d).*

Child Welfare. Any unmarried person or persons under the age of eighteen (18) years. *Miss. Code Ann. § 43-15-103(b).*

Termination of Parental Rights Law. A person under eighteen (18) years of age. *Miss. Code Ann. § 93-15-103(b).*

Child Residential Home Notification Act. A person who has not reached the age of eighteen (18) years or who has not otherwise been legally emancipated. *Miss. Code Ann. § 43-16-3(a).*

Children's Health Care Insurance Program Act. An individual who is under nineteen (19) years of age who is not eligible for Medicaid benefits and is not covered by other health insurance. *Miss. Code Ann. § 41-86-5(a).*

Child at imminent risk of placement

Family Preservation Act of 1994. A minor who may be reasonably expected to face, in the near future, commitment to the care or custody of the state as a result of:
(i) Dependency, abuse or neglect;
(ii) Emotional disturbance;
(iii) Family conflict so extensive that reasonable control of the child is not exercised; or
(iv) Delinquency adjudication. *Miss. Code Ann. § 43-51-3(a).*

Child care service

Child Welfare. Any school, business or volunteer service that is:
1. Licensed by the state to perform child care; or
2. Involves the care, instruction or guidance of minor children where a fee is charged for the care, instruction, guidance or participation of a child in the program or activity offered by the school, business or service; or any public school. *Miss. Code Ann. § 43-15-301(a).*

Child care service employer

Child Welfare. Every person, firm, association, partnership, or corporation offering or conducting a child care service. *Miss. Code Ann. § 43-15-301(b).*

Child in need of special care

Youth Court Law. A child with any mental or physical illness that cannot be treated with the dispositional alternatives ordinarily available to the youth court. *Miss. Code Ann. § 43-21-105(o).*

Child in need of supervision

Youth Court Law. A child who has reached his seventh birthday and is in need of treatment or rehabilitation because the child:
(i) Is habitually disobedient of reasonable and lawful commands of his parent, guardian or custodian and is ungovernable; or
(ii) While being required to attend school, willfully and habitually violates the rules thereof or willfully and habitually absents himself therefrom; or
(iii) Runs away from home without good cause; or
(iv) Has committed a delinquent act or acts. *Miss. Code Ann. § 43-21-105(k).*

Child placing

Child Welfare. Receiving, accepting or providing custody or care for any child under eighteen (18) years of age, temporarily or permanently, for the purpose of:
(i) Finding a person to adopt the child;
(ii) Placing the child temporarily or permanently in a home for adoption; or
(iii) Placing a child in a foster home or residential child-caring agency. *Miss. Code Ann. § 43-15-103(c).*

Child-placing agency

Child Welfare. Any entity or person which places children in foster boarding homes or foster homes for temporary care or for adoption or any other entity or person or group of persons who are engaged in providing adoption studies or foster care studies or placement services as defined by the rules of the department. *Miss. Code Ann. § 43-15-103(d).*

Child protection proceedings

Youth Court Rules. A proceeding concerning a child reported abused, neglected or dependent. *U.R.Y.C.P. 4.*

Child residential home

Child Residential Home Notification Act. Any place, facility or home operated by any person which receives children who are not related to the operators and whose parents or guardians are not residents of the same facility for supervision, care, lodging and maintenance for twenty-four (24) hours a day, with or without transfer of custody. This term does not include:
(i) Residential homes licensed by the Department of Human Services under Section 43-15-5;
(ii) Any public school;
(iii) Any home operated by a state agency;
(iv) Child care facilities as defined in Section 43-20-5;
(v) Youth camps as defined in Section 75-74-3;
(vi) Health care facilities licensed by the State Department of Health; or
(vii) The home of an attorney-in-fact operating under a power of attorney executed under Section 93-31-1 et seq. *Miss. Code Ann. § 43-16-3(b).*

Child's budget

Temporary Assistance to Needy Families. The mathematical computation used by county human service departments by which the Mississippi Standard of Need is compared to the income and resources of a family unit to determine the amount, if any, of assistance to which each family unit may be entitled, with full consideration given to the number of members in a family unit. *Miss. Code Ann. § 43-17-3(f).*

Commercial sexual exploitation

Any sexual act or crime of a sexual nature, which is committed against a child for financial or economic gain, to obtain a thing of value for quid pro quo exchange of property or for any other purpose. *Miss. Code Ann. § 43-21-105(hh).*

Complaint

Youth Court Rules. A report of abuse or neglect pursuant to section 43-21-353 of the Mississippi Code. *U.R.Y.C.P. 4.*

Compulsory-school-age child

Compulsory School Attendance Law. A child who has attained or will attain the age of six (6) years on or before September 1 of the calendar year and who has not attained the age of seventeen (17) years on or before September 1 of the calendar year; and shall include any child who has attained or will attain the age of five (5) years on or before September 1 and has enrolled in a full-day public school kindergarten program. *Miss. Code Ann. § 37-13-91(f).*

Concurrent plan

Youth Court Rules. A permanency plan that runs concurrent with another permanency plan. *U.R.Y.C.P. 4.*

Court

Youth Court Rules. Any youth court created under the Mississippi Youth Court Law or any chancery court when hearing, pursuant to section 93-11-65 of the Mississippi Code, a charge of abuse or neglect of a child that first arises in the course of a custody or maintenance action. *U.R.Y.C.P. 4.*

Termination of Parental Rights Law. The court having jurisdiction under the Mississippi Termination of Parental Rights Law. *Miss. Code Ann. § 93-15-103.*

Covered benefits

Children's Health Care Insurance Program Act. The types of health care benefits and services provided to eligible recipients under the program. *Miss. Code Ann. § 41-86-5.*

Custodian

Youth Court Law. Any person having the present care or custody of a child whether such person be a parent or otherwise. *Miss. Code Ann. § 43-21-105(g).*

Compulsory School Attendance Law. Any person having the present care or custody of a child, other than a parent or guardian of the child. *Miss. Code Ann. § 37-13-91(c).*

Custody

The physical possession of the child by any person. *Miss. Code Ann. § 43-21-105(q).*

Delinquency proceeding

Youth Court Rules. A court proceeding concerning a child charged with a delinquent act. *U.R.Y.C.P. 4.*

Delinquent act

Youth Court Law. Any act, which if committed by an adult, is designated as a crime under state or federal law, or municipal or county ordinance other than offenses punishable by life imprisonment or death. A delinquent act includes escape from lawful detention and violations of the Uniform Controlled Substances Law and violent behavior. *Miss. Code Ann. § 43-21-105(j)*.

Delinquent child

Youth Court Law. A child who has reached his tenth birthday and who has committed a delinquent act. *Miss. Code Ann. § 43-21-105(I)*.

Dependent child

Youth Court Law. Any child who is not a child in need of supervision, a delinquent child, an abused child or a neglected child, and which child has been voluntarily placed in the custody of the Department of Human Services by his parent, guardian or custodian. *Miss. Code Ann. § 43-21-105(p)*.

Temporary Assistance to Needy Families. A needy child under the age of eighteen (18), who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or the unemployment of the parent who is the principal earner, and who is living with his caretaker relative, in a place of residence maintained by one or more of such relatives as his or their own home, or who is placed in foster care pursuant to an order of a court of competent jurisdiction. *Miss. Code Ann. § 43-17-3(c).*

Desertion

Termination of Parental Rights Law. (i) Any conduct by the parent over an extended period of time that demonstrates a willful neglect or refusal to provide for the support and maintenance of the child; or (ii) That the parent has not demonstrated, within a reasonable period of time after the birth of the child, a full commitment to the responsibilities of parenthood. *Miss. Code Ann. § 93-15-103(d).*

Designee

Youth Court Law. Any person that the judge appoints to perform a duty which this chapter requires to be done by the judge or his designee. The judge may not appoint a person who is involved in law enforcement or who is an employee of the Mississippi Department of Human Services to be his designee. *Miss. Code Ann. § 43-21-105(c).*

Detention

Youth Court Law. The care of children in physically restrictive facilities. *Miss. Code Ann. § 43-21-105(s).*

Disposition hearing

Youth Court Rules. A hearing conducted pursuant to Rule 26 of the Uniform Rules of Youth Court Practice to determine the appropriate disposition for an adjudicated child. *U.R.Y.C.P. 26.*

Drug addict

Public Health. Any person who chronically and habitually uses any form of habit-forming drugs, such as opiates and the derivatives thereof, barbiturates, and every tablet, powder, substance, liquid or fluid, patented or not, containing habit-forming drugs if same is capable of being used by human beings and produces drug addiction in any form or degree. *Miss. Code Ann. §§ 41-30-3(j) and 41-31-1(d).*

Drug addiction

Public Health. Any condition of abnormal behavior or illness resulting directly or indirectly from the chronic and habitual use of habit-forming drugs. *Miss. Code Ann. §§ § 41-30-3(j) and 41-31-1(e).*

Durable legal custody

Youth Court Law. The legal status created by a court order which gives the durable legal custodian the responsibilities of physical possession of the child and the duty to provide him with care, nurture, welfare, food, shelter, education and reasonable medical care. All these duties as enumerated are subject to the residual rights and responsibilities of the natural parent(s) or guardian(s) of the child or children. *Miss. Code Ann. § 43-21-105(y)*.

Durable legal relative guardianship

Youth Court Law. The legal status created by a youth court order that conveys the physical and legal custody of a child or children by durable legal guardianship to a relative or fictive kin who is licensed as a foster or resource parent. *Miss. Code Ann. § 43-21-105(dd)*.

