# *MANUAL FOR*

# *MISSISSIPPI YOUTH COURTS*

# 2020

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***(Updated July 1, 2020)***

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# *USER'S GUIDE TO*
# *THE MANUAL FOR MISSISSIPPI YOUTH COURTS*

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:

***309 PROPER FACILITIES***

**Designating detention facilities**
**Detention prohibitions**
**Detention of children charged with certain misdemeanor offenses**
**Arranging for the custody, care and maintenance of the child**
**Juvenile detention centers**

The "3" is Chapter 3, while the "09" is the sequential order of the topic "Proper Facilities." Some topics will include subheadings. Please note that only those portions of a rule or statute pertaining to the selected topic or subheading are actually quoted in the text. Lastly, the symbol ❖ links the text to the applicable diagram or flowchart. Clicking the oval atop a diagram or flowchart returns to the pertinent text.

We express our thanks to the Youth Court Handbook Committee for their input in the development of this manual. Please email any suggestions for improving the style, format, or content of the manual to MJC Staff Attorney William Charlton at: charlton@olemiss.edu.

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## *A BRIEF HISTORY OF THE JUVENILE COURT SYSTEM*

Prior to 1899 no state had a formal juvenile court system.[1] Children who committed crimes were tried and sentenced in criminal courts.[2] In 1899, with the founding of the first juvenile court in Chicago, Illinois, a daring experiment took hold— taking children out of the criminal court system.[3] The rationales for creating a new "child-centered" justice system were two-fold: diversionary and interventionist.[4]

The diversionary rationale was "to save kids from the savagery of the criminal courts and prisons."[5] The notion was that children sentenced as adults were being subjected to unfair punishment and severe corrupting influences.[6] Juvenile Court Judge Tuthill's 1904 account of the treatment of delinquents prior to reform highlighted these concerns:

> Prior to 1899 little was done in Illinois, and, so far as I know, in any other State in the Union, that was not wrongly done by the State toward caring for the delinquent children of the State. No matter how young, these children were indicted, prosecuted, and confined as criminals, in prisons, just the same as were adults pending and after a hearing, and thus were branded as criminals before they knew what crime was. . . . [T]he natural result was that they were thus educated in crime and when discharged were well fitted to become the expert criminals and outlaws who have crowded our penitentiaries and jails. The State had educated innocent children in crime, and the harvest was great.[7]

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[1] *See* Craig J. Herkal, *You Live, You Learn: A Comment on Oklahoma's Youthful Offender Act*, 34 Tulsa L.J. 599, 602 (1999).

[2] *See* Tara Kole, *Juvenile Offenders*, 38 Harv. Journal on Legis. 231, 232 (2001); *see also* Sacha M. Coupet, *What to Do with the Sheep in Wolf's Clothing: The Role of Rhetoric and Reality about Youth Offenders in the Constructive Dismantling of the Juvenile Justice System*, 148 U. Pa. L. Rev. 1303, 1305 (2000) ("At that time, beyond the common law's substantive infancy defense that only relieved children under the age of seven of culpability, 'neither statute nor court decision provided for treating children charged with crimes differently from adults, substantively or procedurally.'").

[3] *See* Franklin E. Zimrig, *The Common Thread: Diversion in Juvenile Justice*, 88 Calif. L. Rev. 2477, 2479 (2000).

[4] *See id.* at 2480-83.

[5] *See id.* at 2480.

[6] *See id.* at 2481.

[7] Richard S. Tuthill, History of the Children's Court in Chicago, in Children's Court's in the U.S.: Their Origin, Development, and Results 1, 1 (Richard H. Ward & Austin Flower eds., AMS Press 1973) (1904).

The interventionist rationale was to rescue kids from a life of crime and truancy.[8] The notion was that wayward or delinquent children could be put on the right societal track by means of positive programs, counseling and treatment.[9]

By 1925 nearly all states, including Mississippi,[10] had created its own juvenile court system.[11] Informal proceedings, classified as civil in nature, replaced formal ones.[12] Also, there was a change in terminology— the petition replaced the criminal complaint or indictment, an adjudication of delinquency replaced the conviction of guilt, and the disposition replaced sentencing.[13] Further, 'parens patria,' a legal principle that requires the state to act on behalf of the child's best interest if the parents are unable to care for or control their child, emerged to identify the juvenile court's essential role.[14]

In 1967, in *Application of Gault*, the U.S. Supreme Court considered the Constitutionality of informal juvenile proceedings. The Court ruled 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.[15]

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[8]*See* Zimrig, *supra* note 2, at 2480-83.

[9]*See id.* at 2483.

[10]*See* Jimmie B. Reynolds, *Constitutional Law— Application of Basic Constitutional Guarantees to Juveniles*, 39 Miss. L.J. 121, 124 (1967) ("Mississippi actively started building such a bridge beginning in 1916 with its first Juvenile Court Act. It provided for instituting proceedings against any delinquent, destitute, or abandoned child.").

[11]*See* Lisa S. Beresford, *Is Lowering the Age at Which Juveniles Can Be Transferred to Adult Criminal Court the Answer to Juvenile Crime? A State-by-state Assessment[:] The Age at Which a Child Should Be Held Responsible for His or Her Actions Has Been Debated for Centuries*, 37 San Diego L. Rev. 783, 790 (2000).

[12]*See* Reynolds, *supra* note 10, at 125 ("[Mississippi's Youth Court Act of 1946] gave the Youth Court exclusive original jurisdiction over delinquent and neglected children and classified the court's jurisdiction as civil in nature.").

[13]Herkal, *supra* note 1, at 602.

[14]*See id.* at 602-03; *see also* Bryant v. Brown, 118 So. 184, 188 (Miss. 1928) ("[T]he state, as parens patria 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.").

[15]Application of Gault, 387 U.S. 1, 31-57 (1967).

In *Gault*, the Court downplayed the juvenile benefits of informal proceedings:

> The early conception of the Juvenile Court proceeding was one in which a fatherly judge touched the heart and conscience of the erring youth by talking over his problems, by paternal advice and admonition, and in which, in extreme situations, benevolent and wise institutions of the State provided guidance and help 'to save him from downward career.' . . . But recent studies have, with surprising unanimity, entered sharp dissent as to the validity of this gentle conception. They suggest that the appearance as well as the actuality of fairness, impartiality and orderliness-- in short, the essentials of due process--may be a more impressive and more therapeutic attitude so far as the juvenile is concerned. . . . Of course, it is not suggested that juvenile court judges should fail appropriately to take account, in their demeanor and conduct, of the emotional and psychological attitude of the juveniles with whom they are confronted.[16]

It also dismissed the notion that delinquency proceedings were 'civil in nature':

> [J]uvenile proceedings to determine 'delinquency,' which may lead to commitment to a state institution, must be regarded as 'criminal' for purposes of the privilege against self-incrimination. To hold otherwise would be to disregard substance because of the feeble enticement of the 'civil' label-of-convenience which has been attached to juvenile proceedings.[17]

One commentator aptly noted that "Gault marked the constitutional domestication of the traditional parens patria juvenile court, and a new era dawned based on a due process model contrasted with the historic informality of juvenile court proceedings."[18]

Following *Gault*, the U.S. Supreme Court extended the due process protections even further.[19] But, in *McKeiver v. Pennsylvania,* the Court finally stopped short of requiring that all rights constitutionally required in adult cases be imposed upon state juvenile delinquency proceedings when it ruled that the Sixth Amendment right to a trial by jury did not apply to juvenile

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[16]*Id.* at 25-26.

[17]*Id.* at 49-50.

[18]Robert E. Shepherd, *"The Child" Grows Up; The Juvenile Justice System Enters Its Second Century*, 33 Fam L.Q. 589, 592 (1999).

[19]*See* Breed v. Jones, 421 U.S. 519, 541 (1975) (ruling that the Double Jeopardy Clause prohibited the criminal prosecution of a juvenile who had already been adjudicated delinquent for the same offense); In re Winship, 397 U.S. 358, 368 (1970) (requiring that delinquency be proved beyond a reasonable doubt).

delinquency proceedings.[20] The Court reasoned that to rule otherwise would "remake the juvenile proceeding into a fully adversary process and . . . put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding."[21] In other words, *Gault*, *Winship*, and *Breed* had not abrogated parens patria in juvenile proceedings, but rather insisted that it be accompanied with due process.

In addition to the Supreme Court rulings, Congressional enactments also advanced the reformation of state juvenile court systems.[22] In 1974, Congress passed The Juvenile Justice and Delinquency Prevention Act (JJDPA):[23]

> [JJDPA] . . . had several very important and influential features: (1) it introduced a strong federal presence to the juvenile justice arena by committing resources and establishing a legislative commitment to certain goals and policies; (2) it recognized the immense value in placing the primary responsibility for implementing those goals and policies at the state and local community level through a formula grant program administered by citizen-dominated state advisory groups; (3) it created the Office of Juvenile Justice and Delinquency Prevention to institutionalize the federal presence in juvenile justice; (4) it committed the federal government to the goals of removing status offenders and non-offenders from secure institutions and separating juvenile offenders from adults in institutional settings; (5) it established a discretionary grant process through the Special Emphasis and Treatment Program to make awards directly to public and private nonprofit agencies to help develop creative techniques and strategies for realizing the Act's purposes; (6) it encouraged the development of national standards to assist in reforming the juvenile justice system; and (7) it embodied the goal of coordinating federal programs in the areas of delinquency prevention and juvenile justice.[24]

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[20]McKeiver v. Pennsylvania, 403 U.S. 528, 543-551 (1971).

[21]*Id.* at 544.

[22]*See* Howard Davidson*, A Model Child Protection Legal Reform Instrument: The Convention on the Rights of the Child and Its Consistency with United States Law,* 5 Geo. J. on Fighting Poverty 185, 189 (1998) (noting that much of federal legislation on juvenile court reforms is tied to federal grant monies).

[23]Juvenile Justice and Delinquency Act, Pub. L. No. 93-415, 88 Stat. 1109 (1974) (codified as amended at 42 U.S.C.A. § 5601 et seq.).

[24]Robert E. Shepherd, *"The Child" Grows Up; The Juvenile Justice System Enters Its Second Century*, 33 Fam L.Q. 589, 593 (1999); *see also* Herkal, *supra* note 1, at 608 ("[The JJDPA] was passed to provide a uniform system states could use in changing their juvenile courts to comply with the new due process requirements."); Zimrig, *supra* note 3, at 2490 ("[Major objectives of the JJDPA were] to remove minors from jails and prisons . . . [and] . . . the deinstitutionalization of status offenders.").

That same year, Congress also passed The Child Abuse Prevention and Treatment Act (CAPTA).[25] CAPTA provided federal funds to states that implemented programs for the identification, prevention and treatment of child abuse and neglect:[26]

> The key state response to child abuse became mandatory reporting, investigating and record-keeping system that is commonly known as the child protective services system. While all states had some form of reporting law in place before CAPTA, few met the more rigorous CAPTA requirements before 1974. CAPTA, in effect, maintained continuing attention on reporting laws, confidentiality, and investigation. It established a minimum state response, determining when exclusive parental control could be questioned and temporarily interrupted, and which children had a plausible right to protection.[27]

Additionally, CAPTA required that children be represented by a guardian ad litem in juvenile court child protection proceedings.[28]

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[25]Child Abuse and Prevention Act, Pub. L. No. 93-247, 88 Stat. 4 (1974) (codified as amended at 42 U.S.C.A. § 5101 et seq.); *see also* Jennifer L. Woolard & Sarah L. Cook, *Common Goals, Competing Interests: Preventing Violence Against Spouses and Children*, 69 UMKC L. Rev. 197, 204 (2000) ("Child abuse and neglect were brought to the nation's awareness in the late 1960s by a group of physicians who identified a pattern of injuries in children brought to the emergency rooms as 'battered child syndrome.' Alarmed by these claims, the federal government responded quickly by passing [CAPTA].").

[26]*See* Marjorie R. Freiman, *Unequal and Inadequate Protection under the Law: State Child Abuse Statutes*, 50 Geo. Wash. L. Rev. 234, 250 (1982); *see also* Howard A. Davidson, *Child Protection Policy and Practice at Century's End*, 33 Fam L.Q. 765, 766 (1999) ("In 1996, Congress amended CAPTA by giving states the option to limit mandatory reporting to more severe parental acts--i.e., those constituting 'serious' harm or the risk of such harm. This change was a response to a concern . . . that child protective service agencies have been using their very limited resources to investigate and intervene in nonserious and sometimes inappropriate cases–to the exclusion of giving adequate attention to cases where children are in danger of greater harm.").

[27]Susan Vivian Mangold, *Extending Non-exclusive Parenting and Right to Protection for Older Foster Children: Creating Third Options in Permanency Planning*, 48 Buff. L. Rev. 835, 853 (2000); *see also* Jillian Grossman, *The Fourth Amendment: Relaxing the rule in Child Abuse Investigations*, 27 Fordham Urb. L.J. 1303, 1319 (2000) ("Although prior to CAPTA most states already complied with many of its requirements, the federal statute had substantial influence on subsequent state reporting statutes. In particular, by bringing the immunity provisions to the public's attention, CAPTA led to an increase in the number of reported cases of child abuse.").

[28]*See* Davidson, *supra* note 27, at 33 ("The principal judicial system effect of CAPTA has been achieved through its guardian ad litem (GAL) requirement. That provision has led to almost universal appointment of independent GALs, either a lawyer or lay (non-attorney) advocate, in juvenile court child protection proceedings.").

Following the passage of CAPTA, the number of children reported as abused and neglected skyrocketed.[29] Often these children would find themselves "drifting' in state-based foster care systems:

> Under CAPTA, states could receive federal reimbursement only for cases in which children were physically removed from home and placed in foster care. Therefore, state child welfare agencies emphasized removing children from any unsafe environment and placing them in custody of the state, rather than focusing on preventive services or family reunification. By the end of the 1970s, too many children were lingering in foster care for long periods of time. Child Welfare Administration workers made little effort to reunify children with their parents, but at the same time, they generally were reluctant to free them for adoption through termination of parental rights. Thus, children remained in the system with little hope of either reunification or permanent placement, shuffling from home to home without a sense of place or permanency. This "foster care drift" prompted consideration of new legislation supporting maintenance of the original home.[30]

In 1980, Congress responded to the "foster care drift" dilemma by enacting The Adoption Assistance and Child Welfare Act (AACWA).[31] However, AACWA failed to resolve the issue. So, in 1997, Congress again responded by passing The Adoption and Safe Families Act (ASFA):[32]

> In order to understand ASFA, one must read it in light of Congress' initial effort to reform public child welfare systems--the Adoption Assistance and Child Welfare Act of 1980 (AACWA). AACWA sought to implement permanency planning concepts that emphasize agency efforts to return children to parental custody, with other permanent outcomes, such as adoption, occupying a less desirable, subordinate role. In addition, AACWA did not expressly address child safety. Growing out of AACWA's perceived failures, ASFA articulates a paramount goal of child safety.

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[29]*See* Libby S. Adler, *The Meanings of Permanence: A Critical Analysis of the Adoption and Safe Families Act of 1997*, 38 Harv. J. on Legis. 1, 17 (2001); *see also* Mangold, *supra* note 28, at 853-54 ("As reports mounted thanks to CAPTA requirements, foster care became the expedient and perhaps the sole resource to address the children's safety.").

[30]Sheri Bonstelle & Christine Schessler, *Adjourning Justice: New York State's Failure to Support Assigned Counsel Violates the Rights of Families in Child Abuse and Neglect Proceedings*, 28 Fordham Urb. L.J. 1151, 1158-59 (2001).

[31]Adoption Assistance and Child Welfare Act, Pub. L. No. 96-272, 94 Stat. 500 (1980) (codified as amended in scattered sections of 42 U.S.C. ).

[32]Adoption and Safe Families Act, Pub. L. No. 105-89, 111 Stat. 2115 (1997) (codified as amended in scattered sections of 42 U.S.C.); *see also* Miss. Code Ann. § 43-15-13.

> ASFA also expressly allows the public agency to engage in concurrent planning (i.e., making simultaneous efforts to achieve family reunification and to secure an adoptive placement). In addition, ASFA compels the agency to seek termination of parental rights within specified time periods and to make reasonable efforts to achieve adoption or other alternate permanent placements, with "alternate" meaning an outcome other than reunification with the original family. Through these provisions, 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.[33]

Most states, including Mississippi, complied with the above federal statutes, and amendments thereto,[34] by enacting new legislation.[35] States also initiated their own reforms, especially in regard to juvenile crime.

In 1976, the National Advisory Committee on Criminal Justice Standards and Goals published findings that showed a disturbing increase in juvenile arrests.[36]

> Public outrage over this apparent increase in juvenile crime focused not on underlying social and economic trends to explain the changes, but rather on the perceived failure of the juvenile justice system. A politically expedient solution was to focus on the treatment of juvenile delinquents by juvenile courts. "Juvenile court was portrayed as a 'kiddie court'" which could not punish these young criminals effectively. This public sentiment created a political advantage for those law-makers who would punish a juvenile based solely on the crime committed. The newly criminalized structure of the juvenile court proved to be easily adaptable; rehabilitation gave way to punishment.[37]

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[33]David J. Herring, *The Adoption and Safe Families Act--Hope and Its Subversion*, 34 Fam. L.Q. 329, 330 (2000); *see also*, Adler, *supra* note 30, at 23 (comparing child welfare reform to a swinging ball between "irreconcilable poles" of family preservation and termination of parental rights).

[34]*E.g.,* Strengthening Abuse and Neglect Courts Act, Pub. L. No. 106-314, 114 Stat. 1266 (2000) (enacted to improve the efficiency and effectiveness in carrying out ASFA).

[35]Mississippi enacted the Youth Court Law of 1979, revised and amended to date.

[36]*See* Herkal, *supra* note 1, at 609.

[37]*Id.* at 608; *but see* Samuel M. Davis, *The Criminalization of Juvenile Justice: Legislative Responses to "The Phantom Menace"*, 70 Miss. L.J. 1, 24 (2000) ("States have been enacting laws to deal with a worsening pattern of juvenile crime that does not exist.").

Most states, including Mississippi, responded by enacting or amending laws to make it easier to prosecute youthful offenders in adult criminal courts.[38] Some states even enacted laws to include punishment in addition to rehabilitation as a purpose of the juvenile courts.[39]

At present, there is intense debate concerning the future of the juvenile justice system.[40] Some urge its abolition.[41] Others suggest a renovation.[42] And still others suggest a restorative model.[43] What will finally emerge is anyone's guess. Diversionary and interventionist rationales, parens patria, punishment, among a host of other considerations, are pieces to the puzzle.[44] Due process is the table upon which the pieces must fit.[45]

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[38]*See* Shepherd, *supra* note 18, at 594 ("Most of these jurisdictions have done this by adding additional crimes to the list of offenses excluded from juvenile handling, lowering the age limit on some or all of the excluded offenses, or adding lesser included offenses to criminal court jurisdiction, or by permitting that court to retain adult jurisdiction over youths before the court even though there was no finding of guilt on the original offense charged."); *see also* Miss. Code Ann. § 43-21-151.

[39]*See* Herkal, *supra* note 1, at 609; *see also* State v. Presha, 748 A.2d 1108, 1114 (N.J. Sup. Ct. 2000) ([P]unishment has now joined rehabilitation as a component of the State's core mission with respect to juvenile offenders.").

[40]*See* Symposium, *Juvenile Justice: Reform After One-Hundred Years*, 37 Am. Crim. L. Rev. 1409 (2000); Symposium, *Foreword— The Debate Over the Future of Juvenile Courts: Can We Reach Consensus?*, 88 J. Crim. L. & Criminology 1 (1997).

[41]*See* Barry C. Feld, *Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy*, 88 J. Crim. L. & Criminology 68 (1997).

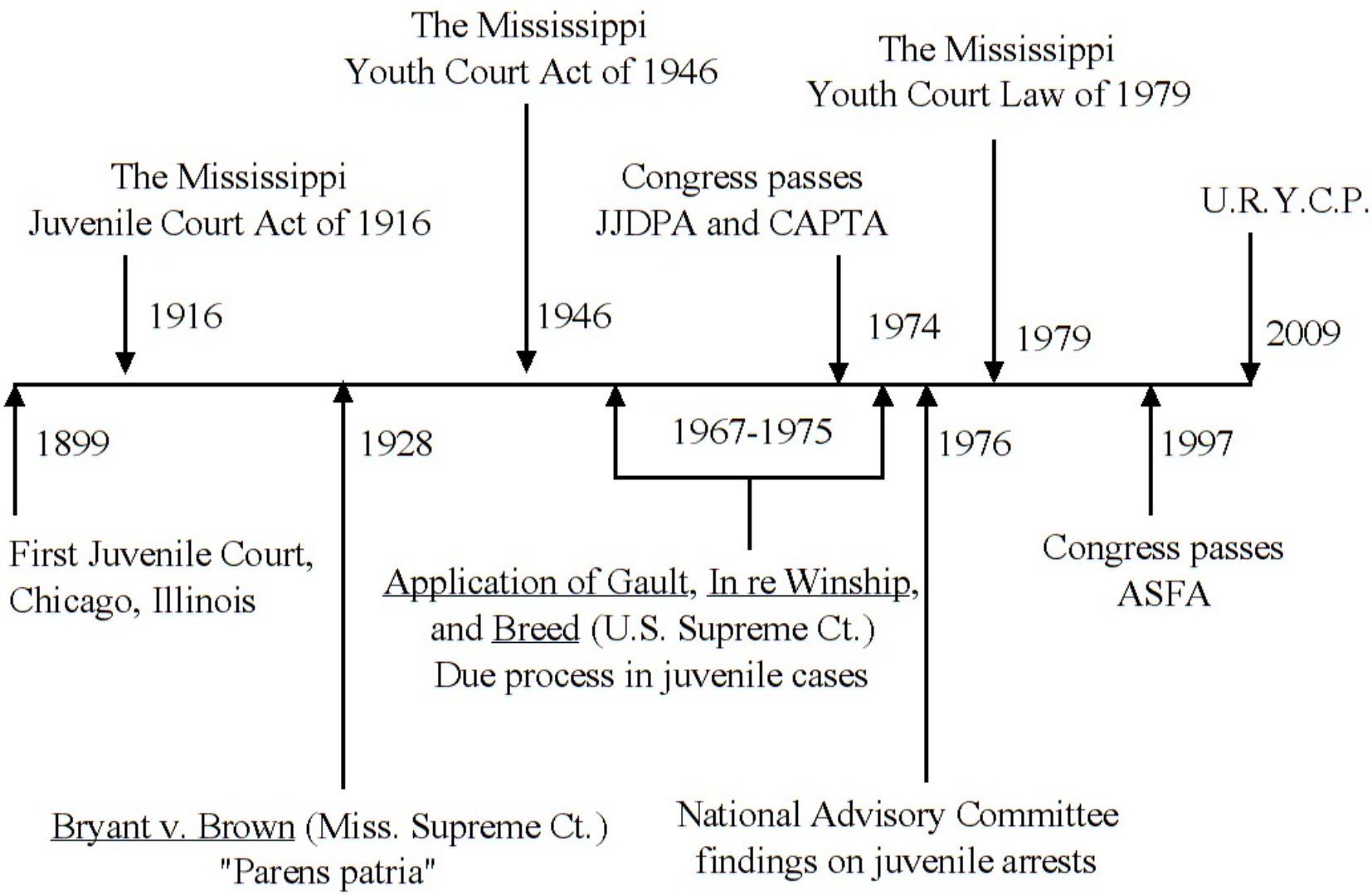
[42]*See* Arthur L. Burnett, Sr., *What of the Future? Envisioning an Effective Juvenile Court*, 15-SPG Crim. Just. 6 (2000); *see also* Davis, *supra* note 38, at 33 (promoting a discretionary decision-making model in response to juvenile crime as opposed to trendy, but mistakenly premised, "get tough" criminalization).

[43]*See* Gordon Bazemore, *Will the Juvenile Court System Survive? The Fork in the Road to Juvenile Court Reform*, 564 Annals Am. Acad. Pol. & Soc. Sci. 81 (1999) (promoting a "restorative justice response" to juvenile crime).

[44]*See* Reynolds, *supra* note 10, at 124 (noting that the Mississippi Supreme Court as early as 1928 recognized the Constitutional challenges facing the court in handling youthful offenders under state laws when (in Bryant v. Brown, 118 So. 184, 188 (Miss. 1928)) it said: "The liberty protected by the Fourteenth Amendment of the Federal Constitution may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.").

[45]*See* Application of Gault, 387 U.S. 1, 19 n.25 (1967) ("The indispensable elements of due process are: first, a tribunal with jurisdiction; second, notice of a hearing to the proper parties; and finally, a fair hearing.").

# Youth Court Time Line



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## *CHAPTER 1*

## *JURISDICTION, VENUE AND TRANSFERS*


***100 JURISDICTION***

**Construction of the laws for youth court proceedings**
**Creation of youth courts**
**Power and authority of youth court**
**Exclusive original jurisdiction of youth courts**
**Actions not within the jurisdiction of the youth court**
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**Sentencing if case is not transferred to youth court**
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➤ **Construction of the laws for youth court proceedings**

**§ 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, 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.

**U.R.Y.C.P. 3**

(a) These rules are intended to provide a just, reasonably prompt, and efficient determination of every action within the jurisdiction of the youth court.
(b) These rules shall not be construed to extend or limit the jurisdiction of the courts of Mississippi.
(c) These rules shall be interpreted and applied in keeping with the philosophy expressed in section 43-21-103 of the Mississippi Code.

➤ **Creation of youth courts**

**Art. 6 § 171**

The legislature shall, from time to time, establish such other inferior courts as may be necessary, and abolish the same whenever deemed expedient.

**§ 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:
(a) “Youth court” means the Youth Court Division.

**§ 43-21-107**

(1) A youth court division is hereby created as a division of the county court of each county now or hereafter having a county court, and the county judge shall be the judge of the youth court unless another judge is named by the county judge as provided by this chapter.

(2) A youth court division is hereby created as a division of the chancery court of each county in which no county court is maintained and any chancellor within a chancery court district shall be the judge of the youth court of that county within such chancery court district unless another judge is named by the senior chancellor of the county or chancery court district as provided by this chapter.
(3) In any county where there is no county court or family court on July 1, 1979, there may be created a youth court division as a division of the municipal court in any city if the governing authorities of such city adopt a resolution to that effect. The cost of the youth court division of the municipal court shall be paid from any funds available to the municipality excluding county funds. No additional municipal youth court shall be formed after January 1, 2007.

*Case law:*

In re T.L.C., 566 So. 2d 691, 696 (Miss. 1990) ("[Y]outh courts are neither superior, equal to, or inferior to other "inferior" courts--they are special courts due to the special nature of their function").

➤ **Power and authority of youth court**

**§ 43-21-153**

(1) The youth court shall have full power and authority to issue all writs and processes including injunctions necessary to the exercise of jurisdiction and to carrying out the purpose of this chapter.
(2) Any person who wilfully violates, neglects or refuses to obey, perform or comply with any order of the youth court shall be in contempt of court and punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in jail not to exceed ninety (90) days, or by both such fine and imprisonment.

*Case law:*

In re M.I., 519 So. 2d 433, 435-36 (Miss. 1988) ("Clearly the youth court had the authority to issue the temporary and permanent injunctions [under § 43–21–153] . . . .").

➤ **Exclusive original jurisdiction of youth courts**

As these terms are defined under section 43-21-105, the youth court has exclusive original jurisdiction in all proceedings concerning:

- a delinquent child;
- an abused or neglected child;
- a child in need of supervision; and
- a dependent child.

*See* U.R.Y.C.P 4; Miss. Code Ann. §§ 43-21-105, -151.

*Case law:*

In re N.M. v. Mississippi Dep't of Human Servs., Marion Cty., 215 So. 3d 1007, 1013 (Miss. Ct. App. 2017) ("[W]e find our 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.").

Meadows v. State, 217 So.3d 772, 777 (Miss. Ct. App. 2017) ("[Y]outh-court jurisdiction attaches at the time of the offense, not the time of the indictment.").

In re L.D.M., 910 So. 2d 522, 524 (Miss. 2005) ("[S]ince a 10-month-old child does not meet the definition of a child in need of supervision as set forth in Miss.Code Ann. § 43-21-105(k) . . ., the Youth Court did not have jurisdiction over this case.").

In re D.L.D., 606 So. 2d 1125, 1127 (Miss. 1992) ("[T]he Youth Court has exclusive original jurisdiction in all proceedings concerning an abused child, and that jurisdiction continues until the child's twentieth birthday. Miss.Code Ann. § 43-21-151(1)-(2).").

In re T.D.B., 446 So. 2d 598, 600 (Miss. 1984) ("The Youth Court Law provides exclusive original jurisdiction in the Youth Court for matters concerning delinquent children.").

➤ **Actions not within the jurisdiction of the youth court**

**Comment to U.R.Y.C.P. 3(a)**

Rule 3(a) limits the scope of these rules to every action within the jurisdiction of the youth court. Actions not within the jurisdiction of the youth court include:
(1) any offense, unless there is a transfer to youth court pursuant to section 43-21-159 of the Mississippi Code, committed by a child 13 years or older which is:
(a) punishable under state or federal law by life imprisonment or death. See Miss. Code Ann. §§ 43-21-105(j), -151(a) (2008); Holly v. State, 671 So. 2d 32 (Miss. 1996); Winters v. State, 473 So. 2d 452 (Miss. 1985). Cf. Williams v. State, 459 So. 2d 777, 779 (Miss. 1984) (holding that once jurisdiction is acquired by the circuit court, it is not lost by accepting a plea to a lesser-included offense or conviction for a lesser-included offense);
(b) a felony and involves the use of a deadly weapon, the carrying of which concealed is prohibited by section 97-37-1, or a shotgun or a rifle. See Miss. Code Ann. § 43-21-151(b) (2008);
(c) committed on or after the child's eighteenth birthday. See Miss. Code Ann. § 43-21-151(2) (2008);

(d) committed after the circuit court has had original jurisdiction and the child was convicted by the circuit court. See Miss. Code Ann. § 43-21-157 (2008);
(e) transferred by the youth court to a criminal court. See Miss. Code Ann. § 43-21-157 (2008);
(f) a hunting or fishing violation, a state or federal traffic violation, a violation under the Mississippi Implied Consent Law, a violation of a municipal ordinance or county resolution, or a violation of section 67-3-70 of the Mississippi Code. See Miss. Code Ann. § 43-21-159 (2008); White v. Walker, 950 F.2d 972 (5th Cir. 1991);
(2) adoption proceedings. See Miss. Code Ann. § 93-17-3 (2008); In re Beggiani, 519 So. 2d 1208 (Miss. 1988);
(3) paternity actions. See Miss. Code Ann. 93-9-15 (2008); Davis v. Washington, 453 So. 2d 712 (Miss. 1984);
(4) cases involving exclusively child support, contempt, and modification issues. See Dep't of Human Servs. v. Blount, 913 So. 2d 326 (Miss. Ct. App. 2005).

*See also* U.R.Y.C.P. 3(b) ("[The Uniform Rules of Youth Court Practice] shall not be construed to extend or limit the jurisdiction of the courts of Mississippi."); Miss. Code Ann. §§ 43-21-151, -159.

*Case law:*

In re D.S., 943 So. 2d 1280, 1283 (Miss. 2006) ("The only determination necessary to vest original jurisdiction over a juvenile in the circuit court is whether an adult who committed the same offense would be exposed to death or life imprisonment.").

Helmert v. Biffany, 842 So. 2d 1287, 1293 (Miss. 2003) ("Youth court is neither equipped or authorized by statute to decide issues of paternity, custody, or visitation, absent allegations of abuse, neglect or delinquency.").

Miller v. State, 740 So. 2d 858, 867 (Miss. 1999) ("Miller has failed to demonstrate that the jurisdictional provisions of the Mississippi Youth Court Act violate his rights to due process and equal protection under the United States and Mississippi Constitutions.").

Rush v. State, 811 So. 2d 431, 437 (Miss. Ct. App. 2001) ("When a minor is above the age when he is subject to the jurisdiction of the Youth Court he may enter a plea of "guilty" in the circuit court to an indictment charging him with a crime.").

Bronson v. State, 786 So. 2d 1083, 1089 (Miss. Ct. App. 2001) ("Here, the circuit court was the proper jurisdiction, since Bronson did use a shotgun to commit the robbery, and the maximum penalty for the crime is life imprisonment. Thus, the youth court had no jurisdiction here and the [Mississippi Youth Court Act] did not apply.").

Young v. State, 797 So. 2d 239, 245 (Miss. Ct. App. 2001) ("We acknowledge that these charges were reduced to the crimes of attempted robbery and accessory after the fact to

robbery which mandate less than a life sentence; however, this does not remove original jurisdiction from the circuit court.”).

➤ **Chancery court’s ancillary jurisdiction**

**Comment to U.R.Y.C.P. 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 [the Uniform Rules of Youth Court Practice].

*Case law:*

B.A.D. v. Finnegan, 82 So. 3d 608, 613 (Miss. 2012) (“The plain language of the [Youth Court] Act does allow the youth court to terminate its jurisdiction of a case. . . . The Court's holding today does not suggest that youth courts can simply terminate their jurisdiction to get cases out of their chambers. But, in this case, there is no harm in allowing the chancery court to retain jurisdiction. . . . The matter transferred involves purely custody. Thus, the chancery court's retention of this case would not run afoul of the youth court's jurisdiction.”).

McDonald v. McDonald, 39 So.3d 868, 886 (Miss. 2010) (“[Miss. Code Ann. § 43-21-151(1)] grants jurisdiction to a youth court in allegations of child abuse, but excepts that a chancery court “may proceed” if a custody action is pending.”).

In re V.M.H., 223 So. 3d 187, 190 (Miss. Ct. App. 2017) (“[I]n the instant case, the chancery court never asserted jurisdiction, and it was the youth court that adjudicated the abuse allegations. It had jurisdiction to do so from the statute.”).

In re L.H., 87 So. 3d 1139, 1142 (Miss. Ct. App. 2012) (“A “charge of abuse” did not “first arise” during the course of a pending chancery court custody action between L.H.'s parents because there was not a pending custody action between L.H.'s parents. The youth court did not err by exercising subject-matter jurisdiction over the charge that L.H. had been sexually abused by her cousins while she was visiting the Appellants.”).

Thomas v. Byars, 947 So. 2d 375, 378 (Miss. Ct. App. 2007) (“When a youth court order and a chancery court order conflict in a case regarding an abused or neglected child, the order of the youth court predominates because jurisdiction over the child resides in the youth court.”).

➤ **Dismissals by other courts for lack of jurisdiction**

**§ 43-21-159**

(1) When a person appears before a court other than the youth court, and it is determined that the person is a child under jurisdiction of the youth court, such court shall, unless the jurisdiction of the offense has been transferred to such court as provided in this chapter, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted, immediately dismiss the proceeding without prejudice and forward all documents pertaining to the cause to the youth court; and all entries in permanent records shall be expunged. The youth court shall have the power to order and supervise the expunction or the destruction of such records in accordance with Section 43–21–265.

➤ **Removal by the youth court of certain criminal misdemeanors**

**U.R.Y.C.P. 23(c)**

(c) Removal by the youth court of certain criminal misdemeanor offenses. Unless the cause has been transferred, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult, except for violations under the Implied Consent Law, and was convicted, the youth court shall have power on its own motion to remove jurisdiction from any criminal court of any offense including a hunting or fishing violation, a traffic violation, a violation of the Mississippi Implied Consent Law, or a violation of section 67-3-70 of the Mississippi Code, committed by a child in a matter under the jurisdiction of the youth court and proceed therewith in accordance with the provisions of the Mississippi Youth Court Law. Such does not apply to a youth who has a pending charge or a conviction for any crime over which circuit court has original jurisdiction.

**§ 43-21-159**

(1) . . . In cases where the child is charged with a hunting or fishing violation or a traffic violation, whether it be any state or federal law, a violation of the Mississippi Implied Consent Law, or municipal ordinance or county resolution, or where the child is charged with a violation of Section 67–3–70, the appropriate criminal court shall proceed to dispose of the same in the same manner as for other adult offenders and it shall not be necessary to transfer the case to the youth court of the county. However, unless the cause has been transferred, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted, the youth court shall have power on its own motion to remove jurisdiction from any criminal court of any offense including a hunting or fishing violation, a traffic violation, a violation of the Mississippi Implied Consent Law, or a violation of Section 67–3–70, committed by a child in a matter under the jurisdiction of the youth court and proceed therewith in accordance with the provisions of this chapter.

. . .

(3) Nothing in subsection (1) or (2) shall apply to a youth who has a pending charge or a conviction for any crime over which circuit court has original jurisdiction.

➤ **Stay of execution by the youth court of certain criminal misdemeanors**

**Comment to U.R.Y.C.P. 11(a)(1)**

When a child is convicted of a misdemeanor offense by a criminal court having original jurisdiction of the misdemeanor charge and the sentence includes that the child is to be committed to, incarcerated in or imprisoned in a jail or other place of detention, the commencement of such commitment, incarceration or imprisonment in a jail or other place of detention is stayed until the criminal court has notified the youth court judge or the judge's designee of the conviction and sentence.

**U.R.Y.C.P. 23(d)**

(d) Stay of execution by the youth court of certain criminal misdemeanor offenses. After conviction and sentence of any child by any court having original jurisdiction on a misdemeanor charge, and within the time allowed for an appeal of such conviction and sentence, the youth court of the county shall have the full power to stay the execution of the sentence and to release the child on good behavior or on other order as the youth court may see fit to make unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted. When a child is convicted of a misdemeanor and is committed to, incarcerated in or imprisoned in a jail or other place of detention by a criminal court having proper jurisdiction of such charge, such court shall notify the youth court judge or the judge's designee of the conviction and sentence prior to the commencement of such incarceration.

**§ 43-21-159**

(2) After conviction and sentence of any child by any other court having original jurisdiction on a misdemeanor charge, and within the time allowed for an appeal of such conviction and sentence, the youth court of the county shall have the full power to stay the execution of the sentence and to release the child on good behavior or on other order as the youth court may see fit to make unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted. When a child is convicted of a misdemeanor and is committed to, incarcerated in or imprisoned in a jail or other place of detention by a criminal court having proper jurisdiction of such charge, such court shall notify the youth court judge or the judge's designee of the conviction and sentence prior to the commencement of such incarceration. The youth court shall have the power to order and supervise the destruction of any records involving children maintained by the criminal court in accordance with Section 43–21–265. However, the youth court shall have the power to set aside a judgment of any other court rendered in any matter over which the youth court has exclusive original

jurisdiction, to expunge or destroy the records thereof in accordance with Section 43–21–265, and to order a refund of fines and costs.
(3) Nothing in subsection (1) or (2) shall apply to a youth who has a pending charge or a conviction for any crime over which circuit court has original jurisdiction.

## *101 PROPER VENUE*

### ➤ Delinquency proceedings

**U.R.Y.C.P. 21(a)**

(a) Delinquency and child in need of supervision proceedings. If a child is alleged to be a delinquent child or a child in need of supervision, the proceedings shall be commenced in any county where any of the alleged acts are said to have occurred. After adjudication, the youth court may, in the best interest of the child, transfer the case at any stage of the proceeding for disposition to the county where the child resides or to a county where a youth court has previously acquired jurisdiction.

*See also* Comment to U.R.Y.C.P. 21(a) ("This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-155(1) (2008).")

*Case law:*

In re K.A.R., 441 So. 2d 108, 109 (Miss. 1983) ("[E]ach judicial district is to be treated as a separate county for purposes of jurisdiction and venue . . . .").

### ➤ Child protection proceedings

**U.R.Y.C.P. 21(b)**

(b) Child protection proceedings. If a child is alleged to be an abused or neglected child, the proceedings shall be commenced in the county where the child's custodian resides or in the county where the child is present when the report is made to the intake unit.

*See also* Comment to U.R.Y.C.P. 21(b) ("This provision comports with the statutory procedures. *See* Miss. Code Ann. § 43-21-155(2) (2008).").

**§ 43-21-155**

(2) If a child is alleged to be an abused or neglected child, the proceedings shall be commenced in the county where the child's custodian resides or in the county where the child is present when the report is made to the intake unit. After adjudication the youth court may transfer the case at any stage of the proceeding for disposition to the county

where the child resides or to a county where a youth court has previously acquired jurisdiction if that is in the best interest of the child.

*Case law:*

In re A.J.M., 911 So. 2d 576, 579 (Miss. Ct. App. 2005) ("Under subsection (2) [of section 43-21-155] the location of the occurrence of the abuse or neglect does not determine venue. Instead, venue is proper in the county where the child's custodian resides or in the county where the child is when the report is filed.").

➤ **Governing law**

**U.R.Y.C.P. 23(a)**

(a) Transfers from youth court. Procedures for transferring cases from youth court to criminal court shall be conducted pursuant to section 43-21-157 of the Mississippi Code.

➤ **Initiating a transfer**

**§ 43-21-157**

(1) If a child who has reached his thirteenth birthday is charged by petition to be a delinquent child, the youth court, either on motion of the youth court prosecutor or on the youth court's own motion, after a hearing as hereinafter provided, may, in its discretion, transfer jurisdiction of the alleged offense described in the petition or a lesser included offense to the criminal court which would have trial jurisdiction of such offense if committed by an adult. The child shall be represented by counsel in transfer proceedings.

➤ **When motion to transfer is to be filed**

**§ 43-21-157**

(2) A motion to transfer shall be filed on a day prior to the date set for the adjudicatory hearing but not more than ten (10) days after the filing of the petition.

➤ **Ordering a transfer study**

**§ 43-21-157**

(2) . . . The youth court may order a transfer study at any time after the motion to transfer is filed. The transfer study and any other social record which the youth court will consider at the transfer hearing shall be made available to the child's counsel prior to the hearing.

➤ **How summons is to be served**

**§ 43-21-157**

(2) . . . Summons shall be served in the same manner as other summons under this chapter with a copy of the motion to transfer and the petition attached thereto.

➤ **Transfer hearing to be bifurcated**

**§ 43-21-157**

(3) The transfer hearing shall be bifurcated. At the transfer hearing, the youth court shall first determine whether probable cause exists to believe that the child committed the alleged offense. For the purpose of the transfer hearing only, the child may, with the assistance of counsel, waive the determination of probable cause.

➤ **Clear and convincing evidence standard**

**§ 43-21-157**

(4) Upon such a finding of probable cause, the youth court may transfer jurisdiction of the alleged offense and the youth if the youth court finds by clear and convincing evidence that there are no reasonable prospects of rehabilitation within the juvenile justice system.

➤ **Factors for determining the reasonable prospects of rehabilitation**

**§ 43-21-157**

(5) The factors which shall be considered by the youth court in determining the reasonable prospects of rehabilitation within the juvenile justice system are:
(a) Whether or not the alleged offense constituted a substantial danger to the public;
(b) The seriousness of the alleged offense;
(c) Whether or not the transfer is required to protect the community;
(d) Whether or not the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
(e) Whether the alleged offense was against persons or against property, greater weight being given to the offense against persons, especially if personal injury resulted;
(f) The sophistication, maturity and educational background of the child;
(g) The child's home situation, emotional condition and life-style;
(h) The history of the child, including experience with the juvenile justice system, other courts, probation, commitments to juvenile institutions or other placements;
(i) Whether or not the child can be retained in the juvenile justice system long enough for effective treatment or rehabilitation;
(j) The dispositional resources available to the juvenile justice system;
(k) Dispositional resources available to the adult correctional system for the child if treated as an adult;
(l) Whether the alleged offense was committed on school property, public or private, or at any school-sponsored event, and constituted a substantial danger to other students;
(m) Any other factors deemed relevant by the youth court; and
(n) Nothing in this subsection shall prohibit the transfer of jurisdiction of an alleged offense and a child if that child, at the time of the transfer hearing, previously has not been placed in a juvenile institution.

➤ **What transfer order is to contain**

**§ 43-21-157**

(6) If the youth court transfers jurisdiction of the alleged offense to a criminal court, the youth court shall enter a transfer order containing:
(a) Facts showing that the youth court had jurisdiction of the cause and of the parties;
(b) Facts showing that the child was represented by counsel;
(c) Facts showing that the hearing was held in the presence of the child and his counsel;
(d) A recital of the findings of probable cause and the facts and reasons underlying the youth court's decision to transfer jurisdiction of the alleged offense;
(e) The conditions of custody or release of the child pending criminal court proceedings, including bail or recognizance as the case may justify, as well as a designation of the custodian for the time being; and
(f) A designation of the alleged offense transferred and of the court to which the transfer is made and a direction to the clerk to forward for filing in such court a certified copy of the transfer order of the youth court.

➤ **Use of child's testimony at transfer hearing restricted**

**§ 43-21-157**

(7) The testimony of the child respondent at a transfer hearing conducted pursuant to this chapter shall not be admissible against the child in any proceeding other than the transfer hearing.

➤ **Effect of transfer to the circuit court**

**§ 43-21-157**

(8) When jurisdiction of an offense is transferred to the circuit court, or when a youth has committed an act which is in original circuit court jurisdiction pursuant to Section 43-21-151, the jurisdiction of the youth court over the youth for any future offenses is terminated, except that jurisdiction over future offenses is not terminated if the circuit court transfers or remands the transferred case to the youth court or if a child who has been transferred to the circuit court or is in the original jurisdiction of the circuit court is not convicted. However, when jurisdiction of an offense is transferred to the circuit court pursuant to this section or when an offense committed by a youth is in original circuit court jurisdiction pursuant to Section 43-21-151, the circuit court shall thereafter assume and retain jurisdiction of any felony offenses committed by such youth without any additional transfer proceedings. Any misdemeanor offenses committed by youth who are in circuit court jurisdiction pursuant to this section or Section 43-21-151 shall be prosecuted in the court which would have jurisdiction over that offense if committed by an adult without any additional transfer proceedings.

➤ **Circuit court may review transfer proceedings**

**§ 43-21-157**

(8) . . . The circuit court may review the transfer proceedings on motion of the transferred child. Such review shall be on the record of the hearing in the youth court. The circuit court shall remand the offense to the youth court if there is no substantial evidence to support the order of the youth court. The circuit court may also review the conditions of custody or release pending criminal court proceedings.

➤ **Transfers to be recognized by all other courts of the state**

**§ 43-21-157**

(9) When any youth has been the subject of a transfer to circuit court for an offense committed in any county of the state or has committed any act which is in the original jurisdiction of the circuit court pursuant to Section 43-21-151, that transfer or original jurisdiction shall be recognized by all other courts of the state and no subsequent offense committed by such youth in any county of the state shall be in the jurisdiction of the youth court unless transferred to the youth court pursuant to Section 43-21-159(3).

➤ **Transfers from youth courts of other states**

**§ 43-21-157**

(9) . . . Transfers from youth courts of other states shall be recognized by the courts of this state and no youth who has a pending charge or a conviction in the adult court system of any other state shall be in the jurisdiction of the youth courts of this state, but such youths shall be in the jurisdiction of the circuit court for any felony committed in this state or in the jurisdiction of the court of competent jurisdiction for any misdemeanor committed in this state.

*Case law:*

Buck v. State, 838 So. 2d 256, 261 (Miss. 2003) ("[T]he statutory youth court transfer procedure is comprehensive and must be followed.").

Hicks v. State, 870 So. 2d 1238, 1240 (Miss. Ct. App. 2004) (The [transfer] order entered in this matter fully complied with the statutes. . . . Accordingly, [the] claim that the youth court did not have the necessary jurisdiction to transfer the case to circuit court is without merit.").

Biggs v. State, 741 So. 2d 318, 331 (Miss. Ct. App. 1999) ("[B]efore transferring a juvenile for trial in the circuit courts, the youth court must first conduct a bifurcated

hearing and (1) determine . . . [that] probable cause exists to believe that the child committed the alleged offense; and (2) find by clear and convincing evidence that there are no reasonable prospects of rehabilitation within the juvenile system.”).

## *103 TRANSFERS TO YOUTH COURT*

➤ **Governing law**

**U.R.Y.C.P. 23(a)**

(b) Transfers to youth court. Procedures for transferring cases from other courts to youth court shall be conducted pursuant to section 43-21-159 of the Mississippi Code.

➤ **When the circuit court judge may transfer a case to youth court**

**§ 43-21-159**

(4) In any case wherein the defendant is a child as defined in this chapter and of which the circuit court has original jurisdiction, the circuit judge, upon a finding that it would be in the best interest of such child and in the interest of justice, may at any stage of the proceedings prior to the attachment of jeopardy transfer such proceedings to the youth court for further proceedings unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted or has previously been convicted of a crime which was in original circuit court jurisdiction, and the youth court shall, upon acquiring jurisdiction, proceed as provided in this chapter for the adjudication and disposition of delinquent child proceeding proceedings.

*Case law:*

State v. U.G., 726 So. 2d 151, 155 (Miss. 1998) (“Neither the best interest of the child nor "the interest of justice” overrides the other, but they can be separate interests and must be given full review by the circuit court.”); *but. cf.* Horne v. State, 825 So. 2d 627, 634 (Miss. 2002) (“The acts of the perpetrators demonstrate a clear lack of conscience. . . . We find that, even though the circuit court erred by not considering the two factors under State v. U.G., this error was harmless.”).

Hoops v. State, 681 So. 2d 521, 536 (Miss. 1996) (“A transfer to youth court may be made at any stage of the proceedings prior to the attachment of jeopardy.”).

➤ **Sentencing if case is not transferred to youth court**

**§ 43-21-159**

(4) . . . If the case is not transferred to the youth court and the youth is convicted of a crime by any circuit court, the trial judge shall sentence the youth as though such youth was an adult. The circuit court shall not have the authority to commit such child to the custody of the Department of Youth Services for placement in a state-supported training school.

➤ **Restrictions on transfers to youth court**

**§ 43-21-159**

(7) No offense involving the use or possession of a firearm by a child who has reached his fifteenth birthday and which, if committed by an adult would be a felony, shall be transferred to the youth court.

*Case law:*

Cockrell v. State, 811 So. 2d 305, 307-08 (Miss. Ct. App. 2001) ("The applicable statute concerning youth court jurisdiction for this offense at the time it was committed was Section 43–21–159(7), . . . ").

Wash v. State, 807 So. 2d 452, 459 (Miss. Ct. App. 2001) ("[T]he issue of Wash's age at the time of the event is critical [ in determining whether a transfer is prohibited under section 43-21-159(7)].").

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## *CHAPTER 2*

## *GUARDIANS AD LITEM AND ATTORNEYS OF RECORD*

### *200 GUARDIAN AD LITEM*

**When appointment is required**
**Who may be appointed**
**Duties**
**Youth court to consider guardian ad litem's recommendation**
**Reasonable fees**
**Appointment of volunteer trained layperson to assist children**
**Appointment of an attorney if conflict exists**

### *201 ATTORNEY OF RECORD / WITHDRAWAL OF COUNSEL*

**Appointment of counsel in delinquency and children in need of supervision matters**
**Qualifications for attorneys appointed to delinquency cases**
**Entry of appearance**
**Withdrawal of counsel**

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➤ **When appointment is required**

**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.

*See also* Miss. Code Ann. § 43-21-121(5) ("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.").

*Case law:*

Smith v. Smith, 206 So. 3d 502, 510 (Miss. 2016) ("When a chancellor chooses to hear the abuse allegation during a custody hearing, appointment of a GAL is mandatory.").

Chrissy F. v. Mississippi Department of Public Welfare, 995 F.2d 595, 599 (5th Cir. 1993) ("The district court erred in attributing to Upton and Dale, as judicial officers, the constitutional duty to protect Chrissy F.'s procedural rights beyond appointment of a guardian ad litem.").

S.G. v. D.C., 13 So.3d 269, 282 (Miss. 2009) ("When making an appointment, we encourage chancellors to define clearly the role and responsibility of the guardian ad litem.").

In re R.D., 658 So. 2d 1378, 1385 (Miss. 1995) ("[T]he children's due process rights to representation cannot and will not be ignored by this Court. 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.").

➤ **Who may be appointed**

**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.

**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.

*Note:* The AOC maintains a roll of all attorneys and laypersons eligible for appointment as a guardian ad litem.

**U.R.Y.C.P. 13(g)**

(g) Appointment of attorney in delinquency matters. In delinquency matters, if a guardian ad litem is appointed, the guardian ad litem and the legal defense counsel for the child cannot be the same person.

*Accord* Miss. Code Ann. § 43-21-121.

*Case law:*

In re R.D., 658 So. 2d 1378, 1383 (Miss. 1995) (judge must select as guardian ad litem competent person with no adverse interest to child, and further, make sure same is adequately instructed on proper performance of duties).

➤ **Duties**

**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.

**Comment to U.R.Y.C.P. 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).

Recommendations or reports by the guardian ad litem pursuant to this provision shall not constitute an ex parte communication.

*Accord* Miss. Code Ann. § 43-21-121.

➤ **Youth court to consider guardian ad litem's recommendation**

The youth court is not required to follow the guardian ad litem's recommendations. But, if the recommendations are not followed, then the youth court judge must state in the findings of facts and conclusions of law the reasons for not adopting them.

*Case law:*

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.").

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.").

➤ **Reasonable fees**

**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.

**Comment to U.R.Y.C.P. 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.

**§ 43-21-121**

(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.

➤ **Appointment of volunteer trained layperson to assist children**

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

(e) Appointment of volunteer trained layperson to assist children. The court may appoint a volunteer trained layperson to assist children, in addition to the appointment of a guardian ad litem, pursuant to section 43-21-121(7) of the Mississippi Code.

*Accord* Miss. Code Ann. § 43-21-121.

**§ 43-21-121(7)**

(7)(a) The court, in its sound discretion, may appoint a volunteer trained layperson to assist children subject to the provisions of this section in addition to the appointment of a guardian ad litem. If the court utilizes his or her discretion as prescribed under this subsection, a volunteer Court–Appointed Special Advocate (CASA) shall be appointed from a program that supervises the volunteer and meets all state and national CASA standards to advocate for the best interests of children in abuse and neglect proceedings. To accomplish the assignment of a CASA volunteer, the court shall issue an order of assignment that shall grant the CASA volunteer the authority, equal to that of the guardian ad litem, to review all relevant documents and to interview all parties and witnesses involved in the proceeding in which he or she is appointed. Except as otherwise ordered by the court, the assignment of a CASA volunteer for a child shall include subsequent proceedings through permanent placement of the child.
(b) Before assigning a CASA volunteer as prescribed under this subsection, the youth court judge shall determine if the volunteer has sufficient qualifications, training and ability to serve as a CASA volunteer, including his or her ability to represent and advocate for the best interests of children assigned to him or her. No volunteer shall be assigned until a comprehensive criminal background check has been conducted.
All CASA volunteers shall:
(i) Be sworn in by a judge of the court;
(ii) Swear or affirm to abide by all laws, regulations, and orders of the court;
(iii) Swear or affirm to advocate what he or she perceives to be in the best interests of the child for whom he or she is assigned in all matters pending before the court;
(iv) Provide independent, factual information to the court regarding the children and cases to which they are assigned;
(v) Advocate on behalf of the children involved in the cases to which they are assigned what they perceive to be in the best interests of the children; and

(vi) Monitor proceedings in cases to which they have been assigned and advise and assist the court in its determination of the best interests of the children involved.
(c) Regarding any case to which a CASA volunteer has been assigned, the CASA volunteer:
(i) Shall be notified by the court of all court proceedings and hearings of any kind pertaining to the child;
(ii) Shall be notified by the Department of Child Protection Services of all administrative review hearings;
(iii) Shall be entitled to attend all court proceedings and hearings of any kind pertaining to the child;
(iv) May be called as a witness in the proceedings by any party or by the court and may request of the court the opportunity to appear as a witness; and
(v) Shall be given access to all portions of the court record relating to proceedings pertaining to the child and the child's family.
(d) Upon application to the court and notice to all parties, the court shall grant the CASA volunteer access to other information, including the department records as provided in Section 43–21–261, relating to the child and the child's family and to other matters involved in the proceeding in which he or she is appointed. All records and information requested or reviewed by the CASA volunteer in the course of his or her assignment shall be deemed confidential and shall not be disclosed by him except pursuant to court order. All records and information shall only be disclosed as directed by court order and shall be disclosed as directed by court order and shall be subject to whatever protective order the court deems appropriate.

*Case law:*

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.").

➤ **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.

**Comment to U.R.Y.C.P. 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.

*Accord* Miss. Code Ann. § 43-21-201.

## *201 ATTORNEY OF RECORD / WITHDRAWAL OF COUNSEL*

### ➤ Appointment of counsel in delinquency and children in need of supervision matters

**U.R.Y.C.P. 14(a)**

(a) Appointment of counsel in delinquency and children in need of supervision matters. In delinquency and children in need of supervision matters, the youth court shall appoint legal counsel to represent indigent children at all critical stages, which include, but are not limited to, detention, adjudicatory, and disposition hearings and parole and probation revocation proceedings.

**§ 43-21-201**

(1) Each party shall have the right to be represented by counsel at all stages of the proceedings including, but not limited to, detention, adjudicatory and disposition hearings and parole or probation revocation proceedings. In delinquency matters the court shall appoint legal defense counsel who is not also a guardian ad litem for the same child. If the party is a child, the child shall be represented by counsel at all critical stages: detention, adjudicatory and disposition hearings; parole or probation revocation proceedings; and post-disposition matters. If indigent, the child shall have the right to have counsel appointed for him by the youth court.

. . .

(4) The child's attorney shall owe the same duties of undivided loyalty, confidentiality and competent representation to the child or minor as is due an adult client pursuant to the Mississippi Rules of Professional Conduct.

➤ **Qualifications for attorneys appointed to delinquency cases**

**§ 43-21-201**

(3) An attorney appointed to represent a delinquent child shall be required to complete annual juvenile justice training that is approved by the Mississippi Judicial College or the Mississippi Commission on Continuing Legal Education. The Mississippi Judicial College and the Mississippi Commission on Continuing Legal Education shall determine the amount of juvenile justice training and continuing education required to fulfill the requirements of this subsection. The Administrative Office of Courts shall maintain a roll of attorneys who have complied with the training requirements and shall enforce the provisions of this subsection. Should an attorney fail to complete the annual training requirement or fail to attend the required training within six (6) months of being appointed to a youth court case, the attorney shall be disqualified to serve and the youth court shall immediately terminate the representation and appoint another attorney. Attorneys appointed by a youth court to five (5) or fewer cases a year are exempt from the requirements of this subsection.

➤ **Entry of appearance**

**U.R.Y.C.P. 14(b)**

(b) Entry of appearance. An attorney shall be deemed of record when the attorney appears personally before the court, files a written entry of appearance, or has been appointed by the court. Once an attorney is deemed of record that attorney shall continue to represent the party in all proceedings pertaining to the case except upon a withdrawal of counsel as set forth in Rule 14(c). After an entry of appearance, counsel shall be served with copies of all subsequent pleadings, motions and notices required to be served on the party which counsel represents.

➤ **Withdrawal of counsel**

**U.R.Y.C.P. 14(c)**

(c) Withdrawal of counsel. An attorney who has made an entry of appearance shall not be permitted to withdraw from the case until a timely appeal, if any, has been decided, except by leave of the court after a notice of withdrawal has been served on the party which counsel represents.

## *CHAPTER 3*

## *DELINQUENCY*


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➤ **Appointment of intake unit**

**U.R.Y.C.P. 8**

(d) Appointment of intake unit. In every youth court division the judge shall appoint one or more persons to function as an intake unit pursuant to sections 43-21-115 and 43-21-123 of the Mississippi Code.

**§ 43-21-115**

In every youth court division the judge shall appoint as provided in Section 43-21-123 one or more persons to function as the intake unit for the youth court division. The youth court intake unit shall perform all duties specified by this chapter. If the person serving as the youth court intake unit is not already a salaried public employee, the salary for such person shall be fixed on order of the judge as provided in Section 43-21-123 and shall be paid by the county or municipality, as the case may be, out of any available funds budgeted for the youth court by the board of supervisors.

**§ 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.

The board of supervisors of any county in which there is located a youth court, and the governing authority of any municipality in which there is located a municipal youth court, are each authorized to reimburse the youth court judges and other youth court employees or personnel for reasonable travel and expenses incurred in the performance of their duties and in attending educational meetings offering professional training to such persons as budgeted.

➤ **Reports made to the intake unit**

**§ 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.

**Comment to U.R.Y.C.P. 8(a)**

Uniform Youth Court Case Identification and Docket Numbering System.
The Mississippi Supreme Court has adopted a Uniform Youth Court Case Identification and Docket Numbering System to be implemented by intake in assigning an identification and docket number for every matter coming before the youth courts of the State of Mississippi. See Amended Special Order No. 46 (Miss. Dec. 12, 1997).