Early intervention services

Early Intervention Act for Infants and Toddlers. Developmental services pursuant to section § 41-87-5(b) of the Mississippi Code.

Early intervention standards

Early Intervention Act for Infants and Toddlers. Those standards established by any agency or agencies statutorily designated the responsibility to establish standards for infants and toddlers with disabilities, in coordination with the council and in accordance with Part C of IDEA. *Miss. Code Ann. § 41-87-5(j).*

Early intervention system

Early Intervention Act for Infants and Toddlers. The total collaborative effort in the state that is directed at meeting the needs of eligible children and their families. *Miss. Code Ann. § 41-87-5(k).*

Educational neglect

Youth Court Rules. Neglect in providing the child with an education as required by law. *U.R.Y.C.P. 4.*

Eligible children, infants, and toddlers

Early Intervention Act for Infants and Toddlers. Children from birth through thirty-six (36) months of age who need early intervention services because they:
(i) Are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:
(A) Cognitive development;
(B) Physical development, including vision or hearing;
(C) Communication development;
(D) Social or emotional development;
(E) Adaptive development;
(ii) Have a diagnosed physical or mental condition, as defined in state policy, that has a high probability of resulting in developmental delay;
(iii) Are at risk of having substantial developmental delays if early intervention services are not provided due to conditions as defined in state policy. (This category may be served at the discretion of the lead agency contingent upon available resources.) *Miss. Code Ann. § 41-87-5(a).*

Family boarding home or foster home

Child Welfare. A home (occupied residence) operated by any entity or person which provides residential child care to at least one (1) child but not more than six (6) children who are not related to the primary caregivers. *Miss. Code Ann. § 43-15-103(h).*

Family preservation services

Family Preservation Act of 1994. Services designed to help families alleviate risks or crises that might lead to out-of-home placement of children. The services may include procedures to maintain the safety of children in their own homes, support to families preparing to reunify or adopt and assistance to families in obtaining services and other sources of support necessary to address their multiple needs in a culturally sensitive environment. *Miss. Code Ann. § 43-51-3(c).*

Family support services

Family Preservation Act of 1994. Preventive community-based activities designed to alleviate stress and to promote parental competencies and behaviors that will increase the ability of families to successfully nurture their children and will enable families to use other resources and opportunities available in the community. These services may include supportive networks designed to enhance child-rearing abilities of parents and to help compensate for the increased social isolation and vulnerability of families. Examples of these services and activities include: respite care for parents and other caregivers; early

developmental screening of children to assess the needs of these children and assistance in obtaining specific services to meet their needs; mentoring, tutoring and health education for youth; and a range of center-based activities, such as informal interactions in drop-in centers and parent support groups, and home visiting programs. *Miss. Code Ann. § 43-51-3(d).*

Fictive kin

Youth Court Law. A person not related to the child legally or biologically but who is considered a relative due to a significant, familial-like and ongoing relationship with the child and family. *Miss. Code Ann. § 43-21-105(ff)*.

Financially able

Youth Court Law. A parent or child who is ineligible for a court-appointed attorney. *Miss. Code Ann. § 43-21-105(aa)*.

Foster care review hearing

Youth Court Rules. A hearing conducted pursuant to section 43-15-13 of the Mississippi Code. *U.R.Y.C.P. 30.*

Group care home

Child Welfare. Any place or facility operated by any entity or person which provides residential child care for at least seven (7) children but not more than twelve (12) children who are not related to the primary caregivers. *Miss. Code Ann. § 43-15-103(I).*

Guardian

Youth Court Law. A court-appointed guardian of the person of a child. *Miss. Code Ann. § 43-21-105(f)*.

Compulsory School Attendance Law. A guardian of the person of a child, other than a parent, who is legally appointed by a court of competent jurisdiction. *Miss. Code Ann. § 37-13-91(b).*

Home

Termination of Parental Rights Law. Any charitable or religious corporation or organization or the superintendent or head of the charitable or religious corporation or organization organized under the laws of the State of Mississippi, any public authority to which has been granted the power to provide care for or procure the adoption of children by any Mississippi statute, and any association or institution engaged in placing children for adoption on July 1, 1955. *Miss. Code Ann. § 93-15-103(e).*

Home Ties Program

Family Preservation Act of 1994. A program under the State Department of Human Services of family preservation and family support services. *Miss. Code Ann. § 43-51-3(b).*

Hospital / Institution

Commitment of Alcoholics and Drug Addicts for Treatment. Either the Mississippi State Hospital, at Whitfield, Mississippi, or the East Mississippi State Hospital, at Meridian, Mississippi, and shall include the grounds thereof and the facilities used for the treatment of alcoholics and the drug addicts. *Miss. Code Ann. § 41-31-1(f).*

Individualized family service plan

Early Intervention Act for Infants and Toddlers. A written plan designed to address the needs of the infant or toddler and his or her family as specified under Section 41-87-13. *Miss. Code Ann. § 41-87-5(I).*

Intake

Youth Court Rules. Procedures conducted pursuant to Rule 8 of the Uniform Rules of Youth Court Practice. *U.R.Y.C.P. 8.*

Interested person

Termination of Parental Rights Law. Any person related to the child by consanguinity or affinity, a custodian or legal guardian of the child, a guardian ad litem representing the child's best interests, or an attorney representing the child's preferences under Rule 13 of the Uniform Rules of Youth Court Practice. *Miss. Code Ann. § 93-15-103(f).*

Public Health. An adult, including but not limited to, a public official, and the legal guardian, spouse, parent, legal counsel, adult, child next of kin, or other person designated by a proposed patient. *Miss. Code Ann. § 41-21-61(d).*

Intoxicated person

Public Health. A person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or drugs. *Miss. Code Ann. § 41-30-3(I).*

Judge

Youth Court Law. The judge of the Youth Court Division. *Miss. Code Ann. § 43-21-105(b)*.

Legal custodian

Youth Court Law. A court-appointed custodian of the child. *Miss. Code Ann. § 43-21-105(h)*.

Legal custody

Youth Court Law. The legal status created by a court order which gives the legal custodian the responsibilities of physical possession of the child and the duty to provide him with food, shelter, education and reasonable medical care, all subject to residual rights and responsibilities of the parent or guardian of the person. *Miss. Code Ann. § 43-21-105(r)*.

Local community

Early Intervention Act for Infants and Toddlers. A county either jointly, severally, or a portion thereof, participating in the provision of early intervention services. *Miss. Code Ann. § 41-87-5(f).*

Low-income child

Children's Health Care Insurance Program Act. A child whose family income does not exceed two hundred percent (200%) of the poverty level for a family of the size involved. *Miss. Code Ann. § 41-86-5(d).*

Maternity home

Child Welfare. Any place or facility operated by any entity or person which receives, treats or cares for more than one (1) child or adult who is pregnant out of wedlock, either before, during or within two (2) weeks after childbirth; provided, that the licensed child-placing agencies and licensed maternity homes may use a family boarding home approved and supervised by the agency or home, as a part of their work, for as many as three (3) children or adults who are pregnant out of wedlock, and provided further, that the provisions of this definition shall not include children or women who receive maternity care in the home of a person to whom they are kin within the sixth degree of kindred computed according to civil law, nor does it apply to any maternity care provided by general or special hospitals licensed according to law and in which maternity treatment and care are part of the medical services performed and the care of children is brief and incidental. *Miss. Code Ann. § 43-15-103(k).*

Minor parent

Termination of Parental Rights Law. Any parent under twenty-one (21) years of age. *Miss. Code Ann. § 93-15-103(g).*

Multidisciplinary team

Early Intervention Act for Infants and Toddlers. A group comprised of the parent(s) or legal guardian and the service providers, as appropriate, described in paragraph (b) of this section, who are assembled for the purposes of:
(i) Assessing the developmental needs of an infant or toddler;
(ii) Developing the individualized family service plan; and
(iii) Providing the infant or toddler and his or her family with the appropriate early intervention services as detailed in the individualized family service plan. *Miss. Code Ann. § 41-87-5(h).*

Neglected child

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

(ii) Who is otherwise without proper care, custody, supervision or support; or
(iii) Who, for any reason, lacks the special care made necessary for him by reason of his mental condition, whether the mental condition is having mental illness or having an intellectual disability; or
(iv) Who, for any reason, lacks the care necessary for his health, morals or well-being. *Miss. Code Ann. § 43-21-105(l).*

Nonpublic school

Compulsory School Attendance Law. An institution for the teaching of children, consisting of a physical plant, whether owned or leased, including a home, instructional staff members and students, and which is in session each school year. This definition shall include, but not be limited to, private, church, parochial and home instruction programs. *Miss. Code Ann. § 37-13-91(i).*

Out-of-home setting

Youth Court Law. The temporary supervision or care of children by the staff of licensed day care centers, the staff of public, private and state schools, the staff of juvenile detention facilities, the staff of unlicensed residential care facilities and group homes and the staff of, or individuals representing, churches, civic or social organizations. *Miss. Code Ann. § 43-21-105(x)*.

Parent

Youth Court Law. The father or mother to whom the child has been born, or the father or mother by whom the child has been legally adopted. *Miss. Code Ann. § 43-21-105(e)*.