Uniform Youth Court Case Tracking System and Form.
The Mississippi Supreme Court has adopted a Uniform Youth Court Case Tracking System and Form to be implemented by intake as a data collection procedure for every matter coming before the youth courts of the State of Mississippi. See Special Order No. 47 (Miss. Dec. 16, 1996).

➤ **Preliminary inquiry**

**§ 43–21–357**

(1) After receiving a report, the youth court intake unit shall promptly make a preliminary inquiry to determine whether the interest of the child, other children in the same environment or the public requires the youth court to take further action. As part of the preliminary inquiry, the youth court intake unit may request or the youth court may order the Department of Human Services, the Department of Youth Services, any successor agency or any other qualified public employee to make an investigation or report concerning the child and any other children in the same environment, and present the findings thereof to the youth court intake unit. If the youth court intake unit receives a neglect or abuse report, the youth court intake unit shall immediately forward the

complaint to the Department of Human Services to promptly make an investigation or report concerning the child and any other children in the same environment and promptly present the findings thereof to the youth court intake unit.

➤ **Intake recommendations**

**U.R.Y.C.P. 8**

(a) Delinquency and child in need of supervision 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 a delinquent child or a child in need of supervision, 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 child be warned or counseled informally; or
**(4)** that the child be referred to the youth court [intervention] court; 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(a) 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* Miss. Code Ann. § 43–21–357(1), providing in part: "(e) That the child be referred to the youth court intervention court;"

➤ **When intake is required to make a recommendation**

**Comment to U.R.Y.C.P. 8(a)**

When the intake unit receives a report of a delinquent child or a child in need of supervision it may request, or the youth court may order, the Department of Human Services, Division of Youth Services, or other appointed intake unit, to make an investigation concerning the child, and any other children in the same environment, and present the findings to the intake unit. If it appears from the intake screening process that the child is a delinquent child or a child in need a supervision, the intake unit must make a recommendation to the youth court pursuant to Rule 8(a) 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. See Miss. Code Ann. § 43-21-357(2).

## *301 COURT ORDERS UPON INTAKE RECOMMENDATIONS*

➤ **Authorized actions**

**U.R.Y.C.P. 9**

(a) Delinquency and child in need of supervision 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 Youth Services, or other appointed intake unit, 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 youth court counselor 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, the informal adjustment process may be commenced after the filing of a petition.
(3) The child be warned or counseled informally. The court may order the child to be warned or counseled informally in accordance with the policies of the Department of Human Services, Division of Youth Services.
(4) The child be referred to the youth court drug court. The court may order the child to be referred to the youth court drug court pursuant to the guidelines developed by the State Drug Court Advisory Committee.
(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.

**Comment to Rule 9(a)(5)**

When the intake unit makes a recommendation that a petition be filed, the court must decide whether to proceed informally or to refer the matter to the youth court prosecutor for the consideration of initiating formal proceedings. If the court refers the matter to the youth court prosecutor for the initiation of formal proceedings and the youth court prosecutor decides to file a petition in accordance with Rule 20 of these rules, then the child shall be afforded the procedural due protections required by law for formal proceedings. See Application of Gault, 387 U.S. 1, 30 (1967) (holding that youth court adjudicatory hearings "must measure up to the essentials of due process and fair treatment"); Patterson v. Hopkins, 350 F. Supp. 676, 683 (N.D. Miss. 1972) ("[T]he Due Process Clause does require application during the adjudicatory hearing of 'the essentials of due process and fair treatment.' . . . [T]he constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in Gault-notice of charges, right to counsel, the rights of confrontation and examination, and the privilege against self-incrimination.") (internal quotation marks omitted).

## *302 INFORMAL ADJUSTMENT PROCESS* ❖

### ➤ Required notice

**§ 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.

### ➤ What the informal adjustment must include

**§ 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.

➤ **An informal adjustment may commence after the filing of a petition**

**§ 43-21-401**

(2) If authorized by the youth court, informal adjustment may be commenced after the filing of a petition.

➤ **Speedy trial is waived**

**§ 43-21-401**

(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.

➤ **Informal adjustment counselor conducts 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.

➤ **Informing the parties of their rights**

**§ 43-21-405**

(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.

➤ **Informing the parties of certain information and procedures**

**§ 43-21-405**

(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.

➤ **Discussing recommendations for actions or conduct**

**§ 43-21-405**

(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.

➤ **Informal adjustment agreement to be written and signed**

**§ 43-21-405**

(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.

➤ **Time limitation to the informal adjustment process**

**§ 43-21-405**

(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.

➤ **Termination if satisfactory completion**

**§ 43-21-407**

(1) If it appears to the informal adjustment counselor that the child and his parent, guardian or custodian:
(a) have complied with the terms and conditions of the informal adjustment agreement; and
(b) have received the maximum benefit from the informal adjustment process, the informal adjustment counselor shall terminate the informal adjustment process and dismiss the child without further proceedings. The informal adjustment counselor shall notify the child and his parent, guardian or custodian in writing of the satisfactory completion of the informal adjustment and report such action to the youth court.

➤ **Termination for other reasons**

**§ 43-21-407**

(2) If it appears to the informal adjustment counselor that further efforts at informal adjustment would not be in the best interests of the child or the community, or that the child or his parent, guardian or custodian:
(a) denies the jurisdiction of the youth court;
(b) declines to participate in the informal adjustment process;
(c) expresses a desire that the facts be determined by the youth court;
(d) fails without reasonable excuse to attend scheduled meetings;
(e) appears unable or unwilling to benefit from the informal adjustment process, the informal adjustment counselor shall terminate the informal adjustment process. If the informal adjustment process is so terminated, the intake unit shall reinitiate the intake procedure under section 43-21-357. Even if the informal adjustment process has been so terminated, the intake unit shall not be precluded from reinitiating the informal adjustment process.

➤ **When a custody order may be issued**

**U.R.Y.C.P. 11**

(a) Delinquency and child in need of supervision proceedings.
(1) When a custody order may be issued. The youth court judge or referee, a chancellor sitting as a youth court judge, or the judge's designee, and no other judge of another court, may issue an order to take into temporary custody or custody a child within the original exclusive 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 temporary custody order or custody order recites that:
(i) there is probable cause the child is within the jurisdiction of the youth 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.

*Accord* Miss. Code Ann. §§ 43-21-301, -307, -315.

➤ **Factors as to whether custody is necessary**

**Comment to U.R.Y.C.P. 11(a)(1)**

Factors the court may consider in determining whether custody is necessary include: the child's family ties and relationships; the child's prior delinquency record; the violent nature of the alleged offense; the child's prior history of committing acts that resulted in bodily injury to others; the child's character and mental condition; the court's ability to supervise the child if placed with a parent or relative; the child's ties to the community; the risk of nonappearance; the danger to the child or public if the child is released; another petition is pending against the child; the home conditions of the child; and a violation of a valid court order. Accord Michigan Court Rule 3.935(C). The court must include its findings in the temporary custody or custody order.

➤ **Order requirements**

**U.R.Y.C.P. 11**

(a)(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 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;
(iv) state the date issued and the youth court by which the order is issued; and
(v) be signed by the youth court judge or referee, or the judge's designee, with the title of his/her office.

*Accord* Miss. Code Ann. §§ 43-21-301, -307, -315.

**Comment to U.R.Y.C.P. 11(a)(2)**

A parent, guardian, or custodian of a child is a party to the case. Such includes the Department of Human Services, Division of Youth Services whenever it is serving as the legal or physical custodian of the child under the Mississippi Youth Court Law.

**§ 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 in danger of a significant risk of harm, any person would be in danger of a significant risk of harm 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 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 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.
(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.

*Case law:*

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.").

➤ **Custody requirements**

**U.R.Y.C.P. 11**

(a)(3) Custody requirements. The court shall comply with the following custodial requirements:
(i) No child who has been accused or adjudicated of any status offense shall be placed in an adult jail or lockup. An accused status offender shall not be held in secure juvenile detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial court appearance, excluding Saturdays, Sundays and statutory state holidays, except under the following circumstances: a status offender may be held in secure juvenile detention for violating a valid court order as set forth in Rule 10 of these rules and pursuant to the criteria as established by the federal Juvenile Justice and Delinquency Prevention Act of 2002, and any subsequent amendments thereto, and out-of-state runaways may be detained pending return to their home state.

(ii) No accused or adjudicated juvenile offender, except for an accused or adjudicated juvenile offender in cases where jurisdiction is waived to the adult criminal court, shall be detained or placed into custody of any adult jail or lockup for a period in excess of six (6) hours.
(iii) The custody of any child taken into custody shall comply with the detention requirements of section 43-21-315 of the Mississippi Code.

*Accord* Miss. Code Ann. §§ 43-21-301, -307, -315.

**§ 43-21-313**

(4) A child held in custody in violation of Section 43-21-301(6) shall be immediately transferred to a proper juvenile facility.

**§ 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.
(2) Except as otherwise provided in this chapter, unless jurisdiction is transferred, no child shall be placed in any jail or place of detention of adults by any person or court unless the child shall be physically segregated from other persons not subject to the jurisdiction of the youth court and the physical arrangement of such jail or place of detention of adults prevents such child from having substantial contact with and substantial view of such other persons; but in any event, the child shall not be confined anywhere in the same cell with persons not subject to the jurisdiction of the youth court. Any order placing a child into custody shall comply with the detention requirements provided in Section 43-21-301(6). This subsection shall not be construed to apply to commitments to the training school under Section 43-21-605(1)(g)(iii).
(3) Any child who is charged with a hunting or fishing violation, a traffic violation, or any other criminal offense for which the youth court shall have power on its own motion to remove jurisdiction from any criminal court, may be detained only in the same facilities designated by the youth court for children within the jurisdiction of the youth court.

➤ **Additional orders after a child is ordered into custody**

**U.R.Y.C.P. 11**

(a)(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.

*Accord* Miss. Code Ann. § 43-21-315.

**§ 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.

➤ **Governing law**

**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.

**Comment to U.R.Y.C.P. 12**

Custody of a child taken into custody without an order may not exceed twenty-four (24) hours unless an order for temporary custody has been issued pursuant to Rule 11 of these rules.

**§ 43-21-301**

(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.

➤ **Grounds for taking a child into custody without a custody order**

**§ 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 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
(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.

*Case law:*

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.").

*See also* Miss. Code Ann. § 43-21-305 ("A law enforcement officer may stop any child abroad in a public place whom the officer has probable cause to believe is within the jurisdiction of the youth court and may question the child as to his name, address and explanation of his actions.").

➤ **Least restrictive custody should be selected**

**§ 43-21-303**

(2) When it is necessary to take a child into custody, the least restrictive custody should be selected.

➤ **Notification requirements**

**§ 43-21-303**

(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.

- **Limitations on the duration of custody**

**§ 43-21-303**

(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.

- **Fingerprinting and photographing restrictions**

**§ 43-21-255**

(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.

- **Interview and interrogation restrictions**

**U.R.Y.C.P. 17**

Procedures governing the rights of a child taken into custody for delinquency or as a child in need of supervision shall be in compliance with section 43-21-311 of the Mississippi Code.

**§ 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.

**§ 43-21-303**

(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.

*Case law:*

In re M.A.C., 566 So.2d 472, 475 (Miss. 1990) ("The adjudication is reversed due to the blatant violation of the statutory right of a parent to be present during interrogation of his or her child.").

Smith v. State, 534 So. 2d 194, 196 (Miss. 1988) ("At the time [the child] gave his confession he had not been charged with any crime that would remove him from the Youth Court's jurisdiction . . . Therefore, the circumstances surrounding [his] confession must satisfy the Youth Court Act.").

➤ **When the rights under Section 43-21-311 do not attach**

**Comment to U.R.Y.C.P. 17**

The rights set forth in section 43-21-311 of the Mississippi Code attach whenever the child is taken into custody for an offense which is within the jurisdiction of the youth court. See Smith v. State, 534 So. 2d 194, 196 (Miss. 1988) ("At the time [the child] gave his confession he had not been charged with any crime that would remove him from the Youth Court's jurisdiction . . . Therefore, the circumstances surrounding [his] confession must satisfy the Youth Court Act."). However, these rights do not necessarily apply to a minor who is a suspect in a crime carrying a potential life or death sentence. See Moody v. State, 838 So. 2d 324, 334 (Miss. Ct. App. 2002) ("Once a minor becomes a suspect in a crime carrying a potential life sentence or death, to the extent that it becomes necessary to detain that person and inform him of his Miranda rights prior to an attempt to interrogate him, we conclude that Section 43-21-151(1)(a) is sufficiently invoked so as to remove that youthful suspect from the protections otherwise afforded him under the Youth Court Act."). If the rights are applicable then failure to abide by them may constitute a violation of due process. See Gallegos v. Colorado, 370 U.S. 49, 55 (1962) ("The youth of the petitioner, the long detention, the failure to send for his parents, the failure immediately to bring him before the judge of the Juvenile Court, the failure to see to it that he had the advice of a lawyer or a friend - all of these combine to make us conclude that the formal confession . . . was obtained in violation of due process."); Edmonds v. State, 955 So. 2d 787, 804 (Miss. 2007) ("[The] absence of a parent or guardian during the interrogation of a [child who was under the jurisdiction of the youth court] goes directly to the issue of voluntariness; such a violation renders the statement inadmissible as a violation of basic constitutional guarantees.").

*Case law:*

Winters v. State, 473 So. 2d 452, 459 (Miss. 1985) ("[T]he offense charged, rape, carries a potential life sentence, vesting exclusive jurisdiction of the matter in the circuit court and rendering the Youth Court Act wholly inapplicable.").

Brown v. State, 839 So. 2d 597, 599 (Miss. Ct. App. 2003) ("By statute, [i.e., section 43-21-303,] if a child is taken into custody "in a matter in which the Youth Court has original jurisdiction," his parents or guardian should be invited to be present during questioning. . . . Where original jurisdiction lies with the circuit court, parental presence is not a pre-requisite to admissibility of a minor's confession.").

## *305 CUSTODY RESTRICTIONS ON CERTAIN MISDEMEANOR OFFENSES*

**Comment to U.R.Y.C.P. 11(a)(1)**

Justice and municipal courts may not issue an order to take a child into custody, or an arrest warrant, for any child within the exclusive original jurisdiction of the youth court. Such is not applicable to offenses outside the exclusive original jurisdiction of the youth court, e.g., hunting, fishing or traffic violations. See White v. Walker, 950 F.2d 972, 979 (5th Cir. 1991). However, in those instances, the custody of the child must comply with all state and federal laws pertaining to the detention of juveniles. See U.R.Y.C.P. 19(c). When a child is convicted of a misdemeanor offense by a criminal court having original jurisdiction of the misdemeanor charge and the sentence includes that the child is to be committed to, incarcerated in or imprisoned in a jail or other place of detention, the commencement of such commitment, incarceration or imprisonment in a jail or other place of detention is stayed until the criminal court has notified the youth court judge or the judge's designee of the conviction and sentence.

**U.R.Y.C.P. 19**

(c) Detention of children charged with certain misdemeanor offenses.
Any child who is charged with a hunting or fishing violation, a traffic violation, or any other criminal offense for which the youth court shall have power on its own motion to remove jurisdiction from any criminal court, may be detained only in the same juvenile facilities designated by the youth court for children within the jurisdiction of the youth court.

## *306 DETENTION HEARINGS* ❖

➤ **When the child may be held for longer than temporary custody**

**U.R.Y.C.P. 16**

(a) Delinquency and child in need of supervision 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.
(2) Reasonable oral or written notice of the time, place and purpose of the hearing has been given to the child; to the child's parent, guardian or custodian; to the child's guardian ad litem, if any; and to the child's counsel. If 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.

(3) All parties present are afforded the opportunity to present evidence and cross-examine witnesses produced by others. The youth court may, in its discretion, limit the extent but not the right or presentation of evidence and cross-examination of witnesses. 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.
(4) At the conclusion of the detention hearing, the court finds and the detention 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.
. . .
(5) The court orders custody of the child and that a petition be filed if one has not been filed.

*Accord* Miss. Code Ann. § 43-21-309.

**§ 43-21-203**

(7) In all hearings, a complete record of all evidence shall be taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.
. . .
(11) An order or ruling of the youth court judge delivered orally must be reduced to writing within forty-eight (48) hours, excluding Saturdays, Sundays and statutory state holidays.

➤ **Custody order to comply with statutory requirements**

**U.R.Y.C.P. 16**

(a)(4) Any order placing a child into custody shall comply with the requirements provided in section 43-21-301 of the Mississippi Code.

*Accord* Miss. Code Ann. § 43-21-309.

➤ **When custody is deemed necessary**

**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.

*Accord* Miss. Code Ann. § 43-21-309.

**Comment to U.R.Y.C.P. 16(a)**

Factors the court may consider in determining whether custody is necessary include:

the child's family ties and relationships;
the child's prior delinquency record;
the violent nature of the alleged offense;
the child's prior history of committing acts that resulted in bodily injury to others;
the child's character and mental condition;
the court's ability to supervise the child if placed with a parent or relative;
the child's ties to the community;
the risk of nonappearance;
the danger to the child or public if the child is released;
another petition is pending against the child;
the home conditions of the child; and
a violation of a valid court order.

[The] court must include its findings in the detention or shelter order.

➤ **When the court must order the release of the child**

**U.R.Y.C.P. 16**

(a)(4) . . . 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.

*Accord* Miss. Code Ann. § 43-21-309.

➤ **Waivers as to detention hearings**

**U.R.Y.C.P. 16**

(a)(5) . . . The child with advice of counsel may waive in writing the time of the detention hearing or the detention hearing itself.

*Accord* Miss. Code Ann. § 43-21-309.

➤ **Governing law**

**U.R.Y.C.P. 17**

Procedures governing the rights of a child taken into custody for delinquency or as a child in need of supervision shall be in compliance with section 43-21-311 of the Mississippi Code.

**Comment to U.R.Y.C.P. 17**

The rights set forth in section 43-21-311 of the Mississippi Code attach whenever the child is taken into custody for an offense which is within the jurisdiction of the youth court. See Smith v. State, 534 So. 2d 194, 196 (Miss. 1988) ("At the time [the child] gave his confession he had not been charged with any crime that would remove him from the Youth Court's jurisdiction . . . Therefore, the circumstances surrounding [his] confession must satisfy the Youth Court Act."). However, these rights do not necessarily apply to a minor who is a suspect in a crime carrying a potential life or death sentence. See Moody v. State, 838 So. 2d 324, 334 (Miss. Ct. App. 2002) ("Once a minor becomes a suspect in a crime carrying a potential life sentence or death, to the extent that it becomes necessary to detain that person and inform him of his Miranda rights prior to an attempt to interrogate him, we conclude that Section 43-21-151(1)(a) is sufficiently invoked so as to remove that youthful suspect from the protections otherwise afforded him under the Youth Court Act."). If the rights are applicable then failure to abide by them may constitute a violation of due process. See Gallegos v. Colorado, 370 U.S. 49, 55 (1962) ("The youth of the petitioner, the long detention, the failure to send for his parents, the failure immediately to bring him before the judge of the Juvenile Court, the failure to see to it that he had the advice of a lawyer or a friend - all of these combine to make us conclude that the formal confession . . . was obtained in violation of due process."); Edmonds v. State, 955 So. 2d 787, 804 (Miss. 2007) ("[The] absence of a parent or guardian during the interrogation of a [child who was under the jurisdiction of the youth court] goes directly to the issue of voluntariness; such a violation renders the statement inadmissible as a violation of basic constitutional guarantees.").

➤ **Rights and information to be read and posted**

**§ 43-21-311**

(1) When a child is taken into custody, he shall immediately be informed of:
(a) The reason for his custody;
(b) The time within which review of the custody shall be held;
(c) His rights during custody including his right to counsel;
(d) All rules and regulations of the place at which he is held;

(e) The time and place of the detention hearing when the time and place is set; and
(f) The conditions of his custody which shall be in compliance with the detention requirements provided in Section 43-21-301(6).
These rights shall be posted where the child may read them, and such rights must be read to the child when he or she is taken into custody.

➤ **Telephone rights**

**§ 43-21-311**

(2) When a child is taken into custody, the child may immediately telephone his parent, guardian or custodian; his counsel; and personnel of the youth court. Thereafter, he shall be allowed to telephone his counsel or any personnel of the youth court at reasonable intervals. Unless the judge or his designee finds that it is against the best interest of the child, he may telephone his parent, guardian or custodian at reasonable intervals.

➤ **Visitation rights**

**§ 43-21-311**

(3) When a child is taken into custody, the child may be visited by his counsel and authorized personnel of the youth court at any time. Unless the judge or his designee finds it to be against the best interest of the child, he may be visited by his parent, guardian or custodian during visiting hours which shall be regularly scheduled at least three (3) days per week. The youth court may establish rules permitting visits by other persons.

➤ **Interview and interrogation restrictions**

**§ 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.

## *308 RELEASE FROM CUSTODY UPON CHANGE OF CIRCUMSTANCES*

➤ **Governing law**

**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.

➤ **Written request, reasonable notice, and a hearing**

**§ 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.

## *309 PROPER FACILITIES*

➤ **Designating detention 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.

*Accord* Miss. Code Ann. § 43-21-315(1).

**Comment to U.R.Y.C.P. 19(a)**

Four core protections requiring State compliance.
The JJDP Act, through the 2002 reauthorization, establishes four core protections with which participating States and territories must comply to receive grants under the JJDP Act:

-Deinstitutionalization of status offenders (DSO).
-Separation of juveniles from adults in institutions (separation).
-Removal of juveniles from adult jails and lockups (jail removal).
-Reduction of disproportionate minority contact (DMC), where it exists.

Meeting the core protections is essential to creating a fair, consistent, and effective juvenile justice system that advances the important goals of the JJDP Act. Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, Guidance Manual for Monitoring Facilities under the Juvenile Justice and Delinquency Prevention Act of 2002 1 (September 2003).

➤ **Detention prohibitions**

**U.R.Y.C.P. 19**

(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.

*Accord* § 43-21-315(2); *see also* 42 U.S.C. §§ 5603, -5633.

➤ **Detention of children charged with certain misdemeanor offenses**

**U.R.Y.C.P. 19**

(c) Detention of children charged with certain misdemeanor offenses.
Any child who is charged with a hunting or fishing violation, a traffic violation, a violation of the Mississippi Implied Consent Law, or any other criminal offense for which the youth court shall have power on its own motion to remove jurisdiction from any criminal court, may be detained only in the same juvenile facilities designated by the youth court for children within the jurisdiction of the youth court.

*Accord* Miss. Code Ann. § 43-21-315(3).

➤ **Arranging for the custody, care and maintenance of the child**

**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.

**Comment to U.R.Y.C.P. 19(d)**

This provision is congruent with Mississippi's constitutional mandates. See 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."); 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. The only role of the trial judge regarding this minor was to determine whether the minor needed the treatment and care provided by the state facility, and if so, to order [the child's] commitment."); see also Miss. Code Ann. § 43-21-315(4) (2008).

➤ **Juvenile detention centers**

**§ 43–21–321**

(1) All juvenile detention centers shall develop and implement policies and procedures that comply with the regulations promulgated by the Juvenile Facilities Monitoring Unit.
. . .
(3) All juvenile detention centers shall adhere to the following minimum standards:
(a) Each center shall have a manual that states the policies and procedures for operating and maintaining the facility, and the manual shall be reviewed annually and revised as needed;
(b) Each center shall have a policy that specifies support for a drug-free workplace for all employees, and the policy shall, at a minimum, include the following:
(i) The prohibition of the use of illegal drugs;
(ii) The prohibition of the possession of any illegal drugs except in the performance of official duties;
(iii) The procedure used to ensure compliance with a drug-free workplace policy;

(iv) The opportunities available for the treatment and counseling for drug abuse; and
(v) The penalties for violation of the drug-free workplace policy; and
(c) Each center shall have a policy, procedure and practice that ensures that personnel files and records are current, accurate and confidential.

*Case law:*

Reno v. Flores, 507 U.S. 292, 304 (1993) ("The best interests of the child" is likewise not an absolute and exclusive constitutional criterion for the government's exercise of the custodial responsibilities that it undertakes, which must be reconciled with many other responsibilities. Thus, child-care institutions operated by the State in the exercise of its parens patriae authority . . . are not constitutionally required to be funded at such a level as to provide the best schooling or the best health care available; . . . .").

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.").

## *310 PETITION* ❖

### ➤ Filing

**U.R.Y.C.P. 20**

**(a) Delinquency proceedings.**
**(1) Filing.** All proceedings seeking an adjudication that a child is a delinquent child shall be initiated by the filing of a petition. Upon referral by the youth court, the youth court prosecutor may file a petition to initiate formal.

*Accord* Miss. Code Ann. § 43-21-451.

**Comment to U.R.Y.C.P. 20(a)**

Intake shall assign, pursuant to step 5 of Exhibit A of the Uniform Youth Court Case Identification and Docket Numbering System, a petition number for each petition filed on matters coming before the youth courts of the State of Mississippi. See Amended Special Order No. 46 (Miss. Dec. 12, 1997).

*Case law:*

In re Evans, 350 So. 2d 52, 54 (Miss. 1977) (holding "oral authorization [to file petition] was sufficient").

In re C.A., 872 So. 2d 705 (Miss. Ct. App. 2004) ("[A] petition in Youth Court is the document that contains the allegation of why the child is said to be a delinquent. It is the equivalent of an indictment for an adult.").

➤ **Time**

**U.R.Y.C.P. 20**

**(2) Time.** The petition shall be filed within five (5) days from the date of a detention hearing continuing custody. In non-custody cases, unless another period of time is authorized by the court, the petition shall be filed within ten (10) days of the court's referral of the matter to the youth court prosecutor for consideration of initiating formal proceedings. The court may, in its discretion, dismiss the petition for failure to comply with the time schedule contained herein.

*Accord* Miss. Code Ann. § 43-21-451.

➤ **Form**

**U.R.Y.C.P. 20**

(a)(3) Form. The petition shall be entitled "IN THE INTEREST OF _____."

*Accord* Miss. Code Ann. § 43-21-453.

➤ **Contents**

**U.R.Y.C.P. 20**

(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 delinquent child;
(iv) a citation of the statute or ordinance which the child is alleged to have violated;

(v) a prayer for the type of adjudicatory relief sought; and
(vi) if any of the facts herein required are not known by the petitioner.
The petition must recite factual allegations with the same particularity required in a criminal indictment but need not have the technical form of a criminal indictment. Error in or omission of the citation shall not be grounds for dismissing the petition or for a reversal of the adjudication based thereon if the error or omission did not mislead the child to the child's prejudice.

On each petition alleging a delinquent 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 OR SECTION 43-21-619 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.

*Accord* Miss. Code Ann. § 43-21-455.

**Comment to U.R.Y.C.P. 20(a)(4)**

A petition which institutes a youth court proceeding must recite factual allegations specific and definite enough to fairly apprise the child, the child's parents, custodians or guardians of the particular act or acts of misconduct or the particular circumstances which will be inquired into at the adjudicatory proceedings. See In re Dennis, 291 So. 2d 731, 733 (Miss. 1974); . . . The youth court is a court of statutory and limited jurisdiction, and the facts vesting jurisdiction should be shown affirmatively. See Monk v. State, 116 So. 2d 810, 811 (Miss. 1960). A petition charging delinquency is to include the statute or ordinance which the child is alleged to have violated. See In re R.T., 520 So. 2d 136, 137 (Miss. 1988).

➤ **Two or more offenses alleged in same petition**

**U.R.Y.C.P. 20**

(a)(5) Two or more offenses alleged in same petition. Two (2) or more offenses may be alleged in the same petition in a separate count for each offense if each particular offense is one in which a child could be adjudicated either as a delinquent child or as a child in need of supervision.
On each count admitted or proved in accordance with these rules, the court shall enter a separate adjudication on that count within its adjudicatory order and, after the disposition hearing, a separate disposition on that count within its disposition order. The court may order the disposition of any count to run concurrent or consecutive to any other count(s) or current dispositions, as it deems in the best interest of the child and in the interest of justice.

*Accord* Miss. Code Ann. § 43-21-455.

➤ **Motion to transfer to a criminal court**

**U.R.Y.C.P. 20**

(a)(6) Motion to transfer to a criminal court. The petition may contain a motion to transfer.

*Accord* Miss. Code Ann. § 43-21-455.

➤ **Amendments**

**U.R.Y.C.P. 20**

(a)(7) 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.

*Accord* Miss. Code Ann. § 43-21-457.

➤ **Responsive pleadings not required**

**U.R.Y.C.P. 20**

(a)(8) Responsive pleadings not required. No party shall be required to file a responsive pleading.

*Accord* Miss. Code Ann. § 43-21-459.

## *311 PROPER VENUE*

**U.R.Y.C.P. 21**

(a) Delinquency and child in need of supervision proceedings. If a child is alleged to be a delinquent child or a child in need of supervision, the proceedings shall be commenced in any county where any of the alleged acts are said to have occurred. After adjudication, the youth court may, in the best interest of the child, transfer the case at any stage of the proceeding for disposition to the county where the child resides or to a county where a youth court has previously acquired jurisdiction.

*Accord* Miss. Code Ann. § 43-21-155(1).

*Case law:*
In re K.A.R., 441 So. 2d 108, 109 (Miss. 1983) ("[E]ach judicial district is to be treated as a separate county for purposes of jurisdiction and venue . . . .").

## *312 SUMMONS TO APPEAR AT ADJUDICATION HEARING*

➤ **Persons summoned**

**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.

*Accord* Miss. Code Ann. § 43-21-501.

➤ **Form**

**U.R.Y.C.P. 22**

(a)(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 OR SECTION 43-21-619 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.

*Accord* Miss. Code Ann. § 43-21-503.

➤ **Manner of service**

**U.R.Y.C.P. 22**

(a)(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.

*Accord* Miss. Code Ann. § 43-21-505.

**Comment to U.R.Y.C.P. 22(a)(3)**

Due process requires that the child and the parents or guardian receive notice. See 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."); In re Litdell, 232 So.2d 733, 735 (Miss.1970) ("Due process requires only that reasonable notice be given."); 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.").

➤ **Time**

**U.R.Y.C.P. 22**

(a)(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.

*Accord* Miss. Code Ann. § 43-21-507.

*See also* In re M.M., 220 So. 3d 285, 287 (Miss. Ct. App. 2017) ("But in youth-court matters, 'under our statute notice to the parent is an indispensable prerequisite to the jurisdiction of the court to hear and determine the case, unless such notice be waived by the voluntary appearance of such parent.'").

➤ **Waiver of summons by a party other than the child**

**U.R.Y.C.P. 22**

(a)(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.

Accord Miss. Code Ann. § 43-21-507.