Compulsory School Attendance Law. The father or mother to whom a child has been born, or the father or mother by whom a child has been legally adopted. *Miss. Code Ann. § 37-13-91(a).*

Termination of Parental Rights Law. A natural or adoptive parent of the child. *Miss. Code Ann. § 93-15-103(h).*

Early Intervention Act for Infants and Toddlers. A parent, a guardian, a person acting as a parent of a child, foster parent, or an appointed surrogate parent. The term does not include the state if the child is a ward of the state where the child has not been placed with individuals to serve in a parenting capacity, such as foster parents, or when a surrogate parent has not been appointed. When a child is the ward of the state, a Department of Human Services representative will act as parent for purposes of service authorization. *Miss. Code Ann. § 41-87-5.*

See also 42 U.S.C. § 675(2) (2008) ("The term 'parents' means biological or adoptive parents or legal guardians, as determined by applicable State law.").

Party

Youth Court Rules. The child, the child's parent(s), the child's guardian or custodian, and any other person whom the court deems necessary to designate a party. *U.R.Y.C.P. 4.*

Permanency hearing

Youth Court Rules. A hearing conducted pursuant to Rule 29 of the Mississippi Uniform Rules of Youth Court Practice. *U.R.Y.C.P. 4.*

Permanency outcome

Termination of Parental Rights Law. Achieving a permanent or long-term custodial arrangement for the custody and care of the child that ends the supervision of the Department of Child Protection Services. *Miss. Code Ann. § 93-15-103(I).*

Permanency plan

Youth Court Rules. A judicial plan to achieve, in compliance with federal requirements, a permanent living arrangement for a child taken into protective custody. *U.R.Y.C.P. 4.*

Permanency review hearing

Youth Court Rules. A hearing conducted pursuant to Rule 31 of the Uniform Rules of Youth Court Practice. *U.R.Y.C.P. 4.*

Person responsible for care or support

Youth Court Law. The person who is providing for the child at a given time. This term shall include, but is not limited to, stepparents, foster parents, relatives, nonlicensed babysitters or other similar persons responsible for a child and staff of residential care facilities and group homes that are licensed by the Department of Human Services. *Miss. Code Ann. § 43-21-105(v).*

Person with an intellectual disability

Public Health. Any person (i) who has been diagnosed as having substantial limitations in present functioning, manifested before age eighteen (18), characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two (2) or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work, and (ii) whose recent conduct is a result of having an intellectual disability and poses a substantial likelihood of physical harm to himself or others in that there has been (A) a recent attempt or threat to physically harm himself or others, or (B) a failure and inability to provide necessary food, clothing, shelter, safety, or medical care for himself. *Miss. Code Ann. § 41-21-61(f).*

Person with mental illness

*Public Health. A*ny person who has a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which (i) is manifested by instances of grossly disturbed behavior or faulty perceptions; and (ii) poses a substantial likelihood of physical harm to himself or others as demonstrated by (A) a recent attempt or threat to physically harm himself or others, or (B) a failure to provide necessary food, clothing, shelter or medical care for himself, as a result of the impairment. "Person with mental illness" includes a person who, based on treatment history and other applicable psychiatric indicia, is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness to himself or others when his current mental illness limits or negates his ability to make an informed decision to seek or comply with recommended treatment. "Person with mental illness" does not include a person having only one or more of the following conditions: (1) epilepsy, (2) an intellectual disability, (3) brief periods of intoxication caused by alcohol or drugs, (4) dependence upon or addiction to any alcohol or drugs, or (5) senile dementia. *Miss. Code Ann. § 41-21-61(e).*

Petition

Youth Court Rules. Initiates formal proceedings when filed pursuant to Rule 20 of the Uniform Rules of Youth Court Practice. *U.R.Y.C.P. 20.*

Physician

Public Health. Any person licensed by the State of Mississippi to practice medicine in any of its branches. *Miss. Code Ann. § 41-21-61(g).*

Placement

Youth Court Rules. Placing the child in the care and custody of an appropriate person or organization. *U.R.Y.C.P. 4.*

Placing out

Child Welfare. To arrange for the free care of a child in a family, other than that of the child's parent, stepparent, grandparent, brother, sister, uncle or aunt or legal guardian, for the purpose of adoption or for the purpose of providing care. *Miss. Code Ann. § 43-15-23(1).*

Prehearing procedures

Youth Court Rules. Procedures conducted pursuant to Rule 15 of the Uniform Rules of Youth Court Practice. *U.R.Y.C.P. 15.*

Primary service agency

Early Intervention Act for Infants and Toddlers. The agency, whether a state agency, local agency, local interagency council or service provider which is designated by the lead agency to serve as the fiscal and contracting agent for a local community. *Miss. Code Ann. § 41-87-5(g).*

Psychologist

Public Health. A licensed psychologist who has been certified by the State Board of Psychological Examiners as qualified to perform examinations for the purpose of civil commitment. *Miss. Code Ann. § 41-21-61(h).*

Qualified health professional

Termination of Parental Rights Law. A licensed or certified professional who is engaged in the delivery of health services and who meets all applicable federal or state requirements to provide professional services. *Miss. Code Ann. § 93-15-103(j).*

Qualified mental health professional

Termination of Parental Rights Law. A person with at least a master's degree in mental health or a related field and who has either a professional license or a Department of Mental Health credential as a mental health therapist. *Miss. Code Ann. § 93-15-103(k).*

Reasonable efforts

Youth Court Law. The exercise of reasonable care and due diligence by the Department of Human Services, the Department of Child Protection Services, or any other appropriate entity or person to use appropriate and available services to prevent the unnecessary removal of the child from the home or provide other services related to meeting the needs of the child and the parents. *Miss. Code Ann. § 43-21-105(gg)*.

Recipient

Children's Health Care Insurance Program Act. A person who is eligible for assistance under the program. *Miss. Code Ann. § 41-86-5(g).*

Records involving children

Youth Court Law. Any of the following from which the child can be identified:
(i) All youth court records as defined in Section 43-21-251;
(ii) All forensic interviews conducted by a child advocacy center in abuse and neglect investigations;
(iii) All law enforcement records as defined in Section 43-21-255;
(iv) All agency records as defined in Section 43-21-257; and
(v) All other documents maintained by any representative of the state, county, municipality or other public agency insofar as they relate to the apprehension, custody, adjudication or disposition of a child who is the subject of a youth court cause. *Miss. Code Ann. § 43-21-105(u)*.

Related

Child Welfare. Children, step-children, grandchildren, step-grandchildren, siblings of the whole or half-blood, step-siblings, nieces or nephews of the primary care provider. *Miss. Code Ann. § 43-15-103(n).*

Relative

Youth Court Law. A person related to the child by affinity or consanguinity within the third degree. *Miss. Code Ann. § 43-21-105(ee).*

Report

Youth Court Rules. A report to intake of a matter within the jurisdiction of the youth court. *U.R.Y.C.P. 4.*

Residential child care

Child Welfare. The provision of supervision, and/or protection, and meeting the basic needs of a child for twenty-four (24) hours per day, which may include services to children in a residential setting where care, lodging, maintenance and counseling or therapy for alcohol or controlled substance abuse or for any other emotional disorder or mental illness is provided for children, whether for compensation or not. *Miss. Code Ann. § 43-15-103(o).*

Residential child-caring agency

Child Welfare. Any place or facility operated by any entity or person, public or private, providing residential child care, regardless of whether operated for profit or whether a fee is charged. Such residential child-caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, and emergency shelters that are not in private residence. *Miss. Code Ann. § 43-15-103(p).*

Reunification

Termination of Parental Rights Law. The restoration of the parent's custodial rights in providing for the safety and welfare of the child which ends the supervision of the Department of Child Protection Services. *Miss. Code Ann. § 93-15-103(l).*

School

Compulsory School Attendance Law. Any public school, including a charter school, in this state or any nonpublic school in this state which is in session each school year for at least one hundred eighty (180) school days, except that the “nonpublic” school term shall be the number of days that each school shall require for promotion from grade to grade. *Miss. Code Ann. § 37-13-91(e).*

School attendance officer

Compulsory School Attendance Law. A person employed by the State Department of Education pursuant to Section 37-13-89. *Miss. Code Ann. § 37-13-91(g).*

School day

Compulsory School Attendance Law. Not less than five and one-half (5- ½) and not more than eight (8) hours of actual teaching in which both teachers and pupils are in regular attendance for scheduled schoolwork. *Miss. Code Ann. § 37-13-91(d).*

Screening

Youth Court Law. A process, with or without the administration of a formal instrument, that is designed to identify a child who is at increased risk of having mental health, substance abuse or co-occurring mental health and substance abuse disorders that warrant immediate attention, intervention or more comprehensive assessment. *Miss. Code Ann. § 43-21-105(cc)*.

Sex offense

Child Welfare. The meaning ascribed in Section 45-33-23. *Miss. Code Ann. § 43-15-301.*

Sexual abuse

Youth Court Law. Obscene or pornographic photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened. *Miss. Code Ann. § 43-21-105(n)*.

Shelter

Youth Court Law. Care of children in physically nonrestrictive facilities. *Miss. Code Ann. § 43-21-105(t)*.

Shelter hearing

Youth Court Rules. A hearing conducted pursuant to Rule 16 of the Uniform Rules of Youth Court Practice. *U.R.Y.C.P. 16.*

Social history

Youth Court Rules. A history of significant events and relationships throughout the child's life. *U.R.Y.C.P. 4.*

State Child Health Plan

Children's Health Care Insurance Program Act. The permanent plan that sets forth the manner and means by which the State of Mississippi will provide health care assistance to eligible uninsured, low-income children consistent with the provisions of Title XXI of the federal Social Security Act, as amended. *Miss. Code Ann. § 41-86-5(h).*

State hospitals

Public Health. The Mississippi State Hospital at Whitfield and the East Mississippi State Hospital at Meridian. *Miss. Code Ann. § 41-30-3(e).*

Status offense

Youth Court Law. Conduct subject to adjudication by the youth court that would not be a crime if committed by an adult. *Miss. Code Ann. § 43-21-105(z)*.

Substantial likelihood of bodily harm

Public Health. Means that:
(i) The person has threatened or attempted suicide or to inflict serious bodily harm to himself; or
(ii) The person has threatened or attempted homicide or other violent behavior; or
(iii) The person has placed others in reasonable fear of violent behavior and serious physical harm to them; or
(iv) The person is unable to avoid severe impairment or injury from specific risks; and
(v) There is substantial likelihood that serious harm will occur unless the person is placed under emergency treatment. *Miss. Code Ann. § 41-21-61(j).*

Summons

Youth Court Rules. Notice issued as required by the Uniform Rules of Youth Court Practice. *U.R.Y.C.P. 4.*

Treatment facility

Public Health. A hospital, community mental health center, or other institution qualified to provide care and treatment for persons with mental illness, persons with an intellectual disability or chemically dependent persons. *Miss. Code Ann. § 41-21-61(I).*

Truant child

Youth Court Rules. A compulsory-school-age child who is in violation of Mississippi's Compulsory School Attendance Law for reasons of nonattendance or unlawful absences. *U.R.Y.C.P. 4.*

Volunteer trained layperson

Youth Court Rules. A qualified person appointed, pursuant to section 43-21-121(7) of the Mississippi Code, to assist the child in addition to the appointment of a guardian ad litem. *U.R.Y.C.P. 4.*

Youth

Youth Court Law. A person who has not reached his eighteenth birthday. A child who has not reached his eighteenth birthday and is on active duty for a branch of the armed services or is married is not considered a "child" or "youth" for the purposes of this chapter. *Miss. Code Ann. § 43-21-105(d).*

Youth court

Youth Court Law. The Youth Court Division. *Miss. Code Ann. § 43-21-105(a).*

Youth court clerk

Youth Court Rules. The clerk of the court exercising jurisdiction of the matter. *U.R.Y.C.P. 4.*

Appendix B

WEBSITES

American Bar Association–Center on Children and the Law:
www.americanbar.org/groups/child_law

"The Center improves children's lives through advances in law, justice, knowledge, practice and public policy. . . . In 1978 the American Bar Association's Young Lawyers Division created the ABA Center on Children and the Law. It started as a small legal resource center focusing exclusively on child abuse and neglect issues. . . . From modest beginnings, the Center has grown into a full-service technical assistance, training, and research program addressing a broad spectrum of law and court-related topics affecting children."

American Public Human Services Association: www.aphsa.org

"The American Public Human Services Association (APHSA) is a bipartisan, nonprofit membership organization representing state and local health and human service agencies through their top-level leadership. Through our member network and three national Collaborative Centers, APHSA seeks to influence modern policies and practices that support the health and well-being of all children and families and that lead to stronger communities."

Battered Women's Justice Project: www.bwjp.org

"BWJP promotes systemic change within the civil and criminal justice systems to ensure an effective and just response to victims and perpetrators of intimate partner violence (IPV), and the children exposed to this violence."

Bureau of Indian Affairs: https://www.bia.gov/bia

The Bureau of Indian Affairs' mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives.

Children and Family Futures: https://www.cffutures.org/

"Children and Family Futures strives to prevent child abuse and neglect while improving safety, permanency, well-being and recovery outcomes with equity for all children, parents and families affected by trauma, substance use and mental health disorders."

Child Welfare League of America: http://cwla.org

"CWLA leads and engages its network of public and private agencies and partners to advance policies, best practices and collaborative strategies that result in better outcomes for vulnerable children, youth and families."

Children's Advocacy Centers of Mississippi: www.childadvocacyms.org

"Children's Advocacy Centers of Mississippi (CACM) is an accredited chapter of the National Children's Alliance. As a membership organization with numerous local Advocacy Centers throughout the state, we bring together multidisciplinary teams to streamline the process of child abuse situations. Our goal is always to put the needs of the child first, and we bring all services under one umbrella. By bringing together many disciplines, including law enforcement, child protection, prosecution, mental and/or medical health, victim advocacy and child advocacy, we work together to conduct interviews and make team decisions about investigation, treatment, management and prosecution of child abuse cases."

Children's Advocacy Institute: www.caichildlaw.org

"The Children's Advocacy Institute (CAI), founded at the nonprofit University of San Diego School of Law in 1989, is an academic, research, and advocacy law firm. CAI represents the interests and rights of children and youth in impact litigation, legislative and regulatory advocacy, research and public education projects, and public service programs."

Children's Defense Fund: Leave No Child Behind: www.childrensdefense.org

"The Children's Defense Fund Leave No Child Behind® mission is to ensure every child a Healthy Start, a Head Start, a Fair Start, a Safe Start and a Moral Start in life and successful passage to adulthood with the help of caring families and communities."

Children's Safe Center of the University of Mississippi Medical Center: www.umc.edu

"The Children's Safe Center provides care for children and young adults who are suspected of being neglected or abused. Part of Children's of Mississippi and Batson Children's Hospital, our mission is to provide a safe environment for mistreated children and their families."

Family Justice Initiative: www.familyjusticeinitiative.org

"FJI seeks to strengthen families through the provision of high-quality legal representation for children and parents involved in the child welfare system."

First Star: www.firststar.org

"First Star was founded in 1999 as a national 501(c)(3) public charity dedicated to improving life for child victims of abuse and neglect. . . . First Star's leadership firmly believes in the primacy of children's basic interests and rights. An emphasis on best practices and better outcomes benefits children in child protective services, dependency courts and foster care systems across the U.S. and plants the seeds for long-term change in the way our society treats its children."

Mississippi Administrative Office of Courts: www.courts.ms.gov

"The Mississippi Administrative Office of Courts was established in July 1, 1993 in order to assist in the efficient administration of the nonjudicial business of the State's court system."

Mississippi Commission on Children's Justice: www.courts.ms.gov

"The Mississippi Supreme Court charged the Commission on Children's Justice with developing a statewide comprehensive approach to improving the child welfare system; coordinating the three branches of government in assessing the impact of government actions on children who are abused or neglected; and recommending changes to improve children's safety, strengthen and support families and promote public trust and confidence in the child welfare system.**"**

Mississippi Attorney General's Office: www.ago.state.ms.us

"The duties of the Attorney General are outlined in Miss. Code Ann. 7-5-1, et al. The approximately 260 members of this office are dedicated to supporting those legislative mandates, all with the greater goal of serving the public. We do that in a variety of ways: Domestic Violence Services; Civil Litigation; Consumer Protection; Crime Prevention and Victim Services; Criminal Litigation; Fighting Internet Crime; Medicaid Fraud Investigations/Prosecutions; Issuing Opinions; Training Prosecutors; Public Integrity; Representation for over 60 State Agencies; Recovery of Stolen or Misused Funds."

Mississippi Department of Education: www.mdek12.org

"At MDE, we work hard to ensure every child in Mississippi has access to the education he or she deserves: one that can lead to a brighter future through a life-long love of learning. This website provides valuable information for parents, students, legislators, media representatives and anyone involved in the state's education arena."

Mississippi Department of Mental Health: www.dmh.state.ms.us

"Since its inception in 1974, the Mississippi Department of Mental Health has endeavored to provide services of the highest quality through a statewide service delivery system. As one of the major state agencies in Mississippi, the Department of Mental Health provides a network of services to persons who experience problems with mental illness, alcohol and/or drug abuse/dependence, or who have intellectual and developmental disabilities. Services are provided through an array of facilities and agencies operated, certified and/or funded by the Department of Mental Health."

Mississippi Department of Public Safety: www.dps.state.ms.us

Divisions of the Department of Public Safety include: Highway Patrol; Bureau of Investigation; Mississippi Homeland Security; Crime Stoppers; Medical Examiner; Motor Carrier Safety Division; Office of Administrative Operations; Law Enforcement Officer's Training Academy; Crime Lab; Public Affairs; Public Safety Planning; Office of Emergency Operations.

Mississippi Judicial College: http://mjc.olemiss.edu

"The Judicial College provides continuing legal judicial education and training for supreme court justices; court of appeal judges; chancery, circuit, county, justice and municipal court judges; youth court judges and referees; and court administrators, court clerks and court reporters."

Mississippi Kids Count: www.kidscount.ssrc.msstate.edu

"Mississippi KIDS COUNT is the leading resource for comprehensive information on Mississippi's children and serves as a catalyst for improving outcomes for children, families, and communities."

Mississippi State Legislature: www.ls.state.ms.us

This website provides information on the history and current status of legislative bills and resolutions.

Mississippi Youth Court Information Delivery System (MYCIDS):
https://courts.ms.gov/trialcourts/youthcourt/youthcourt.php

"MYCIDS is a system for the real time management of the activities of the Mississippi Youth Court System. It is a web-based application that provides support for the intake of youths into the court system, scheduling of youth cases, management of court dockets, tracking of custody situations, necessary document generation and also provides a base dataset for statistical reporting purposes."