**Comment to U.R.Y.C.P. 22(a)(5)**

A child cannot waive due process required by law. See 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.").

➤ **Waiver of three (3) days' time before hearing by a child served with process**

**U.R.Y.C.P. 22**

(a)(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 all other 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.

*Accord* Miss. Code Ann. § 43-21-507.

➤ **Enforcement**

**U.R.Y.C.P. 22**

(a)(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.

*Accord* Miss. Code Ann. § 43-21-509.

## *313 PREHEARING PROCEDURES*

➤ **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.

➤ **Notice of alibi or insanity defense**

**U.R.Y.C.P. 15**

(b) Notice of alibi or insanity defense.
(1) Time. No later than seven (7) days before the date of the adjudication hearing, the child or the child's attorney must file a written notice with the court and prosecuting attorney of the intent to rely on a defense of alibi or insanity. The notice shall include a list of names and addresses of defense witnesses.
(2) Notice of rebuttal witnesses. Within seven (7) days after the receipt of notice, but no later than two (2) days before the adjudication hearing date, the prosecutor shall provide written notice to the court and defense of an intent to offer rebuttal to the above listed defenses. The notice shall include names and addresses of rebuttal witnesses.
(3) Furnishing notification of additional witnesses. If, prior to or during the adjudication hearing, a party learns of an additional witness whose identity, if known, should have been included in the information previously furnished, the party shall promptly notify the other party or the party's attorney of the name and address of such additional witness.
(4) Sanctions. Upon the failure of either party to comply with the requirements of this rule, the court may use such sanctions as it deems just and proper under the circumstances, including: granting a continuance; limiting further discovery of the party failing to comply; finding the attorney failing to comply in contempt; or excluding the testimony of the undisclosed witness. In no event shall the court limit the right of the defendant to testify in his/her own behalf. For good cause shown, the court may grant an exception to any of the requirements of this rules provision.

➤ **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.

➤ **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.

### ➤ Time of hearing

**U.R.Y.C.P. 24**

(a) Delinquency and child in need of supervision proceedings.
(1) Time of hearing.
(i) If child is not in detention. Unless the hearing is continued upon a showing of good cause or the person who is a subject to the cause has admitted the allegations of the petition, an adjudicatory hearing 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 delinquent child or a child in need of supervision. If the adjudicatory hearing is not held within the ninety (90) days, the petition shall be dismissed with prejudice.
(ii) If child is in detention. If the child is in detention, the hearing shall be held as soon as possible but not later than twenty-one (21) days after the child is first detained by the court unless the hearing be 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 detention.

*Accord* Miss. Code Ann. § 43-21-551.

**Comment to U.R.Y.C.P. 24(a)(1)**

Our court has strictly construed section 43-21-551 of the Mississippi Code, the basis for Rule 24(a)(1) and (b)(1). See, e.g., D.D.B. v. Jackson County Youth Court, 816 So. 2d 380, 383 (Miss. 2002) ("[Section 43-21-551(1)] does not say that an order must be entered within the ninety (90) day period. The statute only says that an adjudicatory hearing shall be held within ninety (90) days or it shall be dismissed, unless the hearing is continued upon a showing of good cause."); In re C.R., 604 So. 2d 1079, 1081 (Miss. 1992) ("The [adjudicatory] proceeding's postponement . . . is without consequence since § 43-21-551 provides that a hearing may be continued upon a showing of good cause.").

### ➤ Acceptance of admissions

**U.R.Y.C.P. 24**

(a)(2) Acceptance of admissions. At any time after the petition has been filed, all parties to the cause may appear before the judge and admit the allegations of the petition. The judge may accept this admission as proof of the allegations if the judge finds that:
the parties making the admission fully understand their rights and fully understand the potential consequences of their admission to the allegations;

the parties making the admission voluntarily, intelligently and knowingly admit to all facts necessary to constitute a basis for court action under Mississippi's Youth Court Law; the parties making the admission have not in the reported admission to the allegation set forth facts that, if found to be true, constitute a defense to the allegation; and the child making the admission is effectively represented by counsel.

*Accord* Miss. Code Ann. § 43-21-553.

*Case law:*

In re D.D.B., 816 So. 2d 380, 384 (Miss. 2002) ("Entering a plea is clearly a component of the adjudicatory hearing.").

➤ **Plea bargaining**

**U.R.Y.C.P. 24**

(a)(3) Plea bargaining. Under no circumstances shall the party or the prosecutor engage in discussion for the purpose of agreeing to exchange concessions by the prosecutor for the party's admission to the petition.

*Accord* Miss. Code Ann. § 43-21-555.

➤ **Conduct of hearing**

**U.R.Y.C.P. 24**

(a)(4) 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.
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.

*Accord* Miss. Code Ann. § 43-21-203.

**Comment to U.R.Y.C.P. 24(a)(4)**

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.

**Comment to U.R.Y.C.P. 24(a)(4)(i)**

Adjudicatory hearings are conducted without a jury. See McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971) ("[T]rial by jury in the juvenile court's adjudicative stage is not a constitutional requirement."); Hopkins v. Youth Court, 227 So. 2d 282, 285 (Miss. 1969) ("[W]e hold that the [youth] court did not err in denying a jury trial.").

**Comment to Rule 24(a)(4)(ii)**

Adjudication hearings are conducted under the rules of evidence and rules of court as may comply with constitutional standards. See 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."). See generally Application of Gault, 387 U.S. 1 (1967); Patterson v. Hopkins, 350 F. Supp. 676, 683 (N.D. Miss. 1972) ("Gault decided that, although the Fourteenth Amendment does not require that the hearing at this stage conform with all the requirements of a criminal trial or even of the usual administrative proceeding, the Due process Clause does require application during the adjudicatory hearing of '"the essentials of due process and fair treatment."").

➤ **Verifying information and explaining procedures and rights**

**U.R.Y.C.P. 24**

(a)(5) 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.

Additionally, if the child is an alleged child in need of supervision, the court shall explain the procedures set forth in Rule 10 of these rules for holding the child in secure juvenile detention for a violation of a valid court order.
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.

*Accord* Miss. Code Ann. § 43-21-557.

**Comment to U.R.Y.C.P. 24(a)(5)**

At the beginning of each adjudicatory hearing, the court is required to verify certain information and to explain certain procedures and rights. See 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.").

*Case law:*

In re Ferguson, 317 So. 2d 899, 900 (Miss. 1975) ("It is well settled that minors in a delinquency proceeding have both a statutory and constitutional right to counsel, and that both the minors and their parents should be advised of such right.").

In re K.G., 957 So. 2d 1050, 1053 (Miss. Ct. App. 2007) ("[E]ven though the youth court clearly failed to follow the mandates of [section] 43-21-557, K.G. has failed to demonstrate any resulting prejudice or unfairness in the proceeding. Consequently, although we find that the youth court erred in not following statutory procedure, we also find that this error was harmless.").

In re L.C.A., 938 So. 2d 300, 306 (Miss. Ct. App. 2006) ("[A]t no point in his brief does L.C.A. indicate just how the youth court proceedings were somehow unfair or how he was prejudiced by the youth court's failure to comply with section 43-21-557. As such, if any error resulted, it is harmless.").

➤ **Evidence**

**U.R.Y.C.P. 24**

(a)(6) 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 criminal proceeding.
(iii) An out-of-court admission or confession by the child, even if otherwise admissible, shall be insufficient to support an adjudication that the child is a delinquent child unless the admission or confession is corroborated in whole or in part by other competent evidence.
(iv) 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.
(v) 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.

*Accord* Miss. Code Ann. §§ 43-21-203(9)(b), -559.

**M.R.E. 101**

(a) Scope. These rules apply to proceedings in Mississippi courts. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101.

**M.R.E. 1101**

(b) Exceptions. These rules--except for those on privilege--do not apply to the following:
(1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;
(2) grand-jury proceedings;
(3) contempt proceedings in which the court may act summarily; and
(4) these miscellaneous proceedings:

- extradition or rendition;
- issuing an arrest warrant, criminal summons, or search warrant;
- probable cause hearings in criminal cases and youth court cases;
- sentencing;
- disposition hearings;
- granting or revoking probation; and
- considering whether to release on bail or otherwise.

**§ 43-21-561**

(6)(a) No statements, admissions or confessions made by or incriminatory information obtained from a child in the course of a screening or assessment that is undertaken in conjunction with any proceedings under this chapter, including, but not limited to, that which is court-ordered, shall be admitted into evidence against the child on the issue of whether the child committed a delinquent act under this chapter or on the issue of guilt in any criminal proceedings.
(b) The provisions of paragraph (a) of this subsection are in addition to and do not override any existing statutory and constitutional prohibition on the admission into evidence in delinquency and criminal proceedings of information obtained during screening, assessment or treatment.

**§ 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.

*Case law:*

In re C.K.B., 36 So. 3d 1267, 1282 (Miss. 2010) ("Section 43-21-559 requires that there must be corroboration for the statement to be sufficient to support an adjudication. That corroboration is missing here.").

➤ **Opportunity to present a closing argument**

**U.R.Y.C.P. 24**

(a)(7) Opportunity to present a closing argument. At the conclusion of the evidence, the court shall give the parties an opportunity to present closing argument pursuant to section 43-21-559(4) of the Mississippi Code.

*Accord* Miss. Code Ann. § 43-21-559(4).

➤ **Standard of proof**

**U.R.Y.C.P. 24**

(a)(8) Standard of proof. If the court finds on proof beyond a reasonable doubt that a child is a delinquent child or a child in need of supervision, the youth court shall enter an order adjudicating the child to be a delinquent child or a child in need of supervision. Where the petition alleges that the child is a delinquent child, the youth court may, as an alternative, enter an order that the child is a child in need of supervision on proof beyond a reasonable doubt that the child is a child in need of supervision.

*Accord* Miss. Code Ann. § 43-21-561.

**Comment to U.R.Y.C.P. 24(a)(8)**

The burden of proof in delinquency and children in need of supervision proceedings is proof beyond a reasonable doubt. See In re Winship, 397 U.S. 358, 368 (1970); L.M. v. State, 600 So. 2d 967, 969 (Miss. 1992); In re Dennis, 291 So. 2d 731, 733 (Miss. 1974).

*Case law:*

In re S.B., 566 So. 2d 1276, 1279 (Miss. 1990) (proof failed to establish fear of imminent serious bodily harm to sustain charge of assault).

In re W.B., 515 So. 2d 1175, 1177 (Miss. 1987) (proof failed to establish receipt of stolen property).

➤ **Terminating proceedings**

**U.R.Y.C.P. 24**

(a)(9) 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.

*Accord* Miss. Code Ann. § 43-21-557(4).

## *315 ADJUDICATION ORDERS*

### ➤ Content

**U.R.Y.C.P. 25**

(a) Delinquency and child in need of supervision proceedings.
(1) Content. An adjudication order shall recite that the child has been adjudicated a delinquent child or a child in need of supervision, as applicable, but in no event shall it recite that the child has been found guilty. No order of adjudication concerning any child shall recite that a child has been found guilty; but it shall recite that a child is found to be a delinquent child or a child in need of supervision. 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 delinquent child or a child in need of supervision. 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.

**§ 43-21-561**

(2) Where the petition alleges that the child is a delinquent child, the youth court may enter an order that the child is a child in need of supervision on proof beyond a reasonable doubt that the child is a child in need of supervision.
. . .
(5) No adjudication upon the status of any child shall operate to impose any of the civil disabilities ordinarily imposed on an adult because of a criminal conviction, nor shall any child be deemed a criminal by reason of adjudication, nor shall that adjudication be deemed a conviction. A person in whose interest proceedings have been brought in the youth court may deny, without any penalty, the existence of those proceedings and any adjudication made in those proceedings. Except for the right of a defendant or prosecutor in criminal proceedings and a respondent or a youth court prosecutor in youth court proceedings to cross-examine a witness, including a defendant or respondent, to show bias or interest, no adjudication shall be used for impeachment purposes in any court.

### ➤ Two or more offenses alleged in same petition

**U.R.Y.C.P. 25**

(a)(2) Two or more offenses alleged in same petition. On each count admitted or proved in accordance with these rules, the court shall enter a separate adjudication on that count within its adjudicatory order.

*Accord* Miss. Code Ann. § 43-21-455.

## *316 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.

*Accord* Miss. Code Ann. §§ 43-21-501 to -507.

## *317 DISPOSITION HEARINGS* ❖

➤ **Time of hearing**

**U.R.Y.C.P. 26**

(a) Delinquency proceedings.
(1) Time of hearing. If the child has been adjudicated a delinquent child, the 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.

*Accord* Miss. Code Ann. § 43-21-601.

**Comment to U.R.Y.C.P. 26(a)(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].").

➤ **Conduct of hearing**

**U.R.Y.C.P. 26**

(a)(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.

*Accord* Miss. Code Ann. §§ 43-21-203, -603.

**Comment to U.R.Y.C.P. 26(a)(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.

➤ **Evidence**

**U.R.Y.C.P. 26**

(a)(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 delinquency cases with consent of the child's counsel.

**Comment to U.R.Y.C.P. 26(a)(3)**

The Mississippi Rules of Evidence do not apply to dispositional hearings. See M.R.E. 1101(b)(3); 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.").

➤ **Explaining the purpose of the dispositional hearing**

**U.R.Y.C.P. 26**

(a)(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.

➤ **Opportunity to present closing argument**

**U.R.Y.C.P. 26**

(a)(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.

➤ **Factors for consideration**

**U.R.Y.C.P. 26**

(a)(6) Factors for consideration. If the child has been adjudicated a delinquent child, before entering a disposition order, the youth court should consider, among others, the following relevant factors:
(i) the nature of the offense;
(ii) the manner in which the offense was committed;
(iii) the nature and number of a child's prior adjudicated offenses;
(iv) the child's need for care and assistance;
(v) the child's current medical history, including medication and diagnosis;
(vi) the child's mental health history, which may include, but not be limited to, the Massachusetts Youth Screening Instrument version 2 (MAYSI-2);
(vii) copies of the child's cumulative record from the last school of record, including special education records, if applicable;
(viii) recommendation from the school of record based on areas of remediation needed;
(ix) disciplinary records from the school of record; and
(x) records of disciplinary actions outside of the school setting.

Additionally, pursuant to section 43-27-25 of the Mississippi Code, no child who is seriously handicapped by mental illness or retardation shall be referred to a state-supported training school.

*Accord* Miss. Code Ann. §§ 43-21-603, 43-27-25.

➤ **Entering disposition order**

**U.R.Y.C.P. 26**

(a)(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 delinquent 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.

*Accord* Miss. Code Ann. § 43-21-603.

## *318 DISPOSITION ORDERS*

➤ **Authorized dispositions**

**U.R.Y.C.P. 27**

(a) Delinquency proceedings.
(1) Authorized dispositions. In delinquency cases, the disposition order may include any of the alternatives as set forth in section 43-21-605(1) of the Mississippi Code. Additionally, the court may order:
(i) drug testing pursuant to section 43-21-605(8) of the Mississippi Code;
(ii) 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;
(iii) parents or guardians to pay for the support of the child placed in custody of any person or agency (other than the custody of a state training school), including any necessary medical treatment, pursuant to section 43-21-615(2) of the Mississippi Code;
(iv) parents or guardians of a child placed in a state-supported training school to receive counseling and parenting classes pursuant to section 43-21-605(4) of the Mississippi Code;
(v) any person found encouraging, causing, or contributing to the delinquency 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;

(vi) 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;
(vii) parents, guardians or custodians who exercise parental custody or control of a child who has willfully or maliciously caused personal injury or damaged or destroyed property to pay damages or restitution and to participate in a counseling program or other suitable family treatment program for the purpose of preventing future occurrences pursuant to section 43-21-619(2) of the Mississippi Code;
(viii) enrollment or reenrollment of any compulsory-school-age child in school (but in no event may a child who has been expelled from a school district for commission of a "violent act", as such term is defined under section 43-21-605(8) of the Mississippi Code, be placed in another school district), and further order appropriate education services, pursuant to section 43-21-621 of the Mississippi Code.

*Accord* Miss. Code Ann. §§ 43-21-605, -611, -615, -617, -619, -621.

**Comment to U.R.Y.C.P. 27(a)**

The conditions and terms of a disposition must be reasonable and appropriate. See In re Green, 203 So. 2d 470, 472 (Miss. 1967) ("The Youth Court was amply justified in finding that the condition [of "stay out of trouble"] was valid under the particular facts of this case, and that [the child] had violated it."); K.N.L. v. State, 803 So. 2d 1245, 1249 (Miss. Ct. App. 2002) ("[T]he prohibition against [the child who had shoplifted from] going to the mall or to a [particular] store is reasonable and appropriate."). A court may order parents, guardians, or custodians to pay certain expenses. See, e.g., In re B.D., 720 So. 2d 476, 479 (Miss. 1998) ("In this case, all parties had notice that restitution was being sought, along with the amounts at issue. A hearing was held with counsel for the appellants present and allowed to present argument, cross-examine witnesses and object. This Court finds that the procedure followed by the Youth Court met due process requirements. Section 43-21-619 is not violative of the state or federal constitutions."). Courts are prohibited from committing an offender age eighteen or older to the division of youth services for placement in a state supported training school. See In re L.C.A., 938 So. 2d 300, 307 (Miss. Ct. App. 2006).

**§ 43-21-105**

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

**Federal requirement if child is to be committed to training school**

Pursuant to the United States District Court's Order Regarding the Suicide Prevention Action Plan, youth court judges must review the federal requirements for dispositional hearings for youths that are to be committed to a training school. The Division of Youth Services must have all medical and mental records prior to accepting a youth into a training school. The youth court should review the medical and mental records prior to the youth's commitment. Failure to have the medical and mental records will result in the youth not being admitted to the training school. See Order Regarding Suicide Prevention Action plan, Civil Action No.: 3:03-cv-1354-HTW-JCS (S. Miss. Apr. 30, 2008).

**§ 43-21-605**

(1) In delinquency cases, the disposition order may include any of the following alternatives:
(a) Release the child without further action;
(b) Place the child in the custody of the parents, a relative or other persons subject to any conditions and limitations, including restitution, as the youth court may prescribe;
(c) Place the child on probation subject to any reasonable and appropriate conditions and limitations, including restitution, as the youth court may prescribe;
(d) Order terms of treatment calculated to assist the child and the child's parents or guardian which are within the ability of the parent or guardian to perform;
(e) Order terms of supervision which may include participation in a constructive program of service or education or civil fines not in excess of Five Hundred Dollars ($500.00), or restitution not in excess of actual damages caused by the child to be paid out of his own assets or by performance of services acceptable to the victims and approved by the youth court and reasonably capable of performance within one (1) year;
(f) Suspend the child's driver's license by taking and keeping it in custody of the court for not more than one (1) year;
(g) Give legal custody of the child to any of the following:
(i) The Department of Human Services for appropriate placement; or
(ii) Any public or private organization, preferably community-based, able to assume the education, care and maintenance of the child, which has been found suitable by the court; or
(iii) The Division of Youth Services for placement in the least restrictive environment, except that no child under the age of ten (10) years shall be committed to the state training school. Only a child who has been adjudicated delinquent for a felony or who has been adjudicated delinquent three (3) or more times for a misdemeanor offense may be committed to the training school. For the purposes of this section, a misdemeanor offense does not include contempt of court for a probation violation, unless the probation violation constitutes a charge that would be a crime if committed by an adult. In the event a child is committed to the Oakley Youth Development Center by the court, the child shall be deemed to be committed to the custody of the Department of Human Services

which may place the child in the Oakley Youth Development Center or another appropriate facility.
The training school may retain custody of the child until the child's twentieth birthday but for no longer. When the child is committed to the training school, the child shall remain in the legal custody of the training school until the child has made sufficient progress in treatment and rehabilitation and it is in the best interest of the child to release the child. However, the superintendent of the state training school, in consultation with the treatment team, may parole a child at any time he or she may deem it in the best interest and welfare of such child. Ten (10) business days before the parole, the training school shall notify the committing court of the pending release. The youth court may then arrange subsequent placement after a reconvened disposition hearing, except that the youth court may not recommit the child to the training school or any other secure facility without an adjudication of a new offense or probation or parole violation. The Department of Human Services shall ensure that staffs create transition planning for youth leaving the facilities. Plans shall include providing the youth and his or her parents or guardian with copies of the youth's training school education and health records, information regarding the youth's home community, referrals to mental and counseling services when appropriate, and providing assistance in making initial appointments with community service providers. Before 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. No child shall be placed in the custody of the state training school for a status offense or for contempt of or revocation of a status offense adjudication unless the child is contemporaneously adjudicated for having committed an act of delinquency that is not a status offense. A disposition order rendered under this subparagraph shall meet the following requirements:
1. The disposition is the least restrictive alternative appropriate to the best interest of the child and the community;
2. The disposition allows the child to be in reasonable proximity to the family home community of each child given the dispositional alternatives available and the best interest of the child and the state; and
3. The disposition order provides that the court has considered the medical, educational, vocational, social and psychological guidance, training, social education, counseling, substance abuse treatment and other rehabilitative services required by that child as determined by the court;
(h) Recommend to the child and the child's parents or guardian that the child attend and participate in the Youth Challenge Program under the Mississippi National Guard, as created in Section 43-27-203, subject to the selection of the child for the program by the National Guard; however, the child must volunteer to participate in the program. The youth court shall not order any child to apply for or attend the program;
(i)(i) Adjudicate the juvenile to the Statewide Juvenile Work Program if the program is established in the court's jurisdiction. The juvenile and his or her parents or guardians must sign a waiver of liability in order to participate in the work program. The judge will

coordinate with the youth services counselors as to placing participants in the work program;
(ii) The severity of the crime, whether or not the juvenile is a repeat offender or is a felony offender will be taken into consideration by the judge when adjudicating a juvenile to the work program. The juveniles adjudicated to the work program will be supervised by police officers or reserve officers. The term of service will be from twenty-four (24) to one hundred twenty (120) hours of community service. A juvenile will work the hours to which he or she was adjudicated on the weekends during school and weekdays during the summer. Parents are responsible for a juvenile reporting for work. Noncompliance with an order to perform community service will result in a heavier adjudication. A juvenile may be adjudicated to the community service program only two (2) times;
(iii) The judge shall assess an additional fine on the juvenile which will be used to pay the costs of implementation of the program and to pay for supervision by police officers and reserve officers. The amount of the fine will be based on the number of hours to which the juvenile has been adjudicated;
(j) Order the child to participate in a youth court work program as provided in Section 43-21-627;
(k) Order terms of house arrest under the intensive supervision program as created in Sections 47-5-1001 through 47-5-1015. The Department of Human Services shall take bids for the placement of juveniles in the intensive supervision program. The Department of Human Services shall promulgate rules regarding the supervision of juveniles placed in the intensive supervision program. For each county there shall be seventy-five (75) slots created in the intensive supervision program for juveniles. Any youth ordered into the intensive home-based supervision program shall receive comprehensive strength-based needs assessments and individualized treatment plans. Based on the assessment, an individualized treatment plan shall be developed that defines the supervision and programming that is needed by a youth. The treatment plan shall be developed by a multi-disciplinary team that includes the family of the youth whenever possible. The juvenile shall pay Ten Dollars ($10.00) to offset the cost of administering the alcohol and drug test. The juvenile must attend school, alternative school or be in the process of working toward a general educational development (GED) certificate;
(l) Order the child into a juvenile detention center operated by the county or into a juvenile detention center operated by any county with which the county in which the court is located has entered into a contract for the purpose of housing delinquents. The time period for detention cannot exceed ninety (90) days, and any detention exceeding forty-five (45) days shall be administratively reviewed by the youth court no later than forty-five (45) days after the entry of the order. At that time the youth court counselor shall review the status of the youth in detention and shall report any concerns to the court. The youth court judge may order that the number of days specified in the detention order be served either throughout the week or on weekends only. No first-time nonviolent youth offender shall be committed to a detention center for a period in excess of ninety (90) days until all other options provided for in this section have been considered and the court makes a specific finding of fact by a preponderance of the evidence by assessing what is in the best rehabilitative interest of the child and the public safety of communities and

that there is no reasonable alternative to a nonsecure setting and therefore commitment to a detention center is appropriate.
If a child is committed to a detention center for ninety (90) days, the disposition order shall meet the following requirements:
(i) The disposition order is the least restrictive alternative appropriate to the best interest of the child and the community;
(ii) The disposition order allows the child to be in reasonable proximity to the family home community of each child given the dispositional alternatives available and the best interest of the child and the state; and
(iii) The disposition order provides that the court has considered the medical, educational, vocational, social and psychological guidance, training, social education, counseling, substance abuse treatment and other rehabilitative services required by that child as determined by the court;
(m) The judge may consider house arrest in an intensive supervision program as a reasonable prospect of rehabilitation within the juvenile justice system. The Department of Human Services shall promulgate rules regarding the supervision of juveniles placed in the intensive supervision program; or
(n) Referral to A-team provided system of care services.
(2) If a disposition order requires that a child miss school due to other placement, the youth court shall notify a child's school while maintaining the confidentiality of the youth court process. If a disposition order requires placement of a child in a juvenile detention facility, the facility shall comply with the educational services and notification requirements of Section 43-21-321.
(3) In addition to any of the disposition alternatives authorized under subsection (1) of this section, the disposition order in any case in which the child is adjudicated delinquent for an offense under Section 63-11-30 shall include an order denying the driver's license and driving privileges of the child as required under Section 63-11-30(9).
(4) If the youth court places a child in a state-supported training school, the court may order the parents or guardians of the child and other persons living in the child's household to receive counseling and parenting classes for rehabilitative purposes while the child is in the legal custody of the training school. A youth court entering an order under this subsection (4) shall utilize appropriate services offered either at no cost or for a fee calculated on a sliding scale according to income unless the person ordered to participate elects to receive other counseling and classes acceptable to the court at the person's sole expense.
(5) Fines levied under this chapter shall be paid into the general fund of the county but, in those counties wherein the youth court is a branch of the municipal government, it shall be paid into the municipal treasury.
(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.
(7) The youth court shall not place a child in another school district who has been expelled from a school district for the commission of a violent act. For the purpose of this subsection, “violent act” means any action which results in death or physical harm to another or an attempt to cause death or physical harm to another.

(8) The youth court may require drug testing as part of a disposition order. If a child tests positive, the court may require treatment, counseling and random testing, as it deems appropriate. The costs of such tests shall be paid by the parent, guardian or custodian of the child unless the court specifically finds that the parent, guardian or custodian is unable to pay.
(9) The Mississippi Department of Human Services, Division of Youth Services, shall operate and maintain services for youth adjudicated delinquent at the Oakley Youth Development Center. The program shall be designed for children committed to the training schools by the youth courts. The purpose of the program is to promote good citizenship, self-reliance, leadership and respect for constituted authority, teamwork, cognitive abilities and appreciation of our national heritage. The program must use evidenced-based practices and gender-specific programming and must develop an individualized and specific treatment plan for each youth. The Division of Youth Services shall issue credit towards academic promotions and high school completion. The Division of Youth Services may award credits to each student who meets the requirements for a general education development certification. The Division of Youth Services must also provide to each special education eligible youth the services required by that youth's individualized education plan.

*See also* Miss. Code Ann. § 43-21-159(6) ("When a child's driver's license is suspended by the youth court for any reason, the clerk of the youth court shall report the suspension, 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."); Miss. Code Ann. § 63-1-71(2) ("The court in this state before whom any person is convicted of or adjudicated delinquent for a violation of an offense under subsection (1) of this section shall collect forthwith the Mississippi driver's license of the person and forward such license to the Department of Public Safety along with a report indicating the first and last day of the suspension or revocation period imposed pursuant to this section. . . . .").
*Case law:*

In re J.M.R., 852 So. 2d 601, 604 (Miss. Ct. App. 2002) ("There is substantial evidence in the record to support [the judge's] order to commit [the child] to training school.").

In re A.B., 663 So. 2d 580, 582 (Miss. 1995) ("The clear language of § 43–21–605 indicates that decisions regarding parole of youths are to be decided by the superintendent of the state training facility. Given their qualifications and opportunities to observe the children, such persons are no doubt in the best position to determine when a child should be released on parole.").

➤ **If child is in need of special care**

**§ 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.").

➤ **If child is mentally ill or intellectually disabled**

**§ 43-27-25**

No person shall be committed to an institution under the control of the Department of Youth Services who is seriously handicapped by having mental illness or an intellectual disability. If after a person is referred to the training schools it is determined that he has mental illness or an intellectual disability to an extent that he could not be properly cared for in its custody, the director may institute necessary legal action to accomplish the transfer of such person to such other state institution as, in his judgment, is best qualified to care for him in accordance with the laws of this state. The department shall establish standards with regard to the physical and mental health of persons which it can accept for commitment.

➤ **Two or more offenses alleged in same petition**

**U.R.Y.C.P. 27**

(a)(2) Two or more offenses alleged in same petition. The court shall enter a separate disposition on each adjudicated count. The court may order the disposition of any count to run concurrent or consecutive to any other count(s) or current disposition(s), as it deems in the best interest of the child and in the interest of justice.

➤ **Additional matters pertaining to delinquency orders**

**U.R.Y.C.P. 27**

(a)(3) Additional matters pertaining to delinquency orders.
(i) Admission packet to be provided to training school. If the disposition ordered by the court includes placing the child in the custody of a training school, an admission packet shall be prepared for the child and provided to the training school pursuant to section 43-21-603(8) of the Mississippi Code. The admittance of any child to a training school shall take place between the hours of 8:00 a.m. and 3:00 p.m. on designated admission days.
(ii) Detention facility to comply with educational services requirement. If a disposition order requires placement of a child in a juvenile detention facility, the facility shall comply with the educational services requirements of section 43-21-321 of the Mississippi Code.
(iii) School to be notified if child is to miss school due to other placement. If a disposition order requires that a child miss school due to other placement, the court shall notify a child's school while maintaining the confidentiality of the court process pursuant to section 43-21-605(2) of the Mississippi Code.
(iv) Institution or agency to provide information to court. Any institution or agency to which a child has been committed shall give to the court any information concerning the child as the court may at any time require.
(v) Fines to be paid in the general fund, exception. Any fines levied under Mississippi's Youth Court Law shall be paid into the general fund of the county but, in those counties wherein the youth court is a branch of the municipal government, it shall be paid into the municipal treasury.

*See also* Order Regarding Suicide Prevention Action plan, Civil Action No.: 3:03-cv-1354-HTW-JCS (S. Miss. Apr. 30, 2008) (requiring the Division of Youth Services to have all medical and mental records prior to accepting a youth into a training school).