National Association of Youth Courts, Inc.: www.youthcourt.net

"The National Association of Youth Courts, Inc., a 501 (c)(3) membership organization, serves as a central point of contact for youth court programs across the nation, providing informational services, delivering training and technical assistance, and developing resource materials on how to develop and enhance youth court programs in the United States."

National Center for State Courts: www.ncsc.org

"The National Center for State Courts is an independent, nonprofit court improvement organization founded at the urging of Chief Justice of the Supreme Court Warren E. Burger. . . . All of NCSC's services — research, information services, education, consulting — are focused on helping courts plan, make decisions, and implement improvements that save time and money, while ensuring judicial administration that supports fair and impartial decision-making."

National Council of Juvenile and Family Court Judges: www.ncjfcj.org

"The VISION of the National Council of Juvenile and Family Court Judges is for a society in which every family and child has access to fair, equal, effective, and timely justice. The MISSION of the National Council of Juvenile and Family Court Judges is to provide all judges, courts, and related agencies involved with juvenile, family, and domestic violence cases with the knowledge and skills to improve the lives of the families and children who seek justice."

National Council on Family Relations: www.ncfr.org

"NCFR's mission is to provide an educational forum for family researchers, educators, and practitioners to share in the development and dissemination of knowledge about families and family relationships, establish professional standards, and work to promote family well-being.**"**

National Judicial College: www.judges.org

"For nearly 50 years, The National Judicial College (NJC) has remained a national leader in judicial education. The first to offer programs to judges nationwide, the NJC continues to work with the judiciary to improve productivity, challenge current perceptions of justice and inspire judges to achieve judicial excellence. The College serves as the one place where judges from across the nation and around the world can meet to improve the delivery of justice and advance the rule of law through a disciplined process of professional study and collegial dialogue."

Office of Juvenile Justice and Delinquency Prevention: www.ojp.gov

"The Office of Juvenile Justice and Delinquency Prevention (OJJDP) assists local community endeavors to effectively avert and react to juvenile delinquency and victimization. Through partnerships with experts from various disciplines, OJJDP aims to improve the juvenile justice system and its policies so that the public is better protected, youth and their families are better served, and hold offenders accountable. OJJDP develops, implements, and monitors programs for juveniles."

Office of Justice Programs (OJP): www.ojp.gov

"The Office of Justice Programs (OJP) provides innovative leadership to federal, state, local, and tribal justice systems, by disseminating state-of-the art knowledge and practices across America, and providing grants for the implementation of these crime fighting strategies. Because most of the responsibility for crime control and prevention falls to law enforcement officers in states, cities, and neighborhoods, the federal government can be effective in these areas only to the extent that it can enter into partnerships with these officers. Therefore, OJP does not directly carry out law enforcement and justice activities. Instead, OJP works in partnership with the justice community to identify the most pressing crime-related challenges confronting the justice system and to provide information, training, coordination, and innovative strategies and approaches for addressing these challenges."

Southern Dreams Mentoring/Prevention Services:
http://southerndreams14.wix.com/wewbsite

Southern Dreams, a non-profit program, which has three component, Life Guard Career Graduation Program, Mentoring and Youth Behavior Program and Prep for Success Development Program. The first component is Life Guard, a career graduation program that is geared to helping teens who are currently seniors in high school and who need credits to graduate or did not pass their state exams. The second part is the Southern Dreams At-Risk Mentoring Program which is geared toward addressing the problems that often lead to students getting expelled or dropping out of school and/or getting trapped in the juvenile court system. The third component is Prep for Success Development Program which is designed to develop youth for college and job readiness skills to assist youth and young adults in the job search.

State of Mississippi Judiciary: www.courts.ms.gov

"This web site is designed to make information about the state court system easily accessible to the public. Here you will find opinions of the Supreme Court and Court of Appeals, the laws of the state of Mississippi in the searchable Mississippi Code, rules of court, and an online catalog of the legal collections of the State Library. You may read dockets of cases pending on appeal. There are links to live broadcasts of oral arguments of the Supreme Court and Court of Appeals."

U.S. Department of Health and Human Services–Children's Bureau:
www.acf.hhs.gov/programs/cb

"The Children's Bureau (CB) partners with federal, state, tribal and local agencies to improve the overall health and well-being of our nation's children and families."

Zero to Three: Early connections last a lifetime: www.zerotothree.org

"Our mission is to ensure that all babies and toddlers have a strong start in life. At ZERO TO THREE, we envision a society that has the knowledge and will to support all infants and toddlers in reaching their full potential."

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Appendix C

MISSISSIPPI COUNCIL OF YOUTH COURT JUDGES RESOLUTION REGARDING GUARDIANS AD LITEM FOR TPR/ADOPTION CASES IN CHANCERY COURT

WHEREAS, the Mississippi Council of Youth Court Judges (hereinafter "Council) is the statutory body composed of all judges and referees of the Youth Courts of the State of Mississippi;

WHEREAS, the Council at its annual business meeting held on September 21 , 2017, did find that in many Chancery Courts around the State of Mississippi, that the typical practice is to appoint a Guardian ad Litem for termination of parental rights (hereinafter "TPR") and/or adoption proceedings that is not the same individual as the Guardian ad Litem appointed for the child in the related underlying abuse and/or neglect case heard in Youth Court;

WHEREAS, the Council was advised that many TPR and adoption proceedings in Mississippi Courts are backlogged due to a variety ofreasons, including but not limited to the appointment of a new Guardian ad Litem that has to familiarize and investigate many of the exact same matters that were presented to the Youth Court;

WHEREAS, the Council believes that it would expedite TPR and adoption proceedings, if the Chancery Court where possible could appoint the same Guardian ad Litem as previously appointed in the related underlying Youth Court matter, as same would be in the best interest of the child(ren) in obtaining better and quicker safety, permanency and well-being outcomes.

NOW, THEREFORE, BE IT RESOLVED by the Mississippi Council of Youth Court Judges as follows:

> The Council requests that the Mississippi Conference of Chancery Judges evaluate this request and that each Chancellor hearing TPR and adoption cases appoint the same Guardian ad Litem for the child as was had in the related underlying abuse and/or neglect case heard in Youth Court to achieve better safety, permanency and well-being outcomes for children.

THE FOREGOING RESOLUTION was unanimously adopted by the Mississippi Council of Youth Court Judges at its annual business meeting held on September 21 , 2017, after proper motion, second and unanimous vote.

EXECUTED on this 21st day of September, 2017.

_____
HON. THOMAS H. BROOME
RANKIN COUNTY YOUTH COURT

WITNESSED BY:

_____
HON. REBECCA TAYLOR, SECRETARY/TREASURER
STONE COUNTY YOUTH COURT

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Appendix D

Forms

- **Order of Appointment of Guardian ad Litem** ***(In Progress)***
- **Affidavit of Substantial Financial Hardship**
- **Sample Parent Interview**

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Order of Appointment of Guardian ad Litem *(In Progress)*

IN THE YOUTH COURT OF _____ COUNTY, STATE OF MISSISSIPPI

IN THE INTEREST OF: _____, A CHILD.

Uniform Youth Court Case Identification and Docket Number: _____.

AFFIDAVIT OF SUBSTANTIAL FINANCIAL HARDSHIP

I. GENERAL INFORMATION

Full name: _____. Date of birth: _____.
Mailing address: _____.
Physical address, if different from mailing address: _____.
Last four digits of SSN: _____. Driver's license number: _____.
Telephone number(s): _____. Email address: _____.
Number and ages of dependents: _____. Are you currently employed? ☐ Yes ☐ No
If yes, then provide the following information: Employer: _____.
Business address and telephone number: _____. Job title or description: _____.

II. MONTHLY NET INCOME

Net employment income (the amount you take home after taxes):	$ _____.
Retirement income:	$ _____.
Social security income:	$ _____.
Unemployment benefits:	$ _____.
Workers' compensation:	$ _____.
Other monthly income:	$ _____.
(Specify: _____.)	
Total Monthly Net Income:	**$ _____.**

III. MONTHLY EXPENSES

Child support:	$ _____.
Alimony payments:	$ _____.
Rent or mortgage:	$ _____.
Utilities (e.g., gas, electricity, water, etc.):	$ _____.
Food:	$ _____.
Clothing:	$ _____.
Health care and medical expenses:	$ _____.
Vehicle payments or transportation expenses:	$ _____.
Minimum loan payments:	$ _____.
Minimum credit card payments:	$ _____.
Educational or employment expenses:	$ _____.
Legal financial obligations owed to the court or another court:	$ _____.
Other basic monthly living expenses:	$ _____.
(Specify: _____.)	

Total Monthly Expenses: **$ _____.**

IV. DISPOSABLE MONTHLY INCOME

(Total Monthly Net Income) minus (Total Monthly Expenses)
= Disposable Monthly Income

Disposable Monthly Income: **$ _____.**

V. CASH AND VALUABLE ASSETS

Cash on hand and monies in a bank checking or savings account: $ _____.
Stocks, bonds, and certificates of deposit: $ _____.
Equity in real estate (value of property less what you owe): $ _____.
Valuable personal property: $ _____.
(Specify: _____.)
Other valuable assets that you own: $ _____.
(Specify: _____.)

Total Cash and Valuable Assets: **$ _____.**

VI. FINANCIAL PUBLIC ASSISTANCE

Check the box(es) for which you, or members of your household, receive financial public assistance:

- ☐ Aid to Families with Dependent Children (AFDC)
- ☐ Supplemental Nutrition Assistance Program (SNAP) (e.g., food stamps)
- ☐ Temporary Assistance for Needy Families (TANF)
- ☐ Supplemental Security Income (SSI)
- ☐ Social Security Disability Insurance (SSDI)
- ☐ VA Disability Compensation
- ☐ Medicaid
- ☐ Other: _____.

VII. ACKNOWLEDGMENT

My statements in this affidavit are true and accurate. I understand that any willful false statement contained herein may subject me to penalties of perjury under section 97-9-61 of the Mississippi Code. Further, I will inform the court if my income or financial status changes while this case is ongoing by personally reporting it to the Clerk of this Court.

_____
PARENT

Sworn to and subscribed before me this the ____ day of _____, 20____.

_____
CLERK OF THE COURT CLERK / D.C.

SAMPLE PARENT INTERVIEW

I. ADVISEMENT

Inform the parent that your role as the guardian ad litem is to act as an arm of the court in protecting the interest of the child, and not as the parties' attorney, and that any statements made to you affecting the health, safety, or welfare of the child will be reported to the court. *See* U.R.Y.C.P. 13(c).

II. GENERAL INFORMATION

Full name: _____. Date of birth: _____.
Mailing address: _____.
Physical address, if different from mailing address: _____.
Last four digits of SSN: _____. Driver's license number: _____.
Telephone number(s): _____. Email address: _____.
Number and ages of dependents: _____. Are you currently employed? ☐ Yes ☐ No
If yes, then provide the following information: Employer: _____.
Business address and telephone number: _____. Job title or description: _____.

III. AFFIDAVIT OF SUBSTANTIAL FINANCIAL HARDSHIP

Request the parent to fill out the form. Explain to the parent that you are requesting this information for making recommendations to the court for:

- preventing the unnecessary removal of the child from the home,
- providing other services related to meeting the needs of the child and the parents, and
- appointing counsel for the parent.

1. Does the parent desire the appointment of counsel?

2. Does the parent have Limited English Proficiency?

IV. QUESTIONS ON THE SAFE RETURN OF THE CHILD TO THE HOME AND MEETING THE NEEDS OF THE CHILD AND PARENTS

1. Is the parent willing and able to provide the basic necessities, such as food, shelter, clothing, educational needs? If not, then is the reason because of financial inability? What reasonable accommodations would help correct the deficiency?

2. Is the parent in need of housing assistance, transportation, or financial aid?

3. Is the parent presently under the care of a qualified health professional or qualified mental health professional? If so, then who is providing that care? If not, then is the reason because of financial inability?

4. Is the child presently under the care of a qualified health professional or qualified mental health professional? If so, then who is providing that care? If not, then is the reason because of financial inability?

5. Does the child or the parent have any special needs? If so, what are they?

6. Does the child or parent have any physical and/or mental health issues needing professional or emergency attention?

7. Does the parent have any pending criminal cases or civil actions? If so, what are they?

8. Are there any outstanding domestic abuse protection orders?

9. Has the parent received any training and education for improving parenting skills, knowledge, and practices? If not, then is the parent agreeable to attending such sessions?

10. What are the parent's feelings toward the child? Does the parent like being a parent? Does the parent have reasonable expectations for the child? Is the parent protective of the child?

11. What is the parent's daily routine? Weekend routine?

12. What is the child's daily routine? Weekend routine?

13. Does the child have a special interest in any particular activities?

14. Who is presently residing in the home? Are there other persons who frequently visit the home?

15. Does the parent, or any other persons residing in the home, have an alcohol problem or a drug dependency?

16. What school is the child attending? How are the child's grades and attendance records? Are there any problems at school that the parent is aware of?

17. What familial or community support is available to the parent? (E.g., Grandparents, aunts, uncles, cousins, fictive kin, neighbors, teachers, members of the family's faith community, mentors, close friends, and others) If so, then what is the nature of the possible support? (E.g., Financial support, transportation, babysitting, etc.)

18. Are there any terms or conditions of the CPS service plan that the parent finds unreasonable? Has the parent been given a copy of the service plan? Has the parent been informed of the consequences for failure to comply its terms?

19. What is the parent's preferred permanency outcome?

20. Does the parent have any questions regarding the upcoming proceedings?

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Appendix E

PARENTAL REPRESENTATION TASK FORCE RECOMMENDED STANDARDS FOR ATTORNEYS REPRESENTING PARENTS IN CHILD PROTECTION OR TERMINATION OF PARENTAL RIGHTS PROCEEDINGS IN YOUTH COURT

Preamble: Attorney's Responsibilities in Parental Representation

These standards apply to attorneys representing parents whose children are involved in child protection proceedings under the Youth Court Act or termination of parental rights proceedings. Competent, diligent, confidential, and professionally ethical parental representation is crucial in safeguarding the fundamental liberty interest of, and the due process protections afforded to, the parent in providing for the care, nurture, welfare, and education of that parent's natural or adoptive child. Thus, an attorney representing a parent in child protection or termination of parental rights proceedings shall comply with all federal and state laws, whether substantive or procedural, applicable to the representation.

A parent's constitutional right to raise his or her child is a liberty interest not only of the parent, but also of the child, that is safeguarded by the Constitution and the courts. Mississippi law presumes that parents are the natural guardians of their children, and that they are equally responsible for their care, nurture, welfare, and education. If the state seeks to interfere with the parent-child relationship, the Constitution mandates: (1) that the state prove parental unfitness as defined by state laws, and (2) that the state follow certain procedures protecting the parents' due process rights.

Attorneys who represent parents in child protective proceedings play a crucial role in safeguarding the parents' liberty interests. Similar to defense lawyers in criminal cases, parents' attorneys prevent the state from overreaching or unjustly removing children from their homes. In situations where temporary removal may be warranted, advocacy by the parents' attorneys may expedite the safe reunification of the family by ensuring the prompt delivery of appropriate services to the family and by counseling the parents about the ramifications of the choices they make.

If the parent cannot care for the child properly, the parent's lawyer may carry out the parent's wishes by arranging for another temporary or permanent legal placement, such as placement with a family member, guardianship, or adoption that will advance the entire family's interests. Additionally, the attorney is expected to comply with these performance standards for parental representation, which comport with the *Mississippi Rules of Professional Conduct*; the Constitution of the United States; the Mississippi Constitution and state law.

1. Competence

An attorney representing a parent in child protection proceedings or termination of parental rights proceedings shall provide competent representation, which requires possessing the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Because parental representation involves matters with a substantial degree of legal and social complexity, and which may significantly, or even severely, impact a parent's parental rights, an attorney who represents a parent in these proceedings is expected to have expertise in this particular field of law, or to work in consultation with an attorney who has that expertise, as deemed requisite for competent representation.

Competent representation, at a minimum, requires:

- Adhering to all relevant training and mentoring requirements before assuming representation of a parent involved in a child welfare or termination of parental rights proceeding.
- Utilizing knowledge of all relevant federal and state laws, rules, regulations, and policies necessary to analyze and assess the factual and legal elements of issues pertaining to all phases of the representation and to provide sound legal advice in resolving or addressing issues.
- Advising the parent of federal and state requirements for achieving permanency for the child in a timely manner.
- Exercising skill in all areas of procedural practice applicable to the proceedings, including that of authorized procedures for obtaining documents and information that may affect the parent's rights and interests, depositions, motions, and hearings.
- Thorough attention to details important toward reaching a favorable outcome for the parent.
- Zealously protecting and pursuing, within the bounds of the law, the parent's rights and interests.

1.1. Education, Training & Experience

Counsel must acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules including but not limited to the *Uniform Rules of Youth Court Practice* and *Youth Court Act*. Understand child development principles, particularly the importance of attachment and bonding and the effects of parental separation on young children; and have knowledge of the types of experts who can consult with attorneys and/or testify on parenting, remedial services and child welfare issues. Counsel should be familiar with the child welfare and family preservation services available in the community and the problems the services are designed to address. Counsel should also have a thorough understanding of the role and authority of the Mississippi Department of Child Protection Services (hereafter CPS or department) and both public and private organizations within the child welfare system.

To acquire and maintain the expertise requisite for competent representation, an attorney should annually engage in training and education programs on these standards and current developments in child welfare law and research. Additionally, it is imperative that the attorney recognizes and understands all federal and state laws applicable to parental rights.

Courts should not appoint an attorney to represent a parent in these actions unless that attorney meets the criteria of these standards and has otherwise met all statutorily imposed qualifications for the representation. *See* Miss. Code Ann. § 41-21-201(3). An attorney who represents parents in these proceedings should participate in twelve (12) hours of continuing legal education on related topics approved by the Office of State Public Defender for initial certification and a minimum of six (6) hours of continuing legal education on related topics per year to maintain certification.

2. Scope of Representation

An attorney representing a parent in child protection proceedings or termination of parental rights proceedings shall abide by the parent's decisions concerning the objectives of representation within the limits imposed by law and the attorney's professional obligations.

An attorney who represents a parent in proceedings involving child protection or termination of parental rights should assure the parent of the attorney's obligation to zealously protect and pursue, within the bounds of law, the parent's rights and interests.

Representational roles:

- As an advisor, an attorney provides the parent with an informed understanding of the parent's legal rights and obligations and explains their practical implications.
- As an advocate, an attorney zealously asserts the parent's interest.