**§ 43-21-603**

(8) 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 disposition order. If the disposition ordered by the youth court includes placing the child in the custody of a training school, an admission packet shall be prepared for the child that contains the following information:
(a) The child's current medical history, including medications and diagnosis;
(b) The child's mental health history;
(c) Copies of the child's cumulative record from the last school of record, including special education records, if reasonably available;
(d) Recommendation from the school of record based on areas of remediation needed;

(e) Disciplinary records from the school of record; and
(f) Records of disciplinary actions outside of the school setting, if reasonably available. Only individuals who are permitted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) shall have access to a child's medical records which are contained in an admission packet. The youth court shall provide the admission packet to the training school at or before the child's arrival at the training school. The admittance of any child to a training school shall take place between the hours of 8:00 a.m. and 3:00 p.m. on designated admission days.

➤ **Other matters pertaining to disposition orders**

**U.R.Y.C.P. 27**

(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.
(2) Mississippi Crime Victims' Bill of Rights. The youth court judge shall comply with the Mississippi Crime Victims' Bill of Rights (Miss. Code Ann. § 99-43-1 et seq.) as is applicable to youth courts.
(3) Registration of Sex Offenders. The youth court judge shall comply with the Registration of Sex Offenders (Miss. Code Ann. § 45-33-21 et seq.) as is applicable to youth courts.

*See also* L.B.C. v. Forrest Cty. Youth Court, 2017 WL 5897905 (Miss. 2017) ("The youth court does not have any discretion [under Section 45–33–25] as to whether a qualified delinquent is required to register as a sex offender.").

**§ 43-21-615**

(1) The costs of conveying any child committed to any institution or agency shall be paid by the county or municipality from which the child is committed out of the general treasury of the county or municipality upon approval of the court. No compensation shall be allowed beyond the actual and necessary expenses of the child and the person actually conveying the child. In the case of a female child, the youth court shall designate some suitable woman to accompany her to the institution or agency.

**§ 43-21-623**

Any juvenile who is adjudicated a delinquent on or after July 1, 1994, as a result of committing a sex offense as defined in Section 45-33-23 or any offense involving the crime of rape and placed in the custody of the Mississippi Department of Human Services, Office of Youth Services, shall be tested for HIV and AIDS. Such tests shall be conducted by the State Department of Health in conjunction with the Office of Youth Services, Mississippi Department of Human Services at the request of the victim or the victim's parents or guardian if the victim is a juvenile. The results of any positive HIV or AIDS tests shall be reported to the victim or the victim's parents or guardian if the victim

is a juvenile as well as to the adjudicated offender. The State Department of Health shall provide counseling and referral to appropriate treatment for victims of a sex offense when the adjudicated offender tested positive for HIV or AIDS if the victim so requests.

## *319 DISPOSITION PROGRAMS*

Disposition programs under the Mississippi Youth Court Law include:

- Oakley Training School (§ 43-21-605(1)(g));
- Youth Challenge Program (§ 43-21-605(1)(h));
- Youth Court Work Program (§ 43-21-605(1)(j)); and
- House Arrest in Intensive Supervision Program (§ 43-21-605(1)(k)).

**§ 43-27-39**

(2) The Columbia Training School shall no longer operate as a secure training school for juvenile delinquents. All youth, both male and female, committed to the custody of the Department of Human Services and adjudicated to training school shall be housed at the Oakley Youth Development Center. The Oakley Youth Development Center shall provide gender-specific treatment for youth who are adjudicated delinquent.

**§ 43-27-203**

(1) There is created under the Mississippi National Guard a program to be known as the "Youth Challenge Program." The program shall be an interdiction program designed for children determined to be "at risk" by the National Guard.
(2) The Mississippi National Guard shall implement and administer the Youth Challenge Program and shall promulgate rules and regulations concerning the administration of the program. The National Guard shall prepare written guidelines concerning the nomination and selection process of participants in the program, and such guidelines shall include a list of the factors considered in the selection process.
(3) Participation in the Youth Challenge Program shall be on a voluntary basis. No child may be sentenced by any court to participate in the program; however, a youth court judge may refer the program to a child when, under his determination, such program would be sufficient to meet the needs of the child.
(4) The Mississippi National Guard, under the auspices of the Challenge Academy, may award an adult high school diploma to each participant who meets the requirements for a general educational development (GED) equivalent under the policies and guidelines of the GED Testing Service of the American Council on Education and any other minimum academic requirements prescribed by the National Guard and Challenge Academy for graduation from the Youth Challenge Program. Participants in the program who do not meet the minimum academic requirements may be awarded a special certificate of

attendance. The Mississippi National Guard and the Challenge Academy shall establish rules and regulations for awarding the adult high school diploma and shall prescribe the form for such diploma and the certificate of attendance.
(5) The Mississippi National Guard may accept any available funds that may be used to defray the expenses of the program, including, but not limited to, federal funding, public or private funds and any funds that may be appropriated by the Legislature for that purpose.

**§ 43-21-627**

Each youth court is authorized to establish a youth court work program as an alternative disposition for nonviolent offenders. The youth court work program shall be used only for first time nonviolent youth offenders. The court shall solicit and approve the assistance of volunteers from the area served by the youth court, including business and community volunteers. The court may require a nonviolent youth offender to work for a minimum of six (6) months with a court approved volunteer as part or all of a sentence imposed by the court. The volunteers shall provide a working environment as mentors to provide guidance and support and to teach the youth offender job skills. Each youth offender and volunteer shall be under the supervision of the court and shall make regular reports to the court as required by order of the court. If a youth offender violates the terms and conditions imposed by the court while participating in the youth court work program, the court is authorized to remove the offender from the program and impose any other disposition authorized by law.

## *320 ORDERS TO PARENTS, GUARDIANS, CUSTODIANS AND OTHERS*

### ➤ Orders requiring support

**§ 43-21-615**

(2) Whenever a child is adjudicated delinquent and committed by the youth court to the custody of any person or agency other than the custody of a state training school, the youth court, after giving the responsible parent or guardian a reasonable opportunity to be heard, may order that the parent or guardian pay, upon such terms or conditions as the youth court may direct, such sum or sums as will cover, in whole or in part, the support of the child including any necessary medical treatment. The parent shall be provided an itemized bill of all costs and shall be given an opportunity to request an adjustment of the costs. If the parent or guardian shall willfully fail or refuse to pay such sum, he may be proceeded against for contempt of court as provided in this chapter.

*See also* U.R.Y.C.P. 20(a)(4), 22(a)(2), 27(a).

➤ **Orders requiring others to act or refrain**

**§ 43-21-605**

(4) If the youth court places a child in a state-supported training school, the court may order the parents or guardians of the child and other persons living in the child's household to receive counseling and parenting classes for rehabilitative purposes while the child is in the legal custody of the training school. A youth court entering an order under this subsection (4) shall utilize appropriate services offered either at no cost or for a fee calculated on a sliding scale according to income unless the person ordered to participate elects to receive other counseling and classes acceptable to the court at the person's sole expense.

**§ 43-21-617**

In all cases where the child is found to be a delinquent child, a child in need of supervision, 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.

*See also* U.R.Y.C.P. 20(a)(4), 22(a)(2), 27(a).

➤ **Orders requiring parent to pay certain expenses**

**§ 43-21-619**

(1) 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.
(2) The youth court may order the parents, guardians or custodians who exercise parental custody and control of a child who is under the jurisdiction of the youth court and who has willfully or maliciously caused personal injury or damaged or destroyed property, to pay such damages or restitution through the court to the victim in an amount not to exceed the actual loss and to enforce payment thereof. Restitution ordered by the youth court under this section shall not preclude recovery of damages by the victim from such child or parent, guardian or custodian or other person who would otherwise be liable. The youth court also may order the parents, guardians or custodians of a child who is under the jurisdiction of the youth court and who willfully or maliciously has caused personal injury or damaged or destroyed property to participate in a counseling program or other

suitable family treatment program for the purpose of preventing future occurrences of malicious destruction of property or personal injury.
(3) Such orders under this section shall constitute a civil judgment and may be enrolled on the judgment rolls in the office of the circuit clerk of the county where such order was entered, and further, such order may be enforced in any manner provided by law for civil judgments.

*See also* U.R.Y.C.P. 20(a)(4), 22(a)(2), 27(a).

**§ 43-21-105**

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

*Case law:*

Williamson v. Daniels, 748 So. 2d 754, 758 (Miss. 1999) ("[Section 43-21-619] is applicable only to the youth court").

In re B.D., 720 So. 2d 476, 479 (Miss. 1998). ("[W]e find that the restitution statute at question is rationally related to a legitimate purpose and is a valid expression of the state's police power. It is the Legislature's judgment that the burden here should be borne by the parents, guardians or custodians of the juvenile at fault.").

## *321 MODIFICATION OF DISPOSITION ORDERS*

**U.R.Y.C.P. 28**

(a) Delinquency and child in need of supervision proceedings.
(1) Modification of orders. Procedures governing the modification of a disposition order of a delinquent child or a child in need of supervision shall be conducted pursuant to section 43-21-613(1) and (2) of the Mississippi Code. Service of summons for such hearings shall be pursuant to Rule 22(c) of these rules.
(2) Annual reviews. Unless the court's jurisdiction has been terminated, all disposition orders for supervision, probation or placement of a child with an individual or an agency shall be reviewed by the court at least annually to determine if continued placement, probation or supervision is in the best interest of the child or the public.

**Comment to U.R.Y.C.P. 28(a)**

The youth court has continuing jurisdiction to modify the disposition of a delinquent or child in need of supervision as necessary. See In re Litdell, 232 So. 2d 733, 736 (Miss.

1970) ("The youth court's jurisdiction of a youth adjudged to be delinquent is a continuing one, with continuing power to alter the terms of the probation if, in the best interests of the child, the original arrangement proves inadequate or to have been ill advised."). 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).

**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.

*Accord* Miss. Code Ann. §§ 43-21-501 to -507.

**§ 43-21-613**

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

*Case law:*

In re Litdell, 232 So. 2d 733, 736 (Miss. 1970) ("The youth court's jurisdiction of youth adjudged to be delinquent is a continuing one, with a continuing power to alter the terms of the probation if, in the interests of the child, the original arrangement proves inadequate or to have been ill-advised.").

## *322 ANNUAL REVIEWS*

**U.R.Y.C.P. 28**

(a)(2) Annual reviews. Unless the court's jurisdiction has been terminated, all disposition orders for supervision, probation or placement of a child with an individual or an agency shall be reviewed by the court at least annually to determine if continued placement, probation or supervision is in the best interest of the child or the public.

*Accord* Miss. Code Ann. § 43-21-613(3)(a).

## *323 MANDATORY REPORTING REQUIREMENTS*

➤ **Uniform Youth Court Case Identification and Docket Numbering System**

The Mississippi Supreme Court has adopted a Uniform Youth Court Case Identification and Docket Numbering System to be implemented by intake in assigning an identification and docket number for every matter coming before the youth courts of the State of Mississippi. *See* Amended Special Order No. 46 (Miss. Dec. 12, 1997).

*See* U.R.Y.C.P. 4, 8, and 20.

➤ **Uniform Youth Court Case Tracking System and Form**

The Mississippi Supreme Court has adopted a Uniform Youth Court Case Tracking System and Form to be implemented by intake as a data collection procedure for every matter coming before the youth courts of the State of Mississippi. *See* Special Order No. 47 (Miss. Dec. 16, 1996).

*See* U.R.Y.C.P. 4 and 8.

➤ **Fifth Amendment**

[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb;

*See also* Miss. Const. art. III § 22 ("No person's life or liberty shall be twice placed in jeopardy for the same offense; but there must be an actual acquittal or conviction on the merits to bar another prosecution.").

➤ **Double jeopardy protections**

Double jeopardy embodies three separate constitutional protections:

> It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense.

Thomas v. State, 711 So. 2d 867, 870 (Miss. 1998).

*See also* United States v. Dinitz, 424 U.S. 600, 606 (1976) ("The Double Jeopardy Clause of the Fifth Amendment protects a defendant in a criminal proceeding against multiple punishments or repeated prosecutions for the same offense."); Breed v. Jones, 421 U.S. 519, 541 (1975) ("We hold that the prosecution of respondent in Superior Court, after an adjudicatory proceeding in Juvenile Court, violated the Double Jeopardy Clause of the Fifth Amendment, as applied to the States through the Fourteenth Amendment.").

➤ **When jeopardy attaches**

"[J]eopardy attaches when the respondent is put to trial before the trier of facts, that is, when the youth court, as the trier of facts, begins to hear evidence." In re W.R.A., 481 So. 2d 280, 287 (Miss. 1985). But one must first suffer actual jeopardy to avail on a claim of double jeopardy. *See* Interest of Watkins, 324 So.2d 232, 233 (Miss. 1975) ("[T]he hearing accorded . . . by the youth court was not an adjudicatory hearing but was a 'transfer' hearing only, . . . No adjudication by the youth court of Watkins' guilt or innocence of such alleged crimes was sought or had."); Lee v. State, 759 So. 2d 390, 393 (Miss. 2000) ("Showing probable cause does not put one in jeopardy.").

➤ **"Same elements" test**

The following test is used to determine whether a second prosecution is precluded by the double jeopardy prohibition:

> A single act may be an offense against two statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other.

Blockburger v. United States, 284 U.S. 299, 304 (1932).

In other words, the double jeopardy prohibition does not apply if each crime (or delinquent act) contains at least one element the other lacks. *See* United States v. Dixon, 509 U.S. 688, 711 (1993) (overruled Grady "same conduct" test); Brown v. State, 731 So. 2d 595, 599 (Miss. 1999) ("The test for determining whether a defendant has been subjected to double jeopardy is the "same elements" test as set out in *Blockburger* . . . .").

➤ **Separate acts constituting separate crimes**

Separate acts though committed close in point of time to one another may constitute separate criminal offenses. In such cases, the double jeopardy prohibition does not apply. *See* Clemons v. State, 482 So. 2d 1102, 1106-07 (Miss. 1985) (double jeopardy prohibition did not apply to two separate cocaine purchases); Pharr v. State, 465 So. 2d 294, 300 (Miss. 1984) (double jeopardy prohibition did not apply to three separate acts of headlighting deer).

➤ **Civil sanctions ordinarily not applicable**

The following two-step approached is used to determine if the sanction imposed rises to the level of criminal punishment:

1. Did the legislature, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other?
2. If legislature indicated an intention to establish a civil penalty - Was the statutory scheme so punitive either in purpose or effect as to negate that intention?

*See* Hudson v. U.S., 522 U.S. 93, 99 (1997).

Administrative driver's license suspension, even though it may have punitive aspects, is viewed as a remedial measure. *See* Keyes v. State, 708 So. 2d 540, 548 (Miss. 1998) ("[T]he Double Jeopardy Clauses of the United States and Mississippi Constitutions do not preclude criminal prosecution for violation of Miss. Code Ann. § 63-11-30 subsequent to administrative license suspension pursuant to § 63-11-23(2).").

**Art. 3 § 26A**

(1) Victims of crime, as defined by law, shall have the right to be treated with fairness, dignity and respect throughout the criminal justice process; and to be informed, to be present and to be heard, when authorized by law, during public hearings.
(2) Nothing in this section shall provide grounds for the accused or convicted offender to obtain any form of relief nor shall this section impair the constitutional rights of the accused. Nothing in this section or any enabling statute shall be construed as creating a cause of action for damages against the state or any of its agencies, officials, employees or political subdivisions.
(3) The Legislature shall have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section.

**§ 99-43-1**

This chapter may be cited as the "Mississippi Crime Victims' Bill of Rights." The purpose of this chapter is to ensure the fair and compassionate treatment of victims of crime, to increase the effectiveness of the criminal justice system by affording rights and considerations to the victims of crime, and to preserve and protect victims' rights to justice and fairness in the criminal justice system.

*See also* Miss. Code Ann. § 99-43-3 ("As used in this chapter, the following words shall have the meanings ascribed to them unless the context clearly requires otherwise: . . . (e) "Court" means all state courts including juvenile courts.").

**§ 99-41-1**

This chapter shall be known and may be cited as the "Mississippi Crime Victims' Compensation Act."

*See also* Miss. Code Ann. § 99-41-5 ("(d) . . . For purposes of this chapter, "criminally injurious conduct" shall also include . . . delinquent acts as defined in Section 43–21–105 which result in personal injury or death to a victim and which, if committed by an adult, would be a crime punishable by fine, imprisonment or death.").

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## *CHAPTER 4*

## *CHILD IN NEED OF SUPERVISION*


***400 INTAKE***

**Appointment of intake unit**
**Reports made to the intake unit**
**Preliminary inquiry**
**Intake recommendations**
**When intake is required to make a recommendation**

***401 COURT ORDERS UPON INTAKE RECOMMENDATIONS***

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**Uniform Youth Court Case Identification and Docket Numbering System**
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➤ **Appointment of intake unit**

**U.R.Y.C.P. 8**

(d) Appointment of intake unit. In every youth court division the judge shall appoint one or more persons to function as an intake unit pursuant to sections 43-21-115 and 43-21-123 of the Mississippi Code.

**§ 43-21-115**

In every youth court division the judge shall appoint as provided in Section 43-21-123 one or more persons to function as the intake unit for the youth court division. The youth court intake unit shall perform all duties specified by this chapter. If the person serving as the youth court intake unit is not already a salaried public employee, the salary for such person shall be fixed on order of the judge as provided in Section 43-21-123 and shall be paid by the county or municipality, as the case may be, out of any available funds budgeted for the youth court by the board of supervisors.

**§ 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.

The board of supervisors of any county in which there is located a youth court, and the governing authority of any municipality in which there is located a municipal youth court, are each authorized to reimburse the youth court judges and other youth court employees or personnel for reasonable travel and expenses incurred in the performance of their duties and in attending educational meetings offering professional training to such persons as budgeted.

➤ **Reports made to the intake unit**

**§ 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.

**Comment to U.R.Y.C.P. 8(a)**

Uniform Youth Court Case Identification and Docket Numbering System.
The Mississippi Supreme Court has adopted a Uniform Youth Court Case Identification and Docket Numbering System to be implemented by intake in assigning an identification and docket number for every matter coming before the youth courts of the State of Mississippi. See Amended Special Order No. 46 (Miss. Dec. 12, 1997).

Uniform Youth Court Case Tracking System and Form.
The Mississippi Supreme Court has adopted a Uniform Youth Court Case Tracking System and Form to be implemented by intake as a data collection procedure for every matter coming before the youth courts of the State of Mississippi. See Special Order No. 47 (Miss. Dec. 16, 1996).

➤ **Preliminary inquiry**

**§ 43–21–357**

(1) After receiving a report, the youth court intake unit shall promptly make a preliminary inquiry to determine whether the interest of the child, other children in the same environment or the public requires the youth court to take further action. As part of the preliminary inquiry, the youth court intake unit may request or the youth court may order the Department of Human Services, the Department of Youth Services, any successor agency or any other qualified public employee to make an investigation or report concerning the child and any other children in the same environment, and present the findings thereof to the youth court intake unit. If the youth court intake unit receives a neglect or abuse report, the youth court intake unit shall immediately forward the

complaint to the Department of Human Services to promptly make an investigation or report concerning the child and any other children in the same environment and promptly present the findings thereof to the youth court intake unit.

➤ **Intake recommendations**

**U.R.Y.C.P. 8**

(a) Delinquency and child in need of supervision 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 a delinquent child or a child in need of supervision, 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 child be warned or counseled informally; or
**(4)** that the child be referred to the youth court [intervention] court; 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(a) 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* Miss. Code Ann. § 43–21–357(1), providing in part: "(e) That the child be referred to the youth court intervention court;"

➤ **When intake is required to make a recommendation**

**Comment to U.R.Y.C.P. 8(a)**

When the intake unit receives a report of a delinquent child or a child in need of supervision it may request, or the youth court may order, the Department of Human Services, Division of Youth Services, or other appointed intake unit, to make an investigation concerning the child, and any other children in the same environment, and present the findings to the intake unit. If it appears from the intake screening process that the child is a delinquent child or a child in need a supervision, the intake unit must make a recommendation to the youth court pursuant to Rule 8(a) 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. See Miss. Code Ann. § 43-21-357(2).

## *401 COURT ORDERS UPON INTAKE RECOMMENDATIONS*

➤ **Authorized actions**

**U.R.Y.C.P. 9**

(a) Delinquency and child in need of supervision 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 Youth Services, or other appointed intake unit, 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 youth court counselor 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, the informal adjustment process may be commenced after the filing of a petition.
(3) The child be warned or counseled informally. The court may order the child to be warned or counseled informally in accordance with the policies of the Department of Human Services, Division of Youth Services.
(4) The child be referred to the youth court drug court. The court may order the child to be referred to the youth court drug court pursuant to the guidelines developed by the State Drug Court Advisory Committee.
(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.

**Comment to Rule 9(a)(5)**

When the intake unit makes a recommendation that a petition be filed, the court must decide whether to proceed informally or to refer the matter to the youth court prosecutor for the consideration of initiating formal proceedings. If the court refers the matter to the youth court prosecutor for the initiation of formal proceedings and the youth court prosecutor decides to file a petition in accordance with Rule 20 of these rules, then the child shall be afforded the procedural due protections required by law for formal proceedings. See Application of Gault, 387 U.S. 1, 30 (1967) (holding that youth court adjudicatory hearings "must measure up to the essentials of due process and fair treatment"); Patterson v. Hopkins, 350 F. Supp. 676, 683 (N.D. Miss. 1972) ("[T]he Due Process Clause does require application during the adjudicatory hearing of 'the essentials of due process and fair treatment.' . . . [T]he constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in Gault-notice of charges, right to counsel, the rights of confrontation and examination, and the privilege against self-incrimination.") (internal quotation marks omitted).

*See also* Miss. Code Ann. § 43–21–357(2), providing in part: "(e) That the child be referred to the youth court intervention court;" and Miss. Code Ann. § 43–21–357(3), providing: "(3) If the preliminary inquiry discloses that a child needs emergency medical treatment, the judge may order the necessary treatment."

## *402 VALID COURT ORDER*

➤ **Valid court order requirements**

**U.R.Y.C.P. 10**

(a) Valid court order for a child in need of supervision who has committed a status offense.
A child in need of supervision who has committed a status offense shall not be held in secure juvenile detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial appearance, with the exception of a child who is an out-of-state runaway pending return to the child's home state, unless:
(1) the court has issued a valid court order which contains:
(i) an advisement of rights, including:
the right to have the petition served on the child in a reasonable time before the hearing;
the right to a hearing on the petition before the court;
the right to an explanation of the nature and consequences of the proceedings;
the right to remain silent;
the right to legal counsel and, if indigent, the right to appointed legal counsel;
the right to present and confront witnesses;
the right to a transcript of the proceedings; and
the right to appeal; and
(ii) a warning that a violation of the valid court order is contempt of court and may result in the child being ordered to a secure juvenile detention facility;
(2) reasonable oral or written notice of the time, place and purpose of the contempt hearing for the violation of the valid court order is given to the child, the child's parent, guardian or custodian, the child's guardian ad litem, if any, and the child's counsel.

Notice shall be satisfied if the following notice is placed in capital letters at the bottom of the valid court order and is acknowledged on the record by the child, the child's parent, guardian or custodian, the child's guardian ad litem, if any, and the child's counsel:

A VIOLATION OF THIS VALID COURT ORDER IS CONTEMPT OF COURT AND MAY RESULT IN YOU BEING ORDERED TO SECURE JUVENILE DETENTION. IF A REPORT OR COMPLAINT OF A VIOLATION OF THIS VALID COURT ORDER IS RECEIVED BY THIS COURT, YOU ARE HEREBY COMMANDED TO APPEAR BEFORE THIS COURT WITHIN 72 HOURS OF YOUR ORIGINAL SECURE JUVENILE DETENTION PERTAINING TO THE VIOLATION OF THE VALID COURT ORDER, EXCLUDING SATURDAYS, SUNDAYS, AND STATUTORY STATE HOLIDAYS FOR A CONTEMPT HEARING ON THE VIOLATION OF THE VALID COURT ORDER. YOU HAVE A RIGHT TO BE REPRESENTED BY AN ATTORNEY. YOU ARE REQUESTED TO IMMEDIATELY NOTIFY THIS COURT OF THE NAME OF YOUR ATTORNEY. IF INDIGENT, YOU HAVE THE RIGHT TO HAVE AN ATTORNEY APPOINTED FREE OF CHARGE,

AND YOU SHOULD IMMEDIATELY APPLY TO THIS COURT FOR SUCH APPOINTED COUNSEL. YOU HAVE A RIGHT TO SUBPOENA WITNESSES IN YOUR BEHALF. THIS NOTICE SHALL BE LEGAL AND SUFFICIENT NOTICE TO YOU, YOUR PARENT(S), GUARDIAN, OR CUSTODIAN, YOUR GUARDIAN AD LITEM, IF ANY, AND YOUR COUNSEL WITH RESPECT TO SUCH HEARING;

but in any event, if the child's parent, guardian or custodian cannot be found, the court may hold the hearing in the absence of the child's parent, guardian or custodian;
(3) the court conducts a probable cause hearing within twenty-four (24) hours of the child being ordered to secure juvenile detention, excluding Saturdays, Sundays, and statutory state holidays, for the violation of the valid court order;
(4) the court conducts an adjudication hearing within seventy-two (72) hours of the original secure juvenile detention for the violation of the valid court order, excluding Saturdays, Sundays, and statutory state holidays; and
(5) the court conducts a separate and distinct disposition hearing within seventy-two (72) hours of the original secure juvenile detention for the violation of the valid court order, excluding Saturdays, Sundays, and statutory state holidays, and in which:
(i) the Department of Human Services, Division of Youth Services submits to the court a written report that contains: a review of the child's behavior; a determination of the reasons for that behavior; and a determination that all other dispositions other than secure juvenile detention are inappropriate;
(ii) the court makes the determination, based upon the written report and other evidence before the court, that all other dispositions other than secure juvenile detention are inappropriate; and
(iii) the court specifies in the disposition order: the number of days the child is to be held in secure juvenile detention; that the secure juvenile detention complies with federal and state laws; and that the court may, within its discretion, suspend the secure juvenile detention should a less restrictive alternative become available.

*Accord* Miss. Code Ann. § 43-21-301(6).

**Comment to U.R.Y.C.P. 10**

Contempt for a violation of a valid court order requires proof beyond a reasonable doubt.

"Valid court order", in the context of Rule 10 of these rules, is a distinct term that identifies any order holding a status offender in secure juvenile detention. Its usage originated when Congress, in response to the problem of status offenders disobeying court orders, amended the Juvenile Justice Delinquency Prevention Act of 1974 by passing a "valid court order exception." See Claire Shubik & Jessica Kendall, Rethinking Juvenile Status Offense Laws: Considerations for Congressional Review of the Juvenile Justice and Delinquency Prevention Act, 45 Fam. Ct. Rev. 384, 388-89 (2007) (discussing the rationale for the passage of the "valid court order exception"). Federal agencies closely scrutinize all valid court orders to ensure compliance with the statutory exception.

➤ **Valid Court Order Exception Form**

**U.R.Y.C.P. 10**

(b) Valid Court Order Exception Form. If a child is taken into custody upon an order of the court for a violation of a valid court order, and such custody is prior to the child being adjudicated in contempt for the violation, the court shall complete and sign a Valid Court Order Exception Form and send a copy thereof to the secure juvenile detention facility.

**Comment to U.R.Y.C.P. 10(b)**

Within twenty-four (24) hours of the time the child is taken into custody for a violation of a valid court order, if such is prior to the child being adjudicated in contempt for the violation, the appropriate public agency must: be notified that the child is being held in custody; interview the child in person; and submit an assessment on the needs of the child to the court that issued the order. See 28 C.F.R. § 31.303 (2008).

The Valid Court Order Assessment Report requires the appropriate public agency worker to:
state the name of the juvenile facility in which the child was placed;
state the date of the placement;
state the name of the person conducting the interview;
describe the circumstances, events, and/or behaviors relevant to the incident;
describe the immediate needs of the child;
describe the most appropriate placement alternatives available for the child pending a disposition on the alleged violation; and
sign and date the assessment report.

## *403 INFORMAL ADJUSTMENT PROCESS* ❖

➤ **Required notice**

**§ 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.

➤ **What the informal adjustment must include**

**§ 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.

➤ **An informal adjustment may commence after the filing of a petition**

**§ 43-21-401**

(2) If authorized by the youth court, informal adjustment may be commenced after the filing of a petition.

➤ **Speedy trial is waived**

**§ 43-21-401**

(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.

➤ **Informal adjustment counselor conducts 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.

➤ **Informing the parties of their rights**

**§ 43-21-405**

(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.

➤ **Informing the parties of certain information and procedures**

**§ 43-21-405**

(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.

➤ **Discussing recommendations for actions or conduct**

**§ 43-21-405**

(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.

➤ **Informal adjustment agreement to be written and signed**

**§ 43-21-405**

(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.

➤ **Time limitation to the informal adjustment process**

**§ 43-21-405**

(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.

➤ **Termination if satisfactory completion**

**§ 43-21-407**

(1) If it appears to the informal adjustment counselor that the child and his parent, guardian or custodian:
(a) have complied with the terms and conditions of the informal adjustment agreement; and
(b) have received the maximum benefit from the informal adjustment process, the informal adjustment counselor shall terminate the informal adjustment process and dismiss the child without further proceedings. The informal adjustment counselor shall notify the child and his parent, guardian or custodian in writing of the satisfactory completion of the informal adjustment and report such action to the youth court.

➤ **Termination for other reasons**

**§ 43-21-407**

(2) If it appears to the informal adjustment counselor that further efforts at informal adjustment would not be in the best interests of the child or the community, or that the child or his parent, guardian or custodian:
(a) denies the jurisdiction of the youth court;
(b) declines to participate in the informal adjustment process;
(c) expresses a desire that the facts be determined by the youth court;
(d) fails without reasonable excuse to attend scheduled meetings;
(e) appears unable or unwilling to benefit from the informal adjustment process, the informal adjustment counselor shall terminate the informal adjustment process. If the informal adjustment process is so terminated, the intake unit shall reinitiate the intake procedure under section 43-21-357. Even if the informal adjustment process has been so terminated, the intake unit shall not be precluded from reinitiating the informal adjustment process.

➤ **When a custody order may be issued**

**U.R.Y.C.P. 11**

(a) Delinquency and child in need of supervision proceedings.
(1) When a custody order may be issued. The youth court judge or referee, a chancellor sitting as a youth court judge, or the judge's designee, and no other judge of another court, may issue an order to take into temporary custody or custody a child within the original exclusive 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 temporary custody order or custody order recites that:
(i) there is probable cause the child is within the jurisdiction of the youth 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.