Counsel shall not substitute counsel's judgment or opinions in those decisions that are the responsibility of the client. Counsel shall also protect the parent's rights including the right to services, visitation and information and decision making while the child is in foster care or other temporary placement. As a general rule, unless inconsistent with the client's goals, counsel shall strive to work collaboratively to resolve matters. It shall be made clear and unambiguous that parents' attorneys are independent of the court and accountable to their clients.

It is expected that counsel of record shall continue to represent the client from the initial court proceeding through all subsequent dependency and/or termination proceedings until resolution and the case is closed.

3. Conflict of interest

An attorney shall not represent a parent in child protection proceedings or termination of parental rights proceedings if the representation will be adversely affected, or materially limited, by obligations or responsibilities owed to another client or by the attorney's own interests, unless the risks associated with that conflict are reasonably minimal and the parent has given knowing and informed consent after being fully advised of the adverse consequences that could occur from those risks.

Consistent with Rule 1.7, MRPC, each parent should have separate counsel in most situations. However, in certain limited circumstances, an attorney may agree to represent both parents in a proceeding. Because parental representation involves rights and interests of a parent that may be adverse to those of the other parent or another party to the action, an attorney who represents a parent in these proceedings is expected to be vigilant in avoiding any actual or potential conflict of interest that could arise from representing either both parents or one parent and another party to the action.

An attorney should assure that adequate time is dedicated to each case. To maintain a manageable workload, a full-time parents' representation attorneys should limit their caseload to between sixty (60) and one hundred (100) cases at any given time. Support staff assistance, travel time required if serving more than one county, experience level of attorney and whether the attorney is part of a multidisciplinary representation team must be considered in determining where in this range an appropriate caseload lies

for an individual attorney. A part time parent's representation attorney should limit their caseload proportionately must ensure that other cases do not interfere with counsel's obligation and commitment to Parent Representation Program cases.

Avoiding a conflict of interest, at a minimum, requires:

- Assessing carefully whether dual or multiple representations could impair the attorney's obligation to zealously protect and pursue the separate and distinct rights and interests of each party.
- Considering any conflicts of interest that might arise in the course of representing dual or multiple parties to the action and the possible adverse consequences that could result should that happen.
- Considering the measures to be taken for ensuring that the confidential disclosures of each party is not compromised.
- Advising each party, preferably separately, on the risks associated with dual or multiple representations.
- Obtaining the informed consent of all parties before undertaking the dual or multiple representation, and court approval of the waiver of conflict of interest.
- Withdrawing from the dual or multiple representation case, if a conflict of interest arises that significantly impairs the attorney's ability to adequately represent the separate and distinct rights and interests of each party.

Serious consideration should be given before agreeing to represent more than one party to the action since an unforeseen need to withdraw from the representation at a later date could cause a prolonged delay in achieving the parent's goal for reunification with the child.

An attorney should never represent both parents in situations where one parent has made allegations of domestic violence or abuse against the other parent.

4. Communication with Client

An attorney representing a parent in child protection proceedings or termination of parental rights proceedings shall fully and promptly inform the parent on the aspects of the case affecting the parent's rights and, to the extent permitted by law, update the parent regarding the child's safety and well-being concerning custody, care, and plans for permanency, and explain these matters in a manner that allows the parent to make informed decisions regarding the representation.

Because parental representation involves matters affecting a fundamental liberty interest, an attorney who represents a parent in these proceedings is expected to fully and promptly inform the parent on all legal aspects of the case affecting the parent's rights so that the parent may participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

Full and prompt communications, at a minimum, requires:

- Providing contact information in writing and establish a message system that allows regular attorney-client contact.
- Regularly meeting and advising the parent on all aspects of the case.
- Reviewing with the parent the allegations in the petition, the terms and

conditions of the court-approved service plan, the orders of the court, and any negotiated agreements.

- Informing the parent of the possible consequences for noncompliance with the court-approved service plan and other orders of the court.
- Apprising the parent regarding the child's safety, permanency, and wellbeing.
- Explaining to the parent the general strategies and prospects of success of any pending proceedings.

Work with the client to develop a case timeline and calendar system that informs the client of significant case events and court hearings and sets a timeframe describing when specific case requirements (such as services) should be completed.

- Provide the client with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule or court order.
- Take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication.
- Avoid meeting the client exclusively at government facilities like the courthouse or DHS. Besides client confidentially concerns raised by meeting in a public facility, meeting in an office or more neutral location assists in the development of a more trusting relationship between the attorney and client. Trust is a hallmark of the attorney-client relationship and is essential for effective representation.

Communicating with a parent who suffers from a mental disability may present challenges in meeting these standards. In such cases, the attorney should keep the parent advised on the status of the case as deemed reasonably practicable and, if necessary, should request the court appoint a trained professional to assist the parent for purposes of the representation. For a parent who is a limited English speaking person or is hearing impaired the attorney should request the court appoint an interpreter approved by the Administrative Office of Courts to accommodate the representation. *See* Miss. Code Ann. § 13-1-301 (appointment of interpreter for hearing impaired).

5. Confidentiality

An attorney representing a parent in child protection proceedings or termination of parental rights proceedings shall not reveal information relating to the representation unless the parent gives informed consent for the disclosure, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is otherwise required by law and, further, such attorney shall not reveal the confidential records of children or others that have been acquired in the course of the representation except as required by law.

Protecting the confidentiality of information, at a minimum, requires:

- Studying and fully understanding the laws governing the attorney-client privilege, the work product doctrine, the rule of confidentiality established in the Mississippi Rules of Professional Conduct, and the laws governing the disclosure of records involving children under the Mississippi Youth Court Law and the Uniform Rules of Youth Court Practice.

- Explaining fully and promptly to the parent the advantages and disadvantages of exercising, waiving, or partially waiving a privilege or right to confidentiality as warranted by the facts and circumstances of the case.

6. Diligence

An attorney representing a parent in child protection proceedings or termination of parental rights proceedings shall act with reasonable diligence and promptness at every stage of these proceedings toward protecting and pursuing the parent's rights and interests.

Because parental representation involves time-sensitive proceedings, an attorney who represents a parent in these proceedings is expected to act with reasonable diligence and promptness in all phases of the representation so that the parent's rights and interests are not adversely affected.

6.1 Discovery & Court Preparation

Counsel shall conduct a thorough and independent investigation at every stage of the proceeding. Counsel shall review the child welfare agency case file and obtain all necessary copies of pleadings and relevant notices filed by other parties. When needed, use formal discovery methods to obtain information.

Effective court preparation includes the following:

- Interview the client and potential witnesses such as school personnel, neighbors, relatives, foster parents, medical professionals, etc., and subpoenaing appropriate witnesses.
- Obtain necessary authorizations for releases of information.
- Research applicable legal issues and advance legal arguments when appropriate.
- Develop a case theory and strategy to follow at hearings and negotiations.
- Timely file all pleadings, motions, and briefs.
- Make timely evidentiary objections, and otherwise developing a thorough record for appellate review.
- Engage in case planning and advocate for appropriate social services.
- Engage in out-of-court advocacy, including participation in family team meetings.
- Advocate for services to remedy circumstances that led to out of home placement and that services be provided in a manner that is accessible to the client.
- Advocate for regular visitation in a family-friendly setting.
- Documenting the parent's efforts to successfully comply with the service agreement.
- With the client's permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.
- Thoroughly prepare the client and all witnesses to testify at the hearing.
- Identify, secure, prepare and qualify expert witness when needed. When permissible, interview opposing counsel's experts.

When representing a parent who is incarcerated, the attorney needs to be especially mindful of federal and state laws governing completion deadlines on reasonable efforts for reunification. *See* Rule 7,

Uniform Rules of Youth Court Practice. As such, the attorney should advise the parent on the challenges for achieving reunification of the child with the parent, and the possible consequences for failing to comply with the terms and conditions of the court-approved service plan.

6.2 Shelter Hearings

The importance of shelter hearings should not be underestimated. Important matters are often decided at this initial hearing that can have long-term effects of the outcomes of the client's case. These issues include placement with the client, relative placement, visitation, and the early engagement of the client into voluntary services. Counsel should work to negotiate or achieve the best possible outcome for the client at this hearing.

Even though these are emergency hearings which give counsel little time to prepare, counsel should protect the due process rights of client, including the right to have shelter hearings within 48 hours of removal, the right to present evidence and examine witnesses, and the right of the client to testify.

Counsel should also recognize the opportunity to establish an excellent attorney-client relationship at the beginning of the case. Clients should be given the opportunity to talk to counsel prior to the hearing about their case. Counsel should prepare the client for the shelter care hearing and call witnesses where appropriate.

6.3 Adjudication Hearings

Counsel should take great steps to adequately prepare for the adjudication hearing, including maintaining continued contact with the client, communicating with the department and the guardians ad litem as necessary for the client's case, subpoenaing witnesses, making requests for discovery, filing motions and/or answers to petitions. Counsel shall protect the client's due process rights, make necessary objections, and take into considerations any underlying or concurrent criminal charges related to the same set of circumstances. If a child is in state custody, the adjudication hearing must take place within 30 days of the child coming into state care. If a child is temporarily placed with relatives or fictive kin, the adjudication hearing should take place within 90 days. As a matter of practice, counsel should request court dates as soon as possible to prevent any unnecessary delays.