*Accord* Miss. Code Ann. §§ 43-21-301, -307, -315.

➤ **Factors as to whether custody is necessary**

**Comment to U.R.Y.C.P. 11(a)(1)**

Factors the court may consider in determining whether custody is necessary include: the child's family ties and relationships; the child's prior delinquency record; the violent nature of the alleged offense; the child's prior history of committing acts that resulted in bodily injury to others; the child's character and mental condition; the court's ability to supervise the child if placed with a parent or relative; the child's ties to the community; the risk of nonappearance; the danger to the child or public if the child is released; another petition is pending against the child; the home conditions of the child; and a violation of a valid court order. Accord Michigan Court Rule 3.935(C). The court must include its findings in the temporary custody or custody order.

➤ **Order requirements**

**U.R.Y.C.P. 11**

(a)(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 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;
(iv) state the date issued and the youth court by which the order is issued; and
(v) be signed by the youth court judge or referee, or the judge's designee, with the title of his/her office.

*Accord* Miss. Code Ann. §§ 43-21-301, -307, -315;

**§ 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 in danger of a significant risk of harm, any person would be in danger of a significant risk of harm 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 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 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.
(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.

*Case law:*

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.").

➤ **Custody requirements**

**U.R.Y.C.P. 11**

(a)(3) Custody requirements. The court shall comply with the following custodial requirements:
(i) No child who has been accused or adjudicated of any status offense shall be placed in an adult jail or lockup. An accused status offender shall not be held in secure juvenile detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial court appearance, excluding Saturdays, Sundays and statutory state holidays, except under the following circumstances: a status offender may be held in secure juvenile detention for violating a valid court order as set forth in Rule 10 of these rules and pursuant to the criteria as established by the federal Juvenile Justice and Delinquency Prevention Act of 2002, and any subsequent amendments thereto, and out-of-state runaways may be detained pending return to their home state.
(ii) No accused or adjudicated juvenile offender, except for an accused or adjudicated juvenile offender in cases where jurisdiction is waived to the adult criminal court, shall be detained or placed into custody of any adult jail or lockup for a period in excess of six (6) hours.
(iii) The custody of any child taken into custody shall comply with the detention requirements of section 43-21-315 of the Mississippi Code.

*Accord* Miss. Code Ann. §§ 43-21-301, -307, -315.

**§ 43-21-313**

(4) A child held in custody in violation of Section 43-21-301(6) shall be immediately transferred to a proper juvenile facility.

**§ 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.
(2) Except as otherwise provided in this chapter, unless jurisdiction is transferred, no child shall be placed in any jail or place of detention of adults by any person or court unless the child shall be physically segregated from other persons not subject to the jurisdiction of the youth court and the physical arrangement of such jail or place of detention of adults prevents such child from having substantial contact with and substantial view of such other persons; but in any event, the child shall not be confined anywhere in the same cell with persons not subject to the jurisdiction of the youth court. Any order placing a child into custody shall comply with the detention requirements provided in Section 43-21-301(6). This subsection shall not be construed to apply to commitments to the training school under Section 43-21-605(1)(g)(iii).
(3) Any child who is charged with a hunting or fishing violation, a traffic violation, or any other criminal offense for which the youth court shall have power on its own motion to remove jurisdiction from any criminal court, may be detained only in the same facilities designated by the youth court for children within the jurisdiction of the youth court.

➤ **Additional orders after a child is ordered into custody**

**U.R.Y.C.P. 11**

(a)(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.

*Accord* Miss. Code Ann. § 43-21-315.

**§ 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.

## *405 TAKING INTO CUSTODY WITHOUT A CUSTODY ORDER*

### ➤ Governing law

**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.

*Accord* Miss. Code Ann. §§ 43-21-301, -307, -315.

**§ 43-21-301**

(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.

### ➤ Grounds for taking a child into custody without a custody order

**§ 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 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
(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 section 43-21-303(1)(a).

*Case law:*

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.").

*See also* Miss. Code Ann. § 43-21-305 ("A law enforcement officer may stop any child abroad in a public place whom the officer has probable cause to believe is within the jurisdiction of the youth court and may question the child as to his name, address and explanation of his actions.").

➤ **Least restrictive custody should be selected**

**§ 43-21-303**

(2) When it is necessary to take a child into custody, the least restrictive custody should be selected.

➤ **Notification requirements**

**§ 43-21-303**

(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.

➤ **Limitations on the duration of custody**

**§ 43-21-303**

(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.

➤ **Fingerprinting and photographing restrictions**

**§ 43-21-255**

(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.

➤ **Interview and interrogation restrictions**

**U.R.Y.C.P. 17**

Procedures governing the rights of a child taken into custody for delinquency or as a child in need of supervision shall be in compliance with section 43-21-311 of the Mississippi Code.

**Comment to U.R.Y.C.P. 17**

The rights set forth in section 43-21-311 of the Mississippi Code attach whenever the child is taken into custody for an offense which is within the jurisdiction of the youth court. See Smith v. State, 534 So. 2d 194, 196 (Miss. 1988) ("At the time [the child] gave his confession he had not been charged with any crime that would remove him from the Youth Court's jurisdiction . . . Therefore, the circumstances surrounding [his] confession must satisfy the Youth Court Act.") . . . Edmonds v. State, 955 So. 2d 787, 804 (Miss. 2007) ("[The] absence of a parent or guardian during the interrogation of a [child who was under the jurisdiction of the youth court] goes directly to the issue of voluntariness; such a violation renders the statement inadmissible as a violation of basic constitutional guarantees.").

**§ 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.

**§ 43-21-303**

(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.

## *406 CUSTODY RESTRICTIONS ON CERTAIN MISDEMEANOR OFFENSES*

**Comment to U.R.Y.C.P. 11(a)(1)**

Justice and municipal courts may not issue an order to take a child into custody, or an arrest warrant, for any child within the exclusive original jurisdiction of the youth court. Such is not applicable to offenses outside the exclusive original jurisdiction of the youth court, e.g., hunting, fishing or traffic violations. See White v. Walker, 950 F.2d 972, 979 (5th Cir. 1991). However, in those instances, the custody of the child must comply with all state and federal laws pertaining to the detention of juveniles. See U.R.Y.C.P. 19(c). When a child is convicted of a misdemeanor offense by a criminal court having original jurisdiction of the misdemeanor charge and the sentence includes that the child is to be committed to, incarcerated in or imprisoned in a jail or other place of detention, the commencement of such commitment, incarceration or imprisonment in a jail or other place of detention is stayed until the criminal court has notified the youth court judge or the judge's designee of the conviction and sentence.

**U.R.Y.C.P. 19**

(c) Detention of children charged with certain misdemeanor offenses.
Any child who is charged with a hunting or fishing violation, a traffic violation, a violation of the Mississippi Implied Consent Law, or any other criminal offense for which the youth court shall have power on its own motion to remove jurisdiction from any criminal court, may be detained only in the same juvenile facilities designated by the youth court for children within the jurisdiction of the youth court.

## *407 DETENTION HEARINGS* ❖

➤ **When the child may be held for longer than temporary custody**

**U.R.Y.C.P. 16**

(a) Delinquency and child in need of supervision 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.
(2) Reasonable oral or written notice of the time, place and purpose of the hearing has been given to the child; to the child's parent, guardian or custodian; to the child's guardian ad litem, if any; and to the child's counsel. If 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.

(3) All parties present are afforded the opportunity to present evidence and cross-examine witnesses produced by others. The youth court may, in its discretion, limit the extent but not the right or presentation of evidence and cross-examination of witnesses. 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.
(4) At the conclusion of the detention hearing, the court finds and the detention 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.
. . .
(5) The court orders custody of the child and that a petition be filed if one has not been filed.

*Accord* Miss. Code Ann. § 43-21-309.

**§ 43-21-203**

(7) In all hearings, a complete record of all evidence shall be taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.
. . .
(11) An order or ruling of the youth court judge delivered orally must be reduced to writing within forty-eight (48) hours, excluding Saturdays, Sundays and statutory state holidays.

➤ **Custody order to comply with statutory requirements**

**U.R.Y.C.P. 16**

(a)(4) Any order placing a child into custody shall comply with the requirements provided in section 43-21-301 of the Mississippi Code.

*Accord* Miss. Code Ann. § 43-21-309.

➤ **When custody is deemed necessary**

**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.

*Accord* Miss. Code Ann. § 43-21-309.

**Comment to U.R.Y.C.P. 16(a)**

Factors the court may consider in determining whether custody is necessary include:

the child's family ties and relationships;
the child's prior delinquency record;
the violent nature of the alleged offense;
the child's prior history of committing acts that resulted in bodily injury to others;
the child's character and mental condition;
the court's ability to supervise the child if placed with a parent or relative;
the child's ties to the community;
the risk of nonappearance;
the danger to the child or public if the child is released;
another petition is pending against the child;
the home conditions of the child; and
a violation of a valid court order.

[The] court must include its findings in the detention or shelter order.

➤ **When the court must order the release of the child**

**U.R.Y.C.P. 16**

(a)(4) . . . 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.

*Accord* Miss. Code Ann. § 43-21-309.

➤ **Waivers as to detention hearings**

**U.R.Y.C.P. 16**

(a)(5) . . . The child with advice of counsel may waive in writing the time of the detention hearing or the detention hearing itself.

*Accord* Miss. Code Ann. § 43-21-309.

## *408 RIGHTS OF CHILD IN CUSTODY FOR CHILD IN NEED OF SUPERVISION PROCEEDINGS*

### ➤ Governing law

**U.R.Y.C.P. 17**

Procedures governing the rights of a child taken into custody for delinquency or as a child in need of supervision shall be in compliance with section 43-21-311 of the Mississippi Code.

**Comment to U.R.Y.C.P. 17**

The rights set forth in section 43-21-311 of the Mississippi Code attach whenever the child is taken into custody for an offense which is within the jurisdiction of the youth court. See Smith v. State, 534 So. 2d 194, 196 (Miss. 1988) ("At the time [the child] gave his confession he had not been charged with any crime that would remove him from the Youth Court's jurisdiction . . . Therefore, the circumstances surrounding [his] confession must satisfy the Youth Court Act.") . . . Edmonds v. State, 955 So. 2d 787, 804 (Miss. 2007) ("[The] absence of a parent or guardian during the interrogation of a [child who was under the jurisdiction of the youth court] goes directly to the issue of voluntariness; such a violation renders the statement inadmissible as a violation of basic constitutional guarantees.").

### ➤ Rights and information to be read and posted

**§ 43-21-311**

(1) When a child is taken into custody, he shall immediately be informed of:
(a) The reason for his custody;
(b) The time within which review of the custody shall be held;
(c) His rights during custody including his right to counsel;
(d) All rules and regulations of the place at which he is held;
(e) The time and place of the detention hearing when the time and place is set; and
(f) The conditions of his custody which shall be in compliance with the detention requirements provided in Section 43-21-301(6).
These rights shall be posted where the child may read them, and such rights must be read to the child when he or she is taken into custody.

### ➤ Telephone rights

**§ 43-21-311**

(2) When a child is taken into custody, the child may immediately telephone his parent, guardian or custodian; his counsel; and personnel of the youth court. Thereafter, he shall

be allowed to telephone his counsel or any personnel of the youth court at reasonable intervals. Unless the judge or his designee finds that it is against the best interest of the child, he may telephone his parent, guardian or custodian at reasonable intervals.

➤ **Visitation rights**

**§ 43-21-311**

(3) When a child is taken into custody, the child may be visited by his counsel and authorized personnel of the youth court at any time. Unless the judge or his designee finds it to be against the best interest of the child, he may be visited by his parent, guardian or custodian during visiting hours which shall be regularly scheduled at least three (3) days per week. The youth court may establish rules permitting visits by other persons.

➤ **Interview and interrogation restrictions**

**§ 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.

## *409 RELEASE FROM CUSTODY UPON CHANGE OF CIRCUMSTANCES*

➤ **Governing law**

**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.

➤ **Written request, reasonable notice, and a hearing**

**§ 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.

➤ **Designating detention 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.

*Accord* Miss. Code Ann. § 43-21-315(1).

**Comment to U.R.Y.C.P. 19(a)**

Unless there is a valid court order, a child in need of supervision (other than an out-of-state runaway pending return to the child's home state) shall not be held in secure juvenile detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial appearance.

Four core protections requiring State compliance.
The JJDP Act, through the 2002 reauthorization, establishes four core protections with which participating States and territories must comply to receive grants under the JJDP Act:

-Deinstitutionalization of status offenders (DSO).
-Separation of juveniles from adults in institutions (separation).
-Removal of juveniles from adult jails and lockups (jail removal).
-Reduction of disproportionate minority contact (DMC), where it exists.

Meeting the core protections is essential to creating a fair, consistent, and effective juvenile justice system that advances the important goals of the JJDP Act. Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, Guidance Manual for Monitoring Facilities under the Juvenile Justice and Delinquency Prevention Act of 2002 1 (September 2003).

➤ **Detention prohibitions**

**U.R.Y.C.P. 19**

(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.

*Accord* § 43-21-315(2); *see also* 42 U.S.C. §§ 5603, -5633..

➤ **Detention of children charged with certain misdemeanor offenses**

**U.R.Y.C.P. 19**

(c) Detention of children charged with certain misdemeanor offenses.
Any child who is charged with a hunting or fishing violation, a traffic violation, a violation of the Mississippi Implied Consent Law, or any other criminal offense for which the youth court shall have power on its own motion to remove jurisdiction from any criminal court, may be detained only in the same juvenile facilities designated by the youth court for children within the jurisdiction of the youth court.

*Accord* Miss. Code Ann. § 43-21-315(3).

➤ **Arranging for the custody, care and maintenance of the child**

**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.

**Comment to U.R.Y.C.P. 19(d)**

This provision is congruent with Mississippi's constitutional mandates. See 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."); 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. The only role of the trial judge regarding this minor was to determine whether the minor needed the treatment and care provided by the state facility, and if so, to order [the child's] commitment."); see also Miss. Code Ann. § 43-21-315(4) (2008).

➤ **Juvenile detention centers**

**§ 43–21–321**

(1) All juvenile detention centers shall develop and implement policies and procedures that comply with the regulations promulgated by the Juvenile Facilities Monitoring Unit.
. . .
(3) All juvenile detention centers shall adhere to the following minimum standards:
(a) Each center shall have a manual that states the policies and procedures for operating and maintaining the facility, and the manual shall be reviewed annually and revised as needed;
(b) Each center shall have a policy that specifies support for a drug-free workplace for all employees, and the policy shall, at a minimum, include the following:
(i) The prohibition of the use of illegal drugs;
(ii) The prohibition of the possession of any illegal drugs except in the performance of official duties;
(iii) The procedure used to ensure compliance with a drug-free workplace policy;
(iv) The opportunities available for the treatment and counseling for drug abuse; and
(v) The penalties for violation of the drug-free workplace policy; and
(c) Each center shall have a policy, procedure and practice that ensures that personnel files and records are current, accurate and confidential.

*Case law:*

Reno v. Flores, 507 U.S. 292, 304 (1993) ("The best interests of the child" is likewise not an absolute and exclusive constitutional criterion for the government's exercise of the custodial responsibilities that it undertakes, which must be reconciled with many other responsibilities. Thus, child-care institutions operated by the State in the exercise of its parens patriae authority . . . are not constitutionally required to be funded at such a level as to provide the best schooling or the best health care available; . . . .").

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.").

## *411 PETITION* ❖

➤ **Filing**

**U.R.Y.C.P. 20**

(b) Child in need of supervision proceedings.
(1) Filing. All proceedings seeking an adjudication that a child is a child in need of supervision shall be initiated by the filing of a petition. Upon referral by the youth court, the youth court prosecutor may file a petition to initiate formal proceedings.

*Accord* Miss. Code Ann. § 43-21-451.

**Comment to U.R.Y.C.P. 20(b)**

Intake shall assign, pursuant to step 5 of Exhibit A of the Uniform Youth Court Case Identification and Docket Numbering System, a petition number for each petition filed on matters coming before the youth courts of the State of Mississippi. See Amended Special Order No. 46 (Miss. Dec. 12, 1997).

*Case law:*

In re Evans, 350 So. 2d 52, 54 (Miss. 1977) (holding "oral authorization [to file petition] was sufficient").

➤ **Time**

**U.R.Y.C.P. 20**

(2) Time. The petition shall be filed within five (5) days from the date of a detention hearing continuing non-secure placement custody. In non-custody cases, unless another period of time is authorized by the court, the petition shall be filed within ten (10) days of the court's referral of the matter to the youth court prosecutor for consideration of initiating formal proceedings. The court may, in its discretion, dismiss the petition for failure to comply with the time schedule contained herein.

*Accord* Miss. Code Ann. § 43-21-451.

➤ **Form**

**U.R.Y.C.P. 20**

(b)(3) Form. The petition shall be entitled "IN THE INTEREST OF _____."

*Accord* Miss. Code Ann. § 43-21-453.

➤ **Contents**

**U.R.Y.C.P. 20**

(b)(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 child in need of supervision;
(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 a child in need of supervision, 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 43-21-619 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.

*Accord* Miss. Code Ann. § 43-21-455.

**Comment to U.R.Y.C.P. 20(b)(4)**

A petition which institutes a youth court proceeding must recite factual allegations specific and definite enough to fairly apprise the child, the child's parents, custodians or guardians of the particular act or acts of misconduct or the particular circumstances which

will be inquired into at the adjudicatory proceedings. See In re Dennis, 291 So. 2d 731, 733 (Miss. 1974); see also In re M.R.L., 488 So. 2d 788, 792-93 (Miss. 1986) (holding that children expressly charged as children in need of supervision could not be found, absent an amendment to the petition, neglected children). The youth court is a court of statutory and limited jurisdiction, and the facts vesting jurisdiction should be shown affirmatively. See Monk v. State, 116 So. 2d 810, 811 (Miss. 1960). A petition charging delinquency is to include the statute or ordinance which the child is alleged to have violated. See In re R.T., 520 So. 2d 136, 137 (Miss. 1988).

➤ **Two or more offenses alleged in same petition**

**U.R.Y.C.P. 20**

(b)(5) Two or more offenses alleged in same petition. Two (2) or more offenses may be alleged in the same petition in a separate count for each offense if each particular offense is one in which a child could be adjudicated either as a delinquent child or as a child in need of supervision.
On each count admitted or proved in accordance with these rules, the court shall enter a separate adjudication on that count within its adjudicatory order and, after the disposition hearing, a separate disposition on that count within its disposition order. The court may order the disposition of any count to run concurrent or consecutive to any other count(s) or current dispositions, as it deems in the best interest of the child and in the interest of justice.

*Accord* Miss. Code Ann. § 43-21-455.

➤ **Amendments**

**U.R.Y.C.P. 20**

(b)(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.

*Accord* Miss. Code Ann. § 43-21-457.

➤ **Responsive pleadings not required**

**U.R.Y.C.P. 20**

(b)(7) Responsive pleadings not required. No party shall be required to file a responsive pleading.

*Accord* Miss. Code Ann. § 43-21-459.

## *412 PROPER VENUE*

**U.R.Y.C.P. 21**

(a) Delinquency and child in need of supervision proceedings. If a child is alleged to be a delinquent child or a child in need of supervision, the proceedings shall be commenced in any county where any of the alleged acts are said to have occurred. After adjudication, the youth court may, in the best interest of the child, transfer the case at any stage of the proceeding for disposition to the county where the child resides or to a county where a youth court has previously acquired jurisdiction.

*Accord* Miss. Code Ann. § 43-21-155(1).

*Case law:*

In re K.A.R., 441 So. 2d 108, 109 (Miss. 1983) ("[E]ach judicial district is to be treated as a separate county for purposes of jurisdiction and venue . . . .").

## *413 SUMMONS TO APPEAR AT ADJUDICATION HEARING*

➤ **Persons summoned**

**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.

*Accord* Miss. Code Ann. § 43-21-501.

➤ **Form**

**U.R.Y.C.P. 22**

(a)(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 OR 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.

*Accord* Miss. Code Ann. § 43-21-503.

➤ **Manner of service**

**U.R.Y.C.P. 22**

(a)(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.

*Accord* Miss. Code Ann. § 43-21-505.

**Comment to U.R.Y.C.P. 22(a)(3)**

Due process requires that the child and the parents or guardian receive notice. See 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."); In re Litdell, 232 So.2d 733, 735 (Miss.1970) ("Due process requires only that reasonable notice be given."); 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.").

➤ **Time**

**U.R.Y.C.P. 22**

(a)(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.

*Accord* Miss. Code Ann. § 43-21-507.

*See also* In re M.M., 220 So. 3d 285, 287 (Miss. Ct. App. 2017) ("But in youth-court matters, 'under our statute notice to the parent is an indispensable prerequisite to the jurisdiction of the court to hear and determine the case, unless such notice be waived by the voluntary appearance of such parent.'").

➤ **Waiver of summons by a party other than the child**

**U.R.Y.C.P. 22**

(a)(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.

Accord Miss. Code Ann. § 43-21-507.

**Comment to U.R.Y.C.P. 22(a)(5)**

A child cannot waive due process required by law. See 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.").

➤ **Waiver of three (3) days' time before hearing by a child served with process**

**U.R.Y.C.P. 22**

(a)(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 all other 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.

*Accord* Miss. Code Ann. § 43-21-507.

➤ **Enforcement**

**U.R.Y.C.P. 22**

(a)(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.

*Accord* Miss. Code Ann. § 43-21-509.

## *414 PREHEARING PROCEDURES*

➤ **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.

➤ **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.

➤ **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.

## *415 ADJUDICATION HEARINGS* ❖

### ➤ Time of hearing

**U.R.Y.C.P. 24**

(a) Delinquency and child in need of supervision proceedings.
(1) Time of hearing.
(i) If child is not in detention. Unless the hearing is continued upon a showing of good cause or the person who is a subject to the cause has admitted the allegations of the petition, an adjudicatory hearing 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 delinquent child or a child in need of supervision. If the adjudicatory hearing is not held within the ninety (90) days, the petition shall be dismissed with prejudice.
(ii) If child is in detention. If the child is in detention, the hearing shall be held as soon as possible but not later than twenty-one (21) days after the child is first detained by the court unless the hearing be 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 detention.

*Accord* Miss. Code Ann. § 43-21-551.

**Comment to U.R.Y.C.P. 24(a)(1)**

Our court has strictly construed section 43-21-551 of the Mississippi Code, the basis for Rule 24(a)(1) and (b)(1). See, e.g., D.D.B. v. Jackson County Youth Court, 816 So. 2d

380, 383 (Miss. 2002) ("[Section 43-21-551(1)] does not say that an order must be entered within the ninety (90) day period. The statute only says that an adjudicatory hearing shall be held within ninety (90) days or it shall be dismissed, unless the hearing is continued upon a showing of good cause."); In re C.R., 604 So. 2d 1079, 1081 (Miss. 1992) ("The [adjudicatory] proceeding's postponement . . . is without consequence since § 43-21-551 provides that a hearing may be continued upon a showing of good cause.").

➤ **Acceptance of admissions**

**U.R.Y.C.P. 24**

(a)(2) Acceptance of admissions. At any time after the petition has been filed, all parties to the cause may appear before the judge and admit the allegations of the petition. The judge may accept this admission as proof of the allegations if the judge finds that:
the parties making the admission fully understand their rights and fully understand the potential consequences of their admission to the allegations;
the parties making the admission voluntarily, intelligently and knowingly admit to all facts necessary to constitute a basis for court action under Mississippi's Youth Court Law;
the parties making the admission have not in the reported admission to the allegation set forth facts that, if found to be true, constitute a defense to the allegation; and
the child making the admission is effectively represented by counsel.

*Accord* Miss. Code Ann. § 43-21-553.

*Case law:*

In re D.D.B., 816 So. 2d 380, 384 (Miss. 2002) ("Entering a plea is clearly a component of the adjudicatory hearing.").

➤ **Plea bargaining**

**U.R.Y.C.P. 24**

(a)(3) Plea bargaining. Under no circumstances shall the party or the prosecutor engage in discussion for the purpose of agreeing to exchange concessions by the prosecutor for the party's admission to the petition.

*Accord* Miss. Code Ann. § 43-21-555.

➤ **Conduct of hearing**

**U.R.Y.C.P. 24**

(a)(4) 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.
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.

*Accord* Miss. Code Ann. § 43-21-203.

**Comment to U.R.Y.C.P. 24(a)(4)**

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.

**Comment to U.R.Y.C.P. 24(a)(4)(i)**

Adjudicatory hearings are conducted without a jury. See McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971) ("[T]rial by jury in the juvenile court's adjudicative stage is not a constitutional requirement."); Hopkins v. Youth Court, 227 So. 2d 282, 285 (Miss. 1969) ("[W]e hold that the [youth] court did not err in denying a jury trial.").

**Comment to Rule 24(a)(4)(ii)**

Adjudication hearings are conducted under the rules of evidence and rules of court as may comply with constitutional standards. See 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."). See generally Application of Gault, 387 U.S. 1 (1967); Patterson v. Hopkins, 350 F. Supp. 676, 683 (N.D. Miss. 1972) ("Gault decided that, although the Fourteenth Amendment does not require that the hearing at this stage conform with all the requirements of a criminal trial or even of the usual administrative proceeding, the Due process Clause does require application during the adjudicatory hearing of ‘"the essentials of due process and fair treatment."").

➤ **Verifying information and explaining procedures and rights**

**U.R.Y.C.P. 24**

(a)(5) 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.

Additionally, if the child is an alleged child in need of supervision, the court shall explain the procedures set forth in Rule 10 of these rules for holding the child in secure juvenile detention for a violation of a valid court order.
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.

*Accord* Miss. Code Ann. § 43-21-557.

**Comment to U.R.Y.C.P. 24(a)(5)**

At the beginning of each adjudicatory hearing, the court is required to verify certain information and to explain certain procedures and rights. See 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.").

*Case law:*

In re K.G., 957 So. 2d 1050, 1053 (Miss. Ct. App. 2007) ("[E]ven though the youth court clearly failed to follow the mandates of [section] 43-21-557, K.G. has failed to demonstrate any resulting prejudice or unfairness in the proceeding. Consequently, although we find that the youth court erred in not following statutory procedure, we also find that this error was harmless.").

In re L.C.A., 938 So. 2d 300, 306 (Miss. Ct. App. 2006) ("[A]t no point in his brief does L.C.A. indicate just how the youth court proceedings were somehow unfair or how he was prejudiced by the youth court's failure to comply with section 43-21-557. As such, if any error resulted, it is harmless.").

➤ **Evidence**

**U.R.Y.C.P. 24**

(a)(6) 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 criminal proceeding.
(iii) An out-of-court admission or confession by the child, even if otherwise admissible, shall be insufficient to support an adjudication that the child is a delinquent child unless the admission or confession is corroborated in whole or in part by other competent evidence.
(iv) 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.
(v) 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.

*Accord* Miss. Code Ann. §§ 43-21-203(9)(b), -559.

**M.R.E. 101**

(a) Scope. These rules apply to proceedings in Mississippi courts. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101.

**M.R.E. 1101**

(b) Exceptions. These rules--except for those on privilege--do not apply to the following:
(1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;
(2) grand-jury proceedings;
(3) contempt proceedings in which the court may act summarily; and
(4) these miscellaneous proceedings:

- extradition or rendition;
- issuing an arrest warrant, criminal summons, or search warrant;
- probable cause hearings in criminal cases and youth court cases;
- sentencing;
- disposition hearings;
- granting or revoking probation; and
- considering whether to release on bail or otherwise.

*Case law:*

In re C.K.B., 36 So. 3d 1267, 1282 (Miss. 2010) ("Section 43-21-559 requires that there must be corroboration for the statement to be sufficient to support an adjudication. That corroboration is missing here.").

➤ **Opportunity to present a closing argument**

**U.R.Y.C.P. 24**

(a)(7) Opportunity to present a closing argument. At the conclusion of the evidence, the court shall give the parties an opportunity to present closing argument pursuant to section 43-21-559(4) of the Mississippi Code.

*Accord* Miss. Code Ann. § 43-21-559(4).

➤ **Standard of proof**

**U.R.Y.C.P. 24**

(a)(8) Standard of proof. If the court finds on proof beyond a reasonable doubt that a child is a delinquent child or a child in need of supervision, the youth court shall enter an order adjudicating the child to be a delinquent child or a child in need of supervision. Where the petition alleges that the child is a delinquent child, the youth court may, as an alternative, enter an order that the child is a child in need of supervision on proof beyond a reasonable doubt that the child is a child in need of supervision.

*Accord* Miss. Code Ann. § 43-21-561.

**Comment to U.R.Y.C.P. 24(a)(8)**

The burden of proof in delinquency and children in need of supervision proceedings is proof beyond a reasonable doubt. See In re Winship, 397 U.S. 358, 368 (1970); L.M. v. State, 600 So. 2d 967, 969 (Miss. 1992); In re Dennis, 291 So. 2d 731, 733 (Miss. 1974).

➤ **Terminating proceedings**

**U.R.Y.C.P. 24**

(a)(9) 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.

*Accord* Miss. Code Ann. § 43-21-557(4).

## *416 ADJUDICATION ORDERS*

➤ **Content**

**U.R.Y.C.P. 25**

(a) Delinquency and child in need of supervision proceedings.
(1) Content. An adjudication order shall recite that the child has been adjudicated a delinquent child or a child in need of supervision, as applicable, but in no event shall it recite that the child has been found guilty. No order of adjudication concerning any child shall recite that a child has been found guilty; but it shall recite that a child is found to be a delinquent child or a child in need of supervision. 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 delinquent child or a child in need of supervision. 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.

**§ 43-21-561**

(2) Where the petition alleges that the child is a delinquent child, the youth court may enter an order that the child is a child in need of supervision on proof beyond a reasonable doubt that the child is a child in need of supervision.
. . .
(5) No adjudication upon the status of any child shall operate to impose any of the civil disabilities ordinarily imposed on an adult because of a criminal conviction, nor shall any child be deemed a criminal by reason of adjudication, nor shall that adjudication be

deemed a conviction. A person in whose interest proceedings have been brought in the youth court may deny, without any penalty, the existence of those proceedings and any adjudication made in those proceedings. Except for the right of a defendant or prosecutor in criminal proceedings and a respondent or a youth court prosecutor in youth court proceedings to cross-examine a witness, including a defendant or respondent, to show bias or interest, no adjudication shall be used for impeachment purposes in any court.

➤ **Two or more offenses alleged in same petition**

**U.R.Y.C.P. 25**

(a)(2) Two or more offenses alleged in same petition. On each count admitted or proved in accordance with these rules, the court shall enter a separate adjudication on that count within its adjudicatory order.

*Accord* Miss. Code Ann. § 43-21-455.

## *417 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.

*Accord* Miss. Code Ann. §§ 43-21-501 to -507.

### ➤ Time of hearing

**U.R.Y.C.P. 26**

(b) Child in need of supervision proceedings.
(1) Time of hearing. If the child has been adjudicated a child in need of supervision, the 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.

*Accord* Miss. Code Ann. § 43-21-601.

**Comment to U.R.Y.C.P. 26(b)(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].").

### ➤ Conduct of hearing

**U.R.Y.C.P. 26**

(b)(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.

*Accord* Miss. Code Ann. §§ 43-21-203, -603.

**Comment to U.R.Y.C.P. 26(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.

➤ **Evidence**

**U.R.Y.C.P. 26**

(b)(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 child in need of supervision cases with consent of the child's counsel.

**Comment to U.R.Y.C.P. 26(b)(3)**

The Mississippi Rules of Evidence do not apply to dispositional hearings. See M.R.E. 1101(b)(3); 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.").

➤ **Explaining the purpose of the dispositional hearing**

**U.R.Y.C.P. 26**

(b)(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.

➤ **Opportunity to present closing argument**

**U.R.Y.C.P. 26**

(b)(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.

➤ **Factors for consideration**

**U.R.Y.C.P. 26**

(b)(6) Factors for consideration. If the child has been adjudicated a child in need of supervision, before entering a disposition order, the youth court should consider, among others, the following relevant factors:
(i) the nature and history of the child's conduct;
(ii) the family and home situation; and
(iii) the child's need of care and assistance.

*Accord* Miss. Code Ann. §§ 43-21-603, 43-27-25.

➤ **Entering disposition order**

**U.R.Y.C.P. 26**

(b)(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 child in need of supervision. 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.

*Accord* Miss. Code Ann. § 43-21-603.

## *419 DISPOSITION ORDERS*

➤ **Authorized dispositions**

**U.R.Y.C.P. 27**

(b) Child in need of supervision proceedings.
(1) Authorized dispositions. In children in need of supervision cases, the disposition order may include any of the alternatives as set forth in section 43-21-607(1) of the Mississippi Code. Additionally, the court may order:
(i) drug testing pursuant to section 43-21-607(2) of the Mississippi Code;
(ii) 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;
(iii) 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 43-21-619(1) 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) parents, guardians or custodians who exercise parental custody or control of a child who has willfully or maliciously caused personal injury or damaged or destroyed property to pay damages or restitution and to participate in a counseling program or other suitable family treatment program for the purpose of preventing future occurrences pursuant to section 43-21-619(2) of the Mississippi Code;
(vi) 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.

*Accord* Miss. Code Ann. §§ 43-21-607, -611, -615, -617, -619, -621.

**§ 43-21-105**

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

**§ 43-21-607**

(1) In children in need of supervision cases, the disposition order may include any of the following alternatives or combination 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 the parent, a relative or other person subject to any conditions and limitations as the youth court may prescribe;
(c) Place the child under youth court supervision subject to any conditions and limitations the youth court may prescribe;
(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 terms of supervision which may include participation in a constructive program of service or education or restitution not in excess of actual damages caused by the child to be paid out of his own assets or by performance of services acceptable to the parties and reasonably capable of performance within one (1) year;
(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 Human Services for appropriate placement which may include a wilderness training program; 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; or
(g) Order the child to participate in a youth court work program as provided in Section 43-21-627.
(2) The court may order drug testing as provided in Section 43-21-605(6).

➤ **If child is in need of special care**

**§ 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.").

➤ **Two or more offenses alleged in same petition**

**U.R.Y.C.P. 27**

(b)(2) Two or more offenses alleged in same petition. The court shall enter a separate disposition on each adjudicated count. The court may order the disposition of any count to run concurrent or consecutive to any other count(s) or current disposition(s), as it deems in the best interest of the child and in the interest of justice.

➤ **Other matters pertaining to disposition orders**

**U.R.Y.C.P. 27**

(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.

**§ 43-21-615**

(1) The costs of conveying any child committed to any institution or agency shall be paid by the county or municipality from which the child is committed out of the general treasury of the county or municipality upon approval of the court. No compensation shall be allowed beyond the actual and necessary expenses of the child and the person actually conveying the child. In the case of a female child, the youth court shall designate some suitable woman to accompany her to the institution or agency.

## *420 DISPOSITION PROGRAMS*

➤ **Youth court work program**

**§ 43-21-627**

Each youth court is authorized to establish a youth court work program as an alternative disposition for nonviolent offenders. The youth court work program shall be used only for first time nonviolent youth offenders. The court shall solicit and approve the assistance of volunteers from the area served by the youth court, including business and community volunteers. The court may require a nonviolent youth offender to work for a minimum of six (6) months with a court approved volunteer as part or all of a sentence imposed by the court. The volunteers shall provide a working environment as mentors to provide guidance and support and to teach the youth offender job skills. Each youth offender and

volunteer shall be under the supervision of the court and shall make regular reports to the court as required by order of the court. If a youth offender violates the terms and conditions imposed by the court while participating in the youth court work program, the court is authorized to remove the offender from the program and impose any other disposition authorized by law.

## *421 ORDERS TO PARENTS, GUARDIANS, CUSTODIANS AND OTHERS*

### ➤ Orders requiring others to act or refrain

**§ 43-21-617**

In all cases where the child is found to be a delinquent child, a child in need of supervision, 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.

*See also* U.R.Y.C.P. 20(b)(4), 22(a)(2).

### ➤ Orders requiring parent to pay certain expenses

**§ 43-21-619**

(1) 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.
(2) The youth court may order the parents, guardians or custodians who exercise parental custody and control of a child who is under the jurisdiction of the youth court and who has willfully or maliciously caused personal injury or damaged or destroyed property, to pay such damages or restitution through the court to the victim in an amount not to exceed the actual loss and to enforce payment thereof. Restitution ordered by the youth court under this section shall not preclude recovery of damages by the victim from such child or parent, guardian or custodian or other person who would otherwise be liable. The youth court also may order the parents, guardians or custodians of a child who is under the jurisdiction of the youth court and who willfully or maliciously has caused personal injury or damaged or destroyed property to participate in a counseling program or other

suitable family treatment program for the purpose of preventing future occurrences of malicious destruction of property or personal injury.
(3) Such orders under this section shall constitute a civil judgment and may be enrolled on the judgment rolls in the office of the circuit clerk of the county where such order was entered, and further, such order may be enforced in any manner provided by law for civil judgments.

*See also* U.R.Y.C.P. 20(b)(4), 22(a)(2), 27(b).

**§ 43-21-105**

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

*Case law:*

Williamson v. Daniels, 748 So. 2d 754, 758 (Miss. 1999) ("[Section 43-21-619] is applicable only to the youth court").

In re B.D., 720 So. 2d 476, 479 (Miss. 1998). ("[W]e find that the restitution statute at question is rationally related to a legitimate purpose and is a valid expression of the state's police power. It is the Legislature's judgment that the burden here should be borne by the parents, guardians or custodians of the juvenile at fault.").

## *422 MODIFICATION OF DISPOSITION ORDERS*

**U.R.Y.C.P. 28**

(a) Delinquency and child in need of supervision proceedings.
(1) Modification of orders. Procedures governing the modification of a disposition order of a delinquent child or a child in need of supervision shall be conducted pursuant to section 43-21-613(1) and (2) of the Mississippi Code. Service of summons for such hearings shall be pursuant to Rule 22(c) of these rules.
(2) Annual reviews. Unless the court's jurisdiction has been terminated, all disposition orders for supervision, probation or placement of a child with an individual or an agency shall be reviewed by the court at least annually to determine if continued placement, probation or supervision is in the best interest of the child or the public.

**Comment to U.R.Y.C.P. 28(a)**

The youth court has continuing jurisdiction to modify the disposition of a delinquent or child in need of supervision as necessary. See In re Litdell, 232 So. 2d 733, 736 (Miss.

1970) ("The youth court's jurisdiction of a youth adjudged to be delinquent is a continuing one, with continuing power to alter the terms of the probation if, in the best interests of the child, the original arrangement proves inadequate or to have been ill advised."). 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).

**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.

*Accord* Miss. Code Ann. §§ 43-21-501 to -507.

**§ 43-21-613**

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

*Case law:*

In re Litdell, 232 So. 2d 733, 736 (Miss. 1970) ("The youth court's jurisdiction of youth adjudged to be delinquent is a continuing one, with a continuing power to alter the terms of the probation if, in the interests of the child, the original arrangement proves inadequate or to have been ill-advised.").

## *423 ANNUAL REVIEWS*

**U.R.Y.C.P. 28**

(a) (2) Annual reviews. Unless the court's jurisdiction has been terminated, all disposition orders for supervision, probation or placement of a child with an individual or an agency shall be reviewed by the court at least annually to determine if continued placement, probation or supervision is in the best interest of the child or the public.

*Accord* Miss. Code Ann. § 43-21-613(3)(a).

## *424 MANDATORY REPORTING REQUIREMENTS*

➤ **Uniform Youth Court Case Identification and Docket Numbering System**

The Mississippi Supreme Court has adopted a Uniform Youth Court Case Identification and Docket Numbering System to be implemented by intake in assigning an identification and docket number for every matter coming before the youth courts of the State of Mississippi. *See* Amended Special Order No. 46 (Miss. Dec. 12, 1997).

*See* U.R.Y.C.P. 4, 8, and 20.

➤ **Uniform Youth Court Case Tracking System and Form**

The Mississippi Supreme Court has adopted a Uniform Youth Court Case Tracking System and Form to be implemented by intake as a data collection procedure for every matter coming before the youth courts of the State of Mississippi. *See* Special Order No. 47 (Miss. Dec. 16, 1996).

*See* U.R.Y.C.P. 4 and 8.

## *CHAPTER 5*

## *ABUSE AND NEGLECT*

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*524 MANDATORY REPORTING REQUIREMENTS*

**Uniform Youth Court Case Identification and Docket Numbering System**
**Uniform Youth Court Case Tracking System and Form**

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➤ **Reporting required if there is reasonable cause to suspect abuse or neglect**

**§ 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.

*See also:*

**§ 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.

**§ 97-29-49**

(3) In addition to the mandatory reporting provisions contained in Section 97–5–51, any law enforcement officer who encounters a minor under eighteen (18) years of age and has reasonable cause to suspect that the minor has engaged in acts described in this section may take the minor into emergency custody in accordance with the requirements of the Youth Court Act for the purpose of obtaining an order of removal of the minor, and shall contact and make a report to the Department of Child Protection Services as required in Section 43–21–353 for suspected child sexual abuse or neglect, and the department shall commence an initial investigation into suspected child sexual abuse or neglect as required in Section 43–21–353.

➤ **If the reported abuse is a felony under state or federal law**

**§ 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 contain 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.

➤ **Confidentiality of reports of abuse or neglect**

**§ 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 investigations**

**§ 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.

➤ **DHS reports to law enforcement**

**§ 43-21-353**

(5) . . . 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.

- **Requesting the accompaniment of a law enforcement officer when investigating a report**

**§ 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.

- **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 out-of-home setting is a licensed facility**

**§ 43-21-353**

(8) . . . 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.

➤ **If CPS investigation does not result in an out-of-state placement**

(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.

➤ **Penalties for willfully violating Section 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.

➤ **Wide area telephone 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).

**§ 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.

➤ **Civil and criminal immunity on reporting abuse or neglect**

**§ 43-21-355**

Any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, school attendance officer, public school district employee, nonpublic school employee, licensed professional counselor or any other person participating in the making of a required report pursuant to Section 43-21-353 or participating in the judicial proceeding resulting therefrom shall be presumed to be acting in good faith. Any person or institution reporting in good faith shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

*See* Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4 (1974) (codified as amended at 42 U.S.C.A. § 5101 et seq.); Caroline T. Trost, *Chilling Child Abuse Reporting: Rethinking the CAPTA Amendments*, 51 Vand. L. Rev. 183, 194 (1998) ("The original CAPTA required that states have immunity provisions for reporters. Although the federal statute did not require a specific degree of immunity, the vast majority of states have implemented immunity provisions for "good faith" reporting, with a small minority choosing to provide "absolute" immunity.").

## *501 INTAKE* ❖

➤ **Appointment of intake unit**

**U.R.Y.C.P. 8**

(d) Appointment of intake unit. In every youth court division the judge shall appoint one or more persons to function as an intake unit pursuant to sections 43-21-115 and 43-21-123 of the Mississippi Code.

**§ 43-21-115**

In every youth court division the judge shall appoint as provided in Section 43-21-123 one or more persons to function as the intake unit for the youth court division. The youth court intake unit shall perform all duties specified by this chapter. If the person serving as the youth court intake unit is not already a salaried public employee, the salary for such person shall be fixed on order of the judge as provided in Section 43-21-123 and shall be paid by the county or municipality, as the case may be, out of any available funds budgeted for the youth court by the board of supervisors.

**§ 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.
The board of supervisors of any county in which there is located a youth court, and the governing authority of any municipality in which there is located a municipal youth court, are each authorized to reimburse the youth court judges and other youth court employees or personnel for reasonable travel and expenses incurred in the performance of their duties and in attending educational meetings offering professional training to such persons as budgeted.

➤ **Reports made to the intake unit**

**§ 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.

**Comment to U.R.Y.C.P. 8(c)**

Uniform Youth Court Case Identification and Docket Numbering System.
The Mississippi Supreme Court has adopted a Uniform Youth Court Case Identification and Docket Numbering System to be implemented by intake in assigning an identification

and docket number for every matter coming before the youth courts of the State of Mississippi. See Amended Special Order No. 46 (Miss. Dec. 12, 1997).

Uniform Youth Court Case Tracking System and Form.
The Mississippi Supreme Court has adopted a Uniform Youth Court Case Tracking System and Form to be implemented by intake as a data collection procedure for every matter coming before the youth courts of the State of Mississippi. See Special Order No. 47 (Miss. Dec. 16, 1996).

➤ **Preliminary inquiry**

**§ 43–21–357**

(1) After receiving a report, the youth court intake unit shall promptly make a preliminary inquiry to determine whether the interest of the child, other children in the same environment or the public requires the youth court to take further action. As part of the preliminary inquiry, the youth court intake unit may request or the youth court may order the Department of Human Services, the Department of Youth Services, any successor agency or any other qualified public employee to make an investigation or report concerning the child and any other children in the same environment, and present the findings thereof to the youth court intake unit. If the youth court intake unit receives a neglect or abuse report, the youth court intake unit shall immediately forward the complaint to the Department of Human Services to promptly make an investigation or report concerning the child and any other children in the same environment and promptly present the findings thereof to the youth court intake unit.

➤ **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.

➤ **When intake is required to make a recommendation**

**Comment to U.R.Y.C.P 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. See Miss. Code Ann. § 43-21-357(2).

## *502 COURT ORDERS UPON INTAKE RECOMMENDATIONS*

➤ **Authorized actions**

**U.R.Y.C.P. 9**

(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.

**Comment to Rule 9(b)(2)**

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. In any event, an informal adjustment process does not circumvent the authority of the Department of Human Services to remove the child from the home or any placement if there is a reasonable concern for the child's safety or welfare.

**Comment to Rule 9(b)(2)(iii)**

The Department of Human Services, Division of Family and Children's Services should conduct a background check and home study prior to making a temporary placement of a child within its custody.

*See also* House Bill 652 (authorizing the Mississippi Department of Child Protection Services to request that a criminal justice agency perform a federal name-based criminal history records check of each adult residing in the home during an emergency placement situation when a child must be placed in home care due to the absence of parents or custodians).

➤ **Required notice**

**§ 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.

➤ **What the informal adjustment must include**

**§ 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.

➤ **An informal adjustment may commence after the filing of a petition**

**§ 43-21-401**

(2) If authorized by the youth court, informal adjustment may be commenced after the filing of a petition.

➤ **Speedy trial is waived**

**§ 43-21-401**

(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.

➤ **Informal adjustment counselor conducts 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.

➤ **Informing the parties of their rights**

**§ 43-21-405**

(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.

➤ **Informing the parties of certain information and procedures**

**§ 43-21-405**

(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.

➤ **Discussing recommendations for actions or conduct**

**§ 43-21-405**

(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.

➤ **Informal adjustment agreement to be written and signed**

**§ 43-21-405**

(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.

➤ **Time limitation to the informal adjustment process**

**§ 43-21-405**

(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.

➤ **Termination if satisfactory completion**

**§ 43-21-407**

(1) If it appears to the informal adjustment counselor that the child and his parent, guardian or custodian:
(a) have complied with the terms and conditions of the informal adjustment agreement; and
(b) have received the maximum benefit from the informal adjustment process, the informal adjustment counselor shall terminate the informal adjustment process and dismiss the child without further proceedings. The informal adjustment counselor shall notify the child and his parent, guardian or custodian in writing of the satisfactory completion of the informal adjustment and report such action to the youth court.

➤ **Termination for other reasons**

**§ 43-21-407**

(2) If it appears to the informal adjustment counselor that further efforts at informal adjustment would not be in the best interests of the child or the community, or that the child or his parent, guardian or custodian:
(a) denies the jurisdiction of the youth court;
(b) declines to participate in the informal adjustment process;
(c) expresses a desire that the facts be determined by the youth court;
(d) fails without reasonable excuse to attend scheduled meetings;
(e) appears unable or unwilling to benefit from the informal adjustment process, the informal adjustment counselor shall terminate the informal adjustment process. If the informal adjustment process is so terminated, the intake unit shall reinitiate the intake procedure under section 43-21-357. Even if the informal adjustment process has been so terminated, the intake unit shall not be precluded from reinitiating the informal adjustment process.

## *504 TEMPORARY CUSTODY ORDERS / CUSTODY ORDERS* ❖

➤ **When a custody order may be issued**

**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.

*Accord* Miss. Code Ann. §§ 43-21-301, -307, -315.

➤ **Order requirements**

**U.R.Y.C.P. 11**

(b)(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.

**Comment to U.R.Y.C.P. 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).

A parent, guardian, or custodian of a child is a party to the case. Such includes the Department of Human Services, Division of Family and Children's Services whenever it is serving as the legal or physical custodian of the child under the Mississippi Youth Court Law.

➤ **Foster child relative licensing process**

**Comment to U.R.Y.C.P. 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 90 calendar days after the child has been placed in the home, the full home study, and all other licensure requirements. See Mississippi Division of Family and Children's Services, Policy § F, at 33-35 (Rev. 2013); 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**

**Comment to U.R.Y.C.P. 11(b)(2)**

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.

➤ **Reasonable efforts, judicial determination required**

**U.R.Y.C.P. 11**

(b)(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.

**§ 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.

➤ **Additional orders after a child is ordered into custody**

**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.

*Accord* Miss. Code Ann. § 43-21-315.

## *505 TAKING INTO CUSTODY WITHOUT A CUSTODY ORDER*

➤ **Governing law**

**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.

*Accord* Miss. Code Ann. §§ 43-21-301, -307, -315.

**Comment to U.R.Y.C.P. 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).

Custody of a child taken into custody without an order may not exceed twenty-four (24) hours unless an order for temporary custody has been issued pursuant to Rule 11 of these rules.
Miss. Code Ann. § 43-21–303(4) provides:
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.

**§ 43-21-301**

(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.

➤ **Grounds for taking a child into custody without a custody order**

**§ 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 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
(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 section 43-21-303(1)(a).

*Case law:*

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.").

*See also* Miss. Code Ann. § 43-21-305 ("A law enforcement officer may stop any child abroad in a public place whom the officer has probable cause to believe is within the jurisdiction of the youth court and may question the child as to his name, address and explanation of his actions.").

➤ **Least restrictive custody should be selected**

**§ 43-21-303**

(2) When it is necessary to take a child into custody, the least restrictive custody should be selected.

➤ **Notification requirements**

**§ 43-21-303**

(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.

➤ **Limitations on the duration of custody**

**§ 43-21-303**

(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.

➤ **Interview and interrogation restrictions**

**§ 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.

**§ 43-21-303**

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**§ 43-21-303**

(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.

➤ **When the child may be held for longer than temporary custody**

**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.
(2) Reasonable oral or written notice of the time, place and purpose of the hearing has been given to the child; to the child's parent, guardian or custodian; to the child's guardian ad litem, if any; and to the child's counsel. If 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.
(3) All parties present are afforded the opportunity to present evidence and cross-examine witnesses produced by others. The youth court may, in its discretion, limit the extent but not the right or presentation of evidence and cross-examination of witnesses. 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.
(4) At the conclusion of the shelter hearing, the court finds and the shelter order recites that:
(i) there is probable cause the child is within the jurisdiction of the court;
(ii) there is probable cause that custody is necessary as described in Rule 16(a)(4)(ii) of these rules; and
(iii) 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. The court shall order that reasonable efforts be made towards the reunification of the child with the child's family if it finds and the shelter order recites that 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, and 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.
(5) The court orders custody of the child and that a petition be filed if one has not been filed.

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.

*Accord* Miss. Code Ann. § 43-21-309.

**Comment to U.R.Y.C.P. 16(b)**

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).

**§ 43-21-203**

(7) In all hearings, a complete record of all evidence shall be taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.
. . .
(11) An order or ruling of the youth court judge delivered orally must be reduced to writing within forty-eight (48) hours, excluding Saturdays, Sundays and statutory state holidays.

➤ **Custody order to comply with statutory requirements**

**U.R.Y.C.P. 16**

(b)(4)(iii) . . . Any order placing a child into custody shall comply with the requirements provided in section 43-21-301 of the Mississippi Code.

*Accord* Miss. Code Ann. § 43-21-309.

➤ **When custody is deemed necessary**

**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.

*Accord* Miss. Code Ann. § 43-21-309.

**Comment to U.R.Y.C.P. 16(b)**

Factors the court may consider in determining whether custody is necessary include:

the child's family ties and relationships;
the child's prior delinquency record;
the violent nature of the alleged offense;
the child's prior history of committing acts that resulted in bodily injury to others;
the child's character and mental condition;
the court's ability to supervise the child if placed with a parent or relative;
the child's ties to the community;
the risk of nonappearance;
the danger to the child or public if the child is released;
another petition is pending against the child;
the home conditions of the child; and
a violation of a valid court order.

[The] court must include its findings in the detention or shelter order.

➤ **When the court must order the release of the child**

**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.

*Accord* Miss. Code Ann. § 43-21-309.

➤ **Waivers as to shelter hearings**

**U.R.Y.C.P. 16**

(b)(5) . . . 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.

*Accord* Miss. Code Ann. § 43-21-309.

## *507 RELEASE FROM CUSTODY UPON CHANGE OF CIRCUMSTANCES*

➤ **Governing law**

**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.

➤ **Written request, reasonable notice, and a hearing**

**§ 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.

## *508 PROPER FACILITIES*

➤ **Designating 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.

*Accord* Miss. Code Ann. § 43-21-315(1).

**Comment to U.R.Y.C.P. 19(a)**

Four core protections requiring State compliance.
The JJDP Act, through the 2002 reauthorization, establishes four core protections with which participating States and territories must comply to receive grants under the JJDP Act:

-Deinstitutionalization of status offenders (DSO).
-Separation of juveniles from adults in institutions (separation).
-Removal of juveniles from adult jails and lockups (jail removal).
-Reduction of disproportionate minority contact (DMC), where it exists.

Meeting the core protections is essential to creating a fair, consistent, and effective juvenile justice system that advances the important goals of the JJDP Act. Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, Guidance Manual for Monitoring Facilities under the Juvenile Justice and Delinquency Prevention Act of 2002 1 (September 2003).

➤ **Detention prohibitions**

**U.R.Y.C.P. 19**

(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.

*Accord* § 43-21-315(2).

**Federal requirement under U.R.Y.C.P. 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; . . .

➤ **Arranging for the custody, care and maintenance of the child**

**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.

**Comment to U.R.Y.C.P. 19(d)**

This provision is congruent with Mississippi's constitutional mandates. See 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."); 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. The only role of the trial judge regarding this minor was to determine whether the minor needed the treatment and care provided by the state facility, and if so, to order [the child's] commitment."); see also Miss. Code Ann. § 43-21-315(4) (2008).

*Case law:*

Reno v. Flores, 507 U.S. 292, 304 (1993) ("The best interests of the child" is likewise not an absolute and exclusive constitutional criterion for the government's exercise of the custodial responsibilities that it undertakes, which must be reconciled with many other responsibilities. Thus, child-care institutions operated by the State in the exercise of its parens patriae authority . . . are not constitutionally required to be funded at such a level as to provide the best schooling or the best health care available; . . . .").

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.").

**§ 43-1-55**

(1) The Office of Family and Children's Services and the Division of Aging and Adult Services shall devise formal standards for employment as a family protection worker and as a family protection specialist within their respective offices and for service delivery designed to measure the quality of services delivered to clients, as well as the timeliness of services. Each family protection worker and family protection specialist shall be assessed annually by a supervisor who is a licensed social worker who is knowledgeable in the standards promulgated. The standards devised by each office shall be applicable to all family protection workers and family protection specialists working under that office.
(2) The Office of Family and Children's Services shall devise formal standards for family protection workers of the Department of Human Services who are not licensed social workers. Those standards shall require that:
(a) In order to be employed as a family protection worker, a person must have a bachelor's degree in either psychology, sociology, nursing, family studies, or a related field, or a graduate degree in either psychology, sociology, nursing, criminal justice, counseling, marriage and family therapy or a related field. The determination of what is a related field shall be made by certification of the State Personnel Board; and
(b) Before a person may provide services as a family protection worker, the person shall complete four (4) weeks of intensive training provided by the training unit of the Office of Family and Children's Services, and shall take and receive a passing score on the certification test administered by the training unit upon completion of the four-week training. Upon receiving a passing score on the certification test, the person shall be certified as a family protection worker by the Department of Human Services. Any person who does not receive a passing score on the certification test shall not be employed or maintain employment as a family protection worker for the department. Further, a person, qualified as a family protection worker through the procedures set forth above, shall not conduct forensic interviews of children until the worker receives additional specialized training in child forensic interview protocols and techniques by a course or curriculum approved by the Department of Human Services to be not less than forty (40) hours.
(3) For the purpose of providing services in child abuse or neglect cases, youth court proceedings, vulnerable adults cases, and such other cases as designated by the Executive Director of Human Services, the caseworker or service provider shall be a family protection specialist or a family protection worker whose work is overseen by a family protection specialist who is a licensed social worker.
(4) The Department of Human Services and the Office of Family and Children's Services shall seek to employ and use family protection specialists to provide the services of the office, and may employ and use family protection workers to provide those services only in counties in which there is not a sufficient number of family protection specialists to adequately provide those services in the county.
. . .
(6) This section and Section 43–27–107, Mississippi Code of 1972, shall stand repealed on July 1, 2015.

➤ **Filing**

**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 referral by the youth court, the youth court prosecutor may file a petition to initiate formal proceedings.

*Accord* Miss. Code Ann. § 43-21-451.

**Comment to U.R.Y.C.P. 20(b)**

Intake shall assign, pursuant to step 5 of Exhibit A of the Uniform Youth Court Case Identification and Docket Numbering System, a petition number for each petition filed on matters coming before the youth courts of the State of Mississippi. See Amended Special Order No. 46 (Miss. Dec. 12, 1997).

*Case law:*

In re Evans, 350 So. 2d 52, 54 (Miss. 1977) (holding "oral authorization [to file petition] was sufficient").

In re C.R., 897 So. 2d 1119, 1122 (Miss. Ct. App. 2004) ("The authority to seek a nolle prosequi or dismiss an abuse petition . . . rests in the sole discretion of the prosecutor [, however, effectuation requires consent of the court].").

➤ **Time**

**U.R.Y.C.P. 20**

(2) Time. The petition shall be filed within five (5) days from the date of a shelter hearing continuing custody. In non-custody cases, unless another period of time is authorized by the court, the petition shall be filed within ten (10) days of the court's referral of the matter to the youth court prosecutor for consideration of initiating formal proceedings. The court may, in its discretion, dismiss the petition for failure to comply with the time schedule contained herein.
*Accord* Miss. Code Ann. § 43-21-451.

➤ **Form**

**U.R.Y.C.P. 20**

(c)(3) Form. The petition shall be entitled "IN THE INTEREST OF _____."

*Accord* Miss. Code Ann. § 43-21-453.

➤ **Contents**

**U.R.Y.C.P. 20**

(c)(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 43-21-619 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.

*Accord* Miss. Code Ann. § 43-21-455.

**Comment to U.R.Y.C.P. 20(c)(4)**

A petition which institutes a youth court proceeding must recite factual allegations specific and definite enough to fairly apprise the child, the child's parents, custodians or guardians of the particular act or acts of misconduct or the particular circumstances which will be inquired into at the adjudicatory proceedings. See In re Dennis, 291 So. 2d 731, 733 (Miss. 1974); see also In re M.R.L., 488 So. 2d 788, 792-93 (Miss. 1986) (holding that children expressly charged as children in need of supervision could not be found, absent an amendment to the petition, neglected children). The youth court is a court of statutory and limited jurisdiction, and the facts vesting jurisdiction should be shown affirmatively. See Monk v. State, 116 So. 2d 810, 811 (Miss. 1960). A petition charging delinquency is to include the statute or ordinance which the child is alleged to have violated. See In re R.T., 520 So. 2d 136, 137 (Miss. 1988).

➤ **Two or more children subject of the same petition**

**U.R.Y.C.P. 20**

(c)(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.

*Accord* Miss. Code Ann. § 43-21-455.

➤ **Amendments**

**U.R.Y.C.P. 20**

(c)(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.

*Accord* Miss. Code Ann. § 43-21-457.

➤ **Responsive pleadings not required**

**U.R.Y.C.P. 20**

(c)(7) Responsive pleadings not required. No party shall be required to file a responsive pleading.

*Accord* Miss. Code Ann. § 43-21-459.

## *511 PROPER VENUE*

**U.R.Y.C.P. 20**

(b) Child protection proceedings. If a child is alleged to be an abused or neglected child, the proceedings shall be commenced in the county where the child's custodian resides or in the county where the child is present when the report is made to the intake unit.

*Accord* Miss. Code Ann. § 43-21-155.

*Case law:*

In re K.A.R., 441 So. 2d 108, 109 (Miss. 1983) ("[E]ach judicial district is to be treated as a separate county for purposes of jurisdiction and venue . . . .").