6.4 Disposition Hearings

If a child has been adjudicated as abused or neglected in accordance with Mississippi Code Annotated [section] 43-21-561, then the Youth Court will proceed with a disposition hearing to determine the continued placement of the children while the client works to establish and complete their service plan. This hearing may take place immediately following the adjudication hearing, unless a party requests a continuance to prepare for their participation in that hearing. If a child is in state custody, the disposition hearing must be held within 14 days of the adjudication hearing. Counsel should make an ore tenus motion to excuse the child if the information and evidence provided will be injurious to the child's best interest, with the child's counsel's consent.

6.5 Periodic Review Hearings

As a matter of strategy, Counsel may consider requesting review hearings prior to annual review/permanency hearings to apprise the court of the client's progress or change in circumstances since the entry of the adjudication order, including but not limited to completion of service plans and/or rectification of the issues which caused the court's initial involvement. Unless otherwise requested, review hearings are typically scheduled for a date certain within 6 months of the shelter hearing. Counsel shall utilize motion practice to advocate for increases in visitation, etc. Counsel shall protect the client's due process rights and make necessary objections during all youth court proceedings.

6.6 Annual Review/Permanency Hearings

Counsel shall engage in case conferences, family team meetings, and/or other forms of out-of-court advocacy related to determining the best interests and permanency plans for the family and/or child on an ongoing basis and well in advance of the annual review/permanency hearing.

Counsel shall file any necessary motions reflecting the client's wishes as to the permanency of the child and any progress or completion the client has achieved regarding the service plan. Counsel must provide legal advice and counsel the client on federal and state laws regarding the timeline of a child¡|s journey through the child welfare system. Counsel must explain the possible outcomes and the legal ramifications that may follow, including successful reunification, continued temporary placement, durable legal custody to a relative or third party, or termination of parental rights and adoption.

Counsel should take great steps to adequately prepare for the annual review/permanency hearing, including maintaining continued contact with the client, communicating with the department and the guardians ad litem as necessary for the client's case, obtaining necessary reports and documentation of completed services, subpoenaing witnesses, making requests for discovery, filing motions and/or answers to petitions. Counsel shall protect the client's due process rights and make necessary objections during all youth court proceedings.

6.7 Case Conferences, Family Team Meetings and Staffings

Counsel shall attend the case conference to develop a written voluntary services plan, driven by the client's assessment of their individual and/or family needs. Services plans should meet the individual needs of each client and be designed to facilitate reunification. Additionally, counsel should participate in case staffings, settlement conferences, multi-disciplinary team reviews, family team meetings and other conferences held to negotiate, develop and implement case plans.

7. Advocacy for Appropriate Services

Consistent with the client's goals, counsel shall thoroughly discuss with the client the advantages of early engagement in services and advocate for timely provision of services appropriate to meet the needs of the individual client. Parents often see themselves as passive recipients of services rather than as a part of the process of determining what services are necessary to resolve the problem. Attorneys should assist them in taking a more active role in the process and representing their own views. Attorneys should help clients obtain not only services deemed necessary by the department, but also those that the family considers essential to its survival.

Advocacy for services should occur at every stage of the proceeding, beginning with the initial shelter hearing and shall also include out-of-court case events such as: case conferences; family team meetings; and multi-disciplinary team staffing. Counsel should identify and address barriers that may prevent or limit the client's ability to successfully engage in services. Counsel should assure that court orders specify each party's duties and responsibilities regarding service referrals, payment for services, transportation issues and a realistic timeline for commencing and completing services.

Counsel's efforts to advocate for services include the following principles:

- The department has a duty to make reasonable efforts to unify the family;
- The department must develop treatment plans for the individual needs of the client in a manner that minimizes the number of contacts the client is required to make;
- The department case worker should solicit the parent¡|s active participation in the development of this individualized service plan;
- The court order should specify who is responsible for attaining services and by what time;

The department must coordinate within the department and with contracted service providers, to ensure that parents in dependency proceedings receive priority access to remedial services;

Remedial services include: individual, group, and family counseling; substance abuse treatment services; mental health services; assistance to address domestic violence; services designed to provide temporary child care and therapeutic services for families; and transportation to or from any of the above services and activities;

- The department may provide funds for remedial services if the parent is unable to pay for such services; and
- Required services must be related to the parental deficiencies or circumstances that led to the child's removal from the home.

8. Advocacy for Visitation

Counsel recognizes that parent-child contact is essential to the welfare of the child and the successful resolution of the client's case and advocates for frequent, consistent visits in the least restrictive setting possible. Counsel's advocacy efforts include the following principles:

- Visitation is the right of the family;
- Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify;
- The department must encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child;
- Visitation plans should allow for make-up visits in the event that a child is not available for a visit or when a parent, for good cause cannot attend a scheduled visit; and
- Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services and may only be limited or denied when necessary to protect the child's health, safety, or welfare.

9. Post Hearings/Appeals

Counsel is obligated to ensure that each client understands and is able to exercise their rights to appeal, discretionary review and post hearing relief.

- Review court orders to ensure accuracy and clarity and review with client.
- Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.
- Consider and discuss the possibility of appeal with the client. Prior to discussion counsel must contact the Office of State Public Defender to determine availability of representation on appeal through that agency. If appellate representation is available counsel must advise client of this resource.
- If the client decides to appeal, timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal as required by the Rules of Appellate Procedure.
- Request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending.
- Coordinate with appellate counsel to assure that appropriate steps are taken (such as a motion to stay) to protect the client's interests while the appeal is pending.

Appendix F

A.A. AND N.A. RECOVERY PROGRAMS

Alcoholics Anonymous (A.A.) and Narcotics Anonymous (N.A.) have helped many alcoholics and addicts attain sobriety. In Chapter 5 "How it Works" of Alcoholics Anonymous ("The Big Book"), the founders of Alcoholics Anonymous suggested 12 steps for recovery. Step One states: "We admitted we were powerless over alcohol–that our lives had become unmanageable." Alcoholics Anonymous 59 (Alcoholics Anonymous World Services, Inc., 4rd ed. 2001); *see also* Narcotics Anonymous 19 (Narcotics Anonymous World Services, Inc., 5th ed. 1988) ("We admitted we were powerless over our addiction, that our lives had become unmanageable.").

A WALL OF DENIAL MUST COME DOWN

See Alcoholics Anonymous, at 39 ("Faced with alcoholic destruction, we soon became as open minded on spiritual matters as we tried to be on other questions. In this respect alcohol was a great persuader. It finally beat us into a state of reasonableness."); Narcotics Anonymous, at 20 ("We didn't stumble into this Fellowship [of N.A.] brimming with love, honesty, open-mindedness or willingness. We reached a point where we could no longer continue using because of physical, mental, and spiritual pain. When we were beaten, we became willing.").

ALCOHOLICS AND ADDICTS CANNOT STOP ON SELF-WILL ALONE

See Alcoholics Anonymous, at 39 ("But, the actual or potential alcoholic, without hardly an exception, will be absolutely unable to stop drinking on the basis of self-knowledge."); Narcotics Anonymous, at 21 ("Many of us tried to stop using on sheer willpower. This was a temporary solution. We saw that willpower alone would not work for any length of time.").

RECOVERY IS A LIFE-LONG EFFORT

See Narcotics Anonymous, at 8 ("We [addicts] realize that we are never cured, and that we carry the disease within us for the rest of our lives. We have a disease, but we do recover."); It Works, How and Why 14 (Narcotics Anonymous World Services, Inc., 1993) ("The disease of addiction can manifest itself in a variety of mental obsessions and compulsive actions that have nothing to do with drugs.").

RECOVERY IS MEASURED BY SPIRITUAL PROGRESS

See Alcoholics Anonymous, at 60 ("We claim spiritual progress rather than spiritual perfection."); It Works, How and Why, at 10 ("In recovery, we will be introduced to spiritual principals such as the surrender, honesty, and acceptance required for the First Step.").

PREDICTING SUCCESS OR FAILURE IN RECOVERY IS OFTEN ELUSIVE

See It Works, How and Why, at 10 ("Multiple relapses do not necessarily signify a lack of interest in recovery, nor does the "model newcomer" demonstrate, without a doubt, a certainty of 'making it.'").

RELAPSE IS A PAINFUL TRUTH OF POWERLESSNESS

See Alcoholics Anonymous, at 37 (The "jaywalker" anecdote); Narcotics Anonymous, at 75 ("Relapse is a reality. It can and does happen. Experience shows that those who do not work our program of recovery on a daily basis may relapse.").

RIGOROUS HONESTY IS ESSENTIAL TO RECOVERY

See Alcoholics Anonymous, at 58 ("Rarely have we seen a person fail who has thoroughly followed our path. Those who do not recover are people who cannot or will not completely give themselves to this simple program, usually men and women who are constitutionally incapable of being honest with themselves. There are such unfortunates. They are not at fault; they seem to have been born that way. They are naturally incapable of grasping and developing a manner of living which demands rigorous honesty. Their chances are less than average."); It Works, How and Why, at 10 ("We have found that we cannot recover without the ability to be honest.").

RECOVERY BEGINS IN WORKING THE TWELVE STEPS OF A.A. OR N.A.

See Alcoholics Anonymous, at 58 ("If you have decided you want what we have and are willing to go to any length to get it– then you are ready to take certain steps. . . . At some of these we balked. We thought we could find an easier, softer way. But we could not."); It Works, How and Why, at 10 ("Recovery begins when we start to apply the spiritual principles contained in the Twelve Steps of NA to all areas of our lives.").