## *512 SUMMONS TO APPEAR AT ADJUDICATION HEARING*

➤ **Persons summoned**

**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.

*Accord* Miss. Code Ann. § 43-21-501.

**Comment to U.R.Y.C.P. 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). Other persons whose presence may be needed at the permanency hearing include: "age-appropriate children; extended family members; adoptive parents; judicial case management staff; service providers; other witnesses." Id.

➤ **Form**

**U.R.Y.C.P. 22**

(a)(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 OR SECTION 43-21-619 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.

*Accord* Miss. Code Ann. § 43-21-503.

➤ **Manner of service**

**U.R.Y.C.P. 22**

(a)(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.

*Accord* Miss. Code Ann. § 43-21-505.

**Comment to U.R.Y.C.P. 22(a)(3)**

Due process requires that the child and the parents or guardian receive notice. See 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."); In re Litdell, 232 So.2d 733, 735 (Miss.1970) ("Due process requires only that reasonable notice be given."); 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.").

➤ **Time**

**U.R.Y.C.P. 22**

(a)(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.

*Accord* Miss. Code Ann. § 43-21-507.

*See also* In re M.M., 220 So. 3d 285, 287 (Miss. Ct. App. 2017) ("But in youth-court matters, 'under our statute notice to the parent is an indispensable prerequisite to the jurisdiction of the court to hear and determine the case, unless such notice be waived by the voluntary appearance of such parent.'").

➤ **Waiver of summons by a party other than the child**

**U.R.Y.C.P. 22**

(a)(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.

*Accord* Miss. Code Ann. § 43-21-507.

**Comment to U.R.Y.C.P. 22(a)(5)**

A child cannot waive due process required by law. See 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.").

*Case law:*

In re N.W., 978 So. 2d 649, 654 (Miss. 2008) ("[T]here is nothing in the record to even infer that [the child's] father waived notice.").

➤ **Waiver of three (3) days' time before hearing by a child served with process**

**U.R.Y.C.P. 22**

(a)(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 all other 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.

*Accord* Miss. Code Ann. § 43-21-507.

➤ **Enforcement**

**U.R.Y.C.P. 22**

(a)(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.

*Accord* Miss. Code Ann. § 43-21-509.

## *513 PREHEARING PROCEDURES*

➤ **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.

➤ **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.

- **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

### ➤ 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.

*Accord* Miss. Code Ann. § 43-21-551.

**Comment to U.R.Y.C.P. 24(b)(1)**

Our court has strictly construed section 43-21-551 of the Mississippi Code, the basis for Rule 24(a)(1) and (b)(1). See, e.g., D.D.B. v. Jackson County Youth Court, 816 So. 2d 380, 383 (Miss. 2002) ("[Section 43-21-551(1)] does not say that an order must be entered within the ninety (90) day period. The statute only says that an adjudicatory hearing shall be held within ninety (90) days or it shall be dismissed, unless the hearing is continued upon a showing of good cause."); In re C.R., 604 So. 2d 1079, 1081 (Miss. 1992) ("The [adjudicatory] proceeding's postponement . . . is without consequence since § 43-21-551 provides that a hearing may be continued upon a showing of good cause.").

### ➤ Where parties do not contest the allegations in the petition

**U.R.Y.C.P. 24**

(b)(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.

*Accord* Miss. Code Ann. § 43-21-553.

➤ **Conduct of hearing**

**U.R.Y.C.P. 24**

(b)(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.
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.

*Accord* Miss. Code Ann. § 43-21-203.

**Comment to U.R.Y.C.P. 24(b)(3)**

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.

In child protection proceedings, the foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the adjudication hearing. See also Miss. Code Ann. 43-15-13(11) (providing rights to be extended to foster parents). If a party invokes Rule 615 of the Mississippi Rules of Evidence, the court should take the testimony of the foster parent(s) and the representative of the residential child caring agency prior to taking the testimony of other witnesses.

**Comment to U.R.Y.C.P. 24(b)(3)(i)**

Adjudicatory hearings are conducted without a jury. See McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971) ("[T]rial by jury in the juvenile court's adjudicative stage is not a constitutional requirement."); Hopkins v. Youth Court, 227 So. 2d 282, 285 (Miss. 1969) ("[W]e hold that the [youth] court did not err in denying a jury trial.").

**Comment to Rule 24(b)(3)(ii)**

Adjudication hearings are conducted under the rules of evidence and rules of court as may comply with constitutional standards. See 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."). See generally Application of Gault, 387 U.S. 1 (1967); Patterson v. Hopkins, 350 F. Supp. 676, 683 (N.D. Miss. 1972) ("Gault decided that, although the Fourteenth Amendment does not require that the hearing at this stage conform with all the requirements of a criminal trial or even of the usual administrative proceeding, the Due process Clause does require application during the adjudicatory hearing of '"the essentials of due process and fair treatment."").

➤ **Verifying information and explaining procedures and rights**

**U.R.Y.C.P. 24**

(b)(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.

*Accord* Miss. Code Ann. § 43-21-557.

**Comment to U.R.Y.C.P. 24(b)(4)**

At the beginning of each adjudicatory hearing, the court is required to verify certain information and to explain certain procedures and rights. See 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.").

*Case law:*

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.").

➤ **Evidence**

**U.R.Y.C.P. 24**

(b)(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.

*Accord* Miss. Code Ann. § 43-21-559.

*See also* Miller v. Smith, 229 So. 3d 100, 105 (Miss. 2017) ("This Court cannot ignore the plain language of the Sixth Amendment, which limits its own application to 'criminal prosecutions.' To the extent we held in the case of [*In Interest of C.B.*, 574 So. 2d 1369, 1374 (Miss. 1990)], that the Sixth Amendment applies in civil proceedings, today we overrule it.").

**M.R.E. 101**

(a) Scope. These rules apply to proceedings in Mississippi courts. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101.

**M.R.E. 1101**

(b) Exceptions. These rules--except for those on privilege--do not apply to the following:
(1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;
(2) grand-jury proceedings;
(3) contempt proceedings in which the court may act summarily; and
(4) these miscellaneous proceedings:

- extradition or rendition;
- issuing an arrest warrant, criminal summons, or search warrant;
- probable cause hearings in criminal cases and youth court cases;
- sentencing;
- disposition hearings;
- granting or revoking probation; and
- considering whether to release on bail or otherwise.

*Case law:*

In re E.A.J., 858 So. 2d 205 (Miss. Ct. App. 2003) ("[T]he trial court examined the minor outside the presence of the jury. The judge questioned the minor regarding her ability to recall the past and her understanding of the importance of telling the truth and listened to her responses to those questions. After questioning and listening to the child, as well as observing the demeanor of the child, the trial court determined that the child's testimony was at least trustworthy enough to be heard. As stated above, the issue of exclusion of a child witness is at the sound discretion of the trial court.").

➤ **Opportunity to present a closing argument**

**U.R.Y.C.P. 24**

(b)(6) Opportunity to present closing argument. At the conclusion of the evidence, the court shall give the parties an opportunity to present closing argument.

*Accord* Miss. Code Ann. § 43-21-559(4).

➤ **Standard of proof**

**U.R.Y.C.P. 24**

(b)(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.

*Accord* Miss. Code Ann. § 43-21-561.

**Comment to U.R.Y.C.P. 24(b)(7)**

The burden of proof in child protection proceedings is proof by a preponderance of the evidence. See E.S. v. State, 567 So. 2d 848, 850 (Miss. 1990).

*Case law:*

In re D.O., 798 So. 2d 417, 421-22 (Miss. 2001) ("Clearly, sufficient evidence was present to support the trial court's finding [of sexual abuse by a preponderance of the evidence].").

T.T. v. Harrison County Dept. of Human Services, 90 So. 3d 1283, 1286 (Miss. Ct. App. 2012) ("[S]ubstantial evidence supports the findings of the youth court. S.T. has two children in the custody of DHR due to serious instances of alleged and adjudicated abuse. B.H. Jr. has a permanent plan of adoption due to the failure of S.T. "to identify her diminished protective capacity." J.T. has a history of broken ribs, a broken tibia, and a broken femur. Further, C.H. died, allegedly by Shaken Baby Syndrome. The record does indicate S.T. attempted to explain some of the injuries to C.H., B.H. Jr., and J.T.; however, S.T. simply cannot explain C.H.'s and J.T.'s broken ribs.").

In re S. And S.C., 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.").

➤ **Terminating proceedings**

**U.R.Y.C.P. 24**

(b)(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.

*Accord* Miss. Code Ann. § 43-21-557(4).

## *515 ADJUDICATION ORDERS*

➤ **Content**

**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.

*Accord* Miss. Code Ann. § 43-21-561(5).

➤ **Two or more children subject of the same petition**

**U.R.Y.C.P. 25**

(b)(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.

*Accord* Miss. Code Ann. § 43-21-455.

## *516 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.

*Accord* Miss. Code Ann. §§ 43-21-501 to -507.

**Comment to U.R.Y.C.P. 22**

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.

➤ **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.

*Accord* Miss. Code Ann. § 43-21-601.

**Comment to U.R.Y.C.P. 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].").

*Case law:*

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.").

➤ **Conduct of hearing**

**U.R.Y.C.P. 26**

(c)(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.

*Accord* Miss. Code Ann. §§ 43-21-203, -603.

**Comment to U.R.Y.C.P. 26(c)(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.

In child protection proceedings, the foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the disposition hearing. See also Miss. Code Ann. 43-15-13(11) (providing rights to be extended to foster parents).

➤ **Evidence**

**U.R.Y.C.P. 26**

(c)(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.

**Comment to U.R.Y.C.P. 26(c)(3)**

The Mississippi Rules of Evidence do not apply to dispositional hearings. See M.R.E. 1101(b)(3); 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.").

➤ **Explaining the purpose of the dispositional hearing**

**U.R.Y.C.P. 26**

(c)(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.

➤ **Opportunity to present closing argument**

**U.R.Y.C.P. 26**

(c)(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.

➤ **Factors for consideration**

**U.R.Y.C.P. 26**

(c)(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.

*Accord* Miss. Code Ann. §§ 43-21-603, 43-27-25.

➤ **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.

*Accord* Miss. Code Ann. § 43-21-603.

## *518 DISPOSITION ORDERS*

➤ **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 43-21-619(1) 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.

*Accord* Miss. Code Ann. §§ 43-21-603, -609, -611, -615, -617, -619, -621.

**Comment to U.R.Y.C.P. 27(c)**

The polestar consideration in child custody cases is the best interest of the child. See, e.g., In re E.M., 810 So. 2d 596, 600 (Miss. 2002) ("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 S.M., 739 So. 2d 473, 475 (Miss. Ct. App. 1999) ("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."). The youth court has no authority to commit a neglected child to training school. See In re Slay, 147 So. 2d 299, 300 (Miss. 1962).

**§ 43-21-105**

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

**§ 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 (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.

**§ 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.
(ee) "Relative" means a person related to the child by affinity or consanguinity within the third degree.
(ff) "Fictive kin" means 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.
(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.

*Case law:*

In re T.T., 427 So. 2d 1382, 1384 (Miss. 1983) ("While [section 43-21-609] does not specifically provide, as an alternative, for ordering the filing of proceedings to terminate parental rights, the authority to do so is implicit from a consideration of the section as a whole.");

In re S.M., 739 So. 2d 473, 475 (Miss. Ct. App. 1999) ("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.").

➤ **If child is in need of special care**

**§ 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.").

*Case law:*

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.").

➤ **Two or more children subject of the same petition**

**U.R.Y.C.P. 27**

(c)(2) Two or more children subject of the same petition. The court shall enter a separate disposition on each adjudicated charge.

➤ **Other matters pertaining to disposition orders**

**U.R.Y.C.P. 27**

(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.
(2) Mississippi Crime Victims' Bill of Rights. The youth court judge shall comply with the Mississippi Crime Victims' Bill of Rights (Miss. Code Ann. § 99-43-1 et seq.) as is applicable to youth courts.
(3) Registration of Sex Offenders. The youth court judge shall comply with the Registration of Sex Offenders (Miss. Code Ann. § 45-33-21 et seq.) as is applicable to youth courts.

**§ 43-21-615**

(1) The costs of conveying any child committed to any institution or agency shall be paid by the county or municipality from which the child is committed out of the general treasury of the county or municipality upon approval of the court. No compensation shall be allowed beyond the actual and necessary expenses of the child and the person actually conveying the child. In the case of a female child, the youth court shall designate some suitable woman to accompany her to the institution or agency.

### ➤ Orders requiring others to act or refrain

**§ 43-21-617**

In all cases where the child is found to be a delinquent child, a child in need of supervision, 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.

*See also* U.R.Y.C.P. 20(b)(4), 22(a)(2).

### ➤ Orders requiring parent to pay certain expenses

**§ 43-21-619**

(1) 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.
(2) The youth court may order the parents, guardians or custodians who exercise parental custody and control of a child who is under the jurisdiction of the youth court and who has willfully or maliciously caused personal injury or damaged or destroyed property, to pay such damages or restitution through the court to the victim in an amount not to exceed the actual loss and to enforce payment thereof. Restitution ordered by the youth court under this section shall not preclude recovery of damages by the victim from such child or parent, guardian or custodian or other person who would otherwise be liable. The youth court also may order the parents, guardians or custodians of a child who is under the jurisdiction of the youth court and who willfully or maliciously has caused personal injury or damaged or destroyed property to participate in a counseling program or other suitable family treatment program for the purpose of preventing future occurrences of malicious destruction of property or personal injury.
(3) Such orders under this section shall constitute a civil judgment and may be enrolled on the judgment rolls in the office of the circuit clerk of the county where such order was entered, and further, such order may be enforced in any manner provided by law for civil judgments.

*See also* U.R.Y.C.P. 20(b)(4), 22(a)(2), 27(b).

**§ 43-21-105**

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

*Case law:*

Williamson v. Daniels, 748 So. 2d 754, 758 (Miss. 1999) ("[Section 43-21-619] is applicable only to the youth court").

In re B.D., 720 So. 2d 476, 479 (Miss. 1998). ("[W]e find that the restitution statute at question is rationally related to a legitimate purpose and is a valid expression of the state's police power. It is the Legislature's judgment that the burden here should be borne by the parents, guardians or custodians of the juvenile at fault.").

## *520 MODIFICATION OF DISPOSITION ORDERS*

➤ **Child protection proceedings**

**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.

**Comment to U.R.Y.C.P. 28(b)**

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.
. . .
(4) The provisions of this section do not apply to proceedings concerning durable legal relative guardianship.

➤ **Dependent children**

**U.R.Y.C.P. 28**

(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.

**§ 43-21-613**

(3)(c) The provisions of this subsection shall also apply to review of cases involving a dependent child; however, such reviews shall take place not less frequently than once each one hundred eighty (180) days, or upon the request of the child's attorney, a parent's attorney, or a parent as deemed appropriate by the youth court in protecting the best interests of the child. A dependent child shall be ordered by the youth court judge or referee to be returned to the custody and home of the child's parent, guardian or custodian unless the judge or referee, upon such review, makes a written finding that the return of the child to the home would be contrary to the child's best interests.

➤ **Durable legal custody**

**U.R.Y.C.P. 28**

(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.

*Accord* §§ 43-21-609(b), -613(3)(d).

**Comment to U.R.Y.C.P. 28(d)**

Section 43-21-609(b) of the Mississippi Code provides in part: "The requirements of Section 43-21-613 as to disposition review hearings does 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." Granting of durable legal custody, however, does not preclude the court from conducting a review hearing of its order. See 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."). Durable legal custody is not allowed as an alternative disposition unless the child has been in the physical custody of the proposed durable custodians for at least one year under the supervision of the Department of Human Services. See May v. Harrison County Dep't of Human Servs., 883 So. 2d 74, 82 (Miss. 2004). The granting of durable legal custody does not afford the durable legal custodian any greater rights than those of a foster parent. See Barnett v. Oathout, 883 So. 2d 563, 1279 (Miss. 2004).

*See also* U.R.Y.C.P. 4 (“"Durable legal custody" has the same meaning as in section 43-21-105(y) of the Mississippi Code; . . .”); Miss. Code Ann. § 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.”).

*Case law:*

In re M.I., 85 So. 3d 856, 860 (Miss. 2012) (“The youth court in no way terminated its jurisdiction over M.I. and T.I. by its grant of durable legal custody . . . .”).

➤ **Service of summons**

**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.

*Accord* Miss. Code Ann. §§ 43-21-501 to -507.

➤ **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.

**Comment to U.R.Y.C.P. 29(a)(1)**

The foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the disposition hearing. See also Miss. Code Ann. 43-15-13(11) (providing rights to be extended to foster parents).

Foster parents to attend permanency review hearings.
Miss. Code Ann. § 43-15-13(12) provides in part:
The Department of Human Services shall require the following responsibilities from participating persons who provide foster care and relative care: . . .
(i) Attending dispositional review hearings . . . conducted by a court of competent jurisdiction, or providing their recommendations to the court in writing.

➤ **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 Human Services, Division of Family and Children's 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).

**§ 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) or (d), 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.

➤ **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.

➤ **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).

**Comment to U.R.Y.C.P. 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 Human Services, Division of Family and Children's 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 Human Services, Division of Family and Children's 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).

**Comment to U.R.Y.C.P. 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**

**Comment to U.R.Y.C.P. 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**

**Comment to U.R.Y.C.P. 29(c)**

DFCS 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 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 Human Services, Division of Family and Children's 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.

**Comment to U.R.Y.C.P. 29(d)(2)**

The Department of Human Services, Division of Family and Children's 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.

## *522 FOSTER CARE REVIEW HEARINGS* ❖

**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.

**§ 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.
(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.
(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 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.
(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.

(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.

(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.
(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.
(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.
(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.
(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.
(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.

*Case law:*

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.").

➤ **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 Human Services, Division of Family and Children's 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.

**Comment to U.R.Y.C.P. 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).

Foster parents responsibility to attend certain hearings.
Miss. Code Ann. § 43-15-13(12) provides in part:
The Department of Human Services shall require the following responsibilities from participating foster parents: . . .
(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.

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).

**Comment to U.R.Y.C.P. 31(c)**

Reasonable efforts findings are required until the permanency plan or concurrent plan is achieved.

➤ **Key decisions to be determined at review hearing**

**Comment to U.R.Y.C.P. 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**

**Comment to U.R.Y.C.P. 31(c)**

DFCS 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 Human Services, Division of Family and Children's Services; and
(ii) the court ordered permanency plan or concurrent plan is adoption.

*Accord* Miss. Code Ann. § 43-21-613(3)(b).

**Comment to U.R.Y.C.P. 31(d)(2)**

The Department of Human Services, Division of Family and Children's 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.

## *524 MANDATORY REPORTING REQUIREMENTS*

➤ **Uniform Youth Court Case Identification and Docket Numbering System**

The Mississippi Supreme Court has adopted a Uniform Youth Court Case Identification and Docket Numbering System to be implemented by intake in assigning an identification and docket number for every matter coming before the youth courts of the State of Mississippi. *See* Amended Special Order No. 46 (Miss. Dec. 12, 1997).

*See* U.R.Y.C.P. 4, 8, and 20.

➤ **Uniform Youth Court Case Tracking System and Form**

The Mississippi Supreme Court has adopted a Uniform Youth Court Case Tracking System and Form to be implemented by intake as a data collection procedure for every matter coming before the youth courts of the State of Mississippi. *See* Special Order No. 47 (Miss. Dec. 16, 1996).

*See* U.R.Y.C.P. 4 and 8.

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## *CHAPTER 6*

## *CIVIL COMMITMENTS*


***600 CHILDREN WHO MAY NEED MENTAL HEALTH SERVICES AND COMMITMENT***

**Care of insane and indigent sick**
**Child's right to counsel**
**Pre-evaluation screening and treatment**
**Affidavit alleging child in need of mental health services**
**Dismissal of affidavit**
**Ordering a commitment hearing**
**Summons**
**Waiver of rights in involuntary commitment proceeding**
**Conduct of the commitment hearing**
**Commitment order**
**If admission is ordered at a treatment facility**
**Liability for costs**

***601 A CHILD IN NEED OF SPECIAL CARE WHO IS IN NEED OF MENTAL TREATMENT***

***602 PERMANENCY HEARINGS AND PERMANENCY REVIEW HEARINGS NOT SUSPENDED***

***603 HEARINGS CONCERNING CONTINUED COMMITMENT***

***604 DISCHARGE FROM TREATMENT FACILITY***

***605 PATIENT RIGHTS***

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➤ **Care of insane and indigent sick**

**Art. 4 § 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.

**§ 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.

**§43-21-603**

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

*Case law:*

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. The only role of the trial judge regarding this minor was to determine whether the minor needed the treatment and care provided by the state facility, and if so, to order [the child's] commitment.").

➤ **Child's right to counsel**

**§ 41-21-102**

(8) A patient has the right to be represented by counsel at any proceeding under sections 41-21-61 through 41-21-107. The court shall appoint counsel to represent the proposed patient if neither the proposed patient nor others provide counsel. In all proceedings under section 41-21-61 through 41-21-107, counsel shall: (a) consult with the person prior to any hearing; (b) be given adequate time to prepare for all hearings; (c) continue to represent the person throughout any proceedings under this charge unless released as counsel by the court; and (d) be a vigorous advocate on behalf of his client.

➤ **Pre-evaluation screening and treatment**

**U.R.Y.C.P. 32**

(a) Children who may need mental health services and commitment.
(1) Pre-evaluation screening and treatment. The youth court shall order a pre-evaluation screening and treatment, and a mental examination and a physical evaluation, pursuant to section 41-21-67 of the Mississippi Code, for a child in its custody if:
(i) the Department of Human Services, or other interested person or agency, files with the clerk of the court an affidavit alleging the child to be in need of mental health services; and
(ii) the youth court finds, based upon the affidavit and any other relevant evidence, that there is probable cause to believe the child is in need of mental health services.

*Accord* § 41-21-61 to -109.

**§ 41-21-61**

As used in Sections 41-21-61 through 41-21-107, unless the context otherwise requires, the following terms defined have the meanings ascribed to them:
(a) "Chancellor" means a chancellor or a special master in chancery.
(b) "Clerk" means the clerk of the chancery court.
(c) "Director" means the chief administrative officer of a treatment facility or other employee designated by him as his deputy.
(d) "Interested person" means 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.
(e) "Person with mental illness" means any 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.
(f) “Person with an intellectual disability” means 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.
(g) “Physician” means any person licensed by the State of Mississippi to practice medicine in any of its branches.
(h) “Psychologist” when used in Sections 41-21-61 through 41-21-107, means 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.
(i) “Treatment facility” means 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.
(j) “Substantial likelihood of bodily harm” 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.

**§ 41-21-67**

(1) Whenever the affidavit provided for in Section 41-21-65 is filed with the chancery clerk, the clerk, upon direction of the chancellor of the court, shall issue a writ directed to the sheriff of the proper county to take into his or her custody the person alleged to be in

need of treatment and to bring the person before the clerk or chancellor, who shall order pre-evaluation screening and treatment by the appropriate community mental health center established under Section 41-19-31 and for examination as set forth in Section 41-21-69. The order may provide where the person shall be held prior to the appearance before the clerk or chancellor. However, when the affidavit fails to set forth factual allegations and witnesses sufficient to support the need for treatment, the chancellor shall refuse to direct issuance of the writ. Reapplication may be made to the chancellor. If a pauper's affidavit is filed by a guardian for commitment of the ward of the guardian, the court shall determine if the ward is a pauper and if the ward is determined to be a pauper, the county of the residence of the respondent shall bear the costs of commitment, unless funds for those purposes are made available by the state.

In any county in which a Crisis Intervention Team has been established under the provisions of Sections 41-21-131 through 41-21-143, the clerk, upon the direction of the chancellor, may require that the person be referred to the Crisis Intervention Team for appropriate psychiatric or other medical services before the issuance of the writ.

(2) Upon issuance of the writ, the chancellor shall immediately appoint and summon two (2) reputable, licensed physicians or one (1) reputable, licensed physician and either one (1) psychologist, nurse practitioner or physician assistant to conduct a physical and mental examination of the person at a place to be designated by the clerk or chancellor and to report their findings to the clerk or chancellor. However, any nurse practitioner or physician assistant conducting the examination shall be independent from, and not under the supervision of, the other physician conducting the examination. In all counties in which there is a county health officer, the county health officer, if available, may be one (1) of the physicians so appointed. Neither of the physicians nor the psychologist, nurse practitioner or physician assistant selected shall be related to that person in any way, nor have any direct or indirect interest in the estate of that person nor shall any full-time staff of residential treatment facilities operated directly by the State Department of Mental Health serve as examiner.

(3) The clerk shall ascertain whether the respondent is represented by an attorney, and if it is determined that the respondent does not have an attorney, the clerk shall immediately notify the chancellor of that fact. If the chancellor determines that the respondent for any reason does not have the services of an attorney, the chancellor shall immediately appoint an attorney for the respondent at the time the examiners are appointed.

(4) If the chancellor determines that there is probable cause to believe that the respondent is mentally ill and that there is no reasonable alternative to detention, the chancellor may order that the respondent be retained as an emergency patient at any licensed medical facility for evaluation by a physician, nurse practitioner or physician assistant and that a peace officer transport the respondent to the specified facility. If the community mental health center serving the county has partnered with Crisis Intervention Teams under the provisions of Sections 41-21-131 through 41-21-143, the order may specify that the licensed medical facility be a designated single point of entry within the county or within an adjacent county served by the community mental health center. If the person evaluating the respondent finds that the respondent is mentally ill and in need of treatment, the chancellor may order that the respondent be retained at the licensed

medical facility or any other available suitable location as the court may so designate pending an admission hearing. If necessary, the chancellor may order a peace officer or other person to transport the respondent to that facility or suitable location. Any respondent so retained may be given such treatment as is indicated by standard medical practice. However, the respondent shall not be held in a hospital operated directly by the State Department of Mental Health, and shall not be held in jail unless the court finds that there is no reasonable alternative.
(5) Whenever a licensed psychologist, nurse practitioner or physician assistant who is certified to complete examinations for the purpose of commitment or a licensed physician has reason to believe that a person poses an immediate substantial likelihood of physical harm to himself or others or is gravely disabled and unable to care for himself by virtue of mental illness, as defined in Section 41-21-61(e), then the physician, psychologist, nurse practitioner or physician assistant may hold the person or may admit the person to and treat the person in a licensed medical facility, without a civil order or warrant for a period not to exceed seventy-two (72) hours. However, if the seventy-two-hour period begins or ends when the chancery clerk's office is closed, or within three (3) hours of closing, and the chancery clerk's office will be continuously closed for a time that exceeds seventy-two (72) hours, then the seventy-two-hour period is extended until the end of the next business day that the chancery clerk's office is open. The person may be held and treated as an emergency patient at any licensed medical facility, available regional mental health facility, or crisis intervention center. The physician or psychologist, nurse practitioner or physician assistant who holds the person shall certify in writing the reasons for the need for holding.
If a person is being held and treated in a licensed medical facility, and that person decides to continue treatment by voluntarily signing consent for admission and treatment, the seventy-two-hour hold may be discontinued without filing an affidavit for commitment. Any respondent so held may be given such treatment as indicated by standard medical practice. Persons acting in good faith in connection with the detention of a person believed to be mentally ill shall incur no liability, civil or criminal, for those acts.

➤ **Affidavit alleging child in need of mental health services**

**U.R.Y.C.P. 32**

(a)(2) Affidavit alleging child in need of mental health services. The affidavit alleging the child to be in need of mental health services shall be filed in duplicate and include:
(i) the name and address of the child's nearest relatives, if known;
(ii) the reason for the affidavit; and
(iii) a factual description of the child's recent behavior, including a description of the behavior, where it occurred, and over what period of time it occurred.
Each factual allegation shall be stated in behavioral terms, and not contain judgmental or conclusory statements, and be supported by observations of witnesses named in the affidavit.

➤ **Dismissal of affidavit**

**U.R.Y.C.P. 32**

(a)(3) Dismissal of affidavit. If the physicians, or the physician and psychologist, appointed to conduct the mental examination and physical evaluation certify that the child is not in need of treatment, the youth court shall dismiss the affidavit.

➤ **Ordering a commitment hearing**

**U.R.Y.C.P. 32**

(a)(4) Ordering a commitment hearing. The youth court shall order a commitment hearing if it finds probable cause, based upon the physicians' and any psychologist's certificate and any other relevant evidence, that the child is in need of inpatient treatment. Such hearing shall be set within seven (7) days of the filing of the certificate unless an extension is requested by the child's attorney. In no event shall the hearing be more than (10) days after the filing of the certificate.

➤ **Summons**

**U.R.Y.C.P. 32**

(a)(5) Summons. Within a reasonable period of time before the hearing, the child and the child's attorney shall be provided with notice, which shall include:
(i) notice of the date, time and place of the hearing;
(ii) a clear statement of the purpose of the hearing;
(iii) the possible consequences or outcome of the hearing;
(iv) the facts which have been alleged in support of the need for commitment;
(v) the names, addresses and telephone numbers of the examiner(s); and
(vi) other witnesses expected to testify.

➤ **Waiver of rights in involuntary commitment proceeding**

**§ 41-21-76**

The respondent in any involuntary commitment proceeding held pursuant to the provisions of sections 41-21-61 through 41-21-107 may make a knowing and intelligent waiver of his rights in such proceeding, provided that the waiver is made by his attorney with the informed consent of the respondent and with the approval of the court. The reasons for the waiver shall be made a part of the record.

➤ **Conduct of the commitment hearing**

**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. The hearing 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.
The child shall be present at the hearing, unless the judge determines that the child is unable to attend and the reasons for such determination are made a part of the record, and shall not be so under the influence or suffering from the effects of drugs, medication or other treatment so as to be hampered in participating in the proceedings. The court, at the time of the hearing, shall be presented a record of all drugs, medication or other treatment which the child has received pending the hearing, unless the court determines that such a record would be impractical and documents the reasons for that determination.

➤ **Commitment order**

**U.R.Y.C.P. 32**

(a)(7) Commitment order. The youth court shall order the child committed in the least restrictive treatment facility necessary to meet the child's treatment needs if it finds:
(i) by clear and convincing evidence the child to be in need of mental health services; and,
(ii) after careful consideration, that there are no suitable alternatives to judicial commitment.
The court shall state the findings of fact and conclusions of law which constitute the basis for the order of commitment. The findings shall include a listing of less restrictive alternatives considered by the court and the reasons that each was found not suitable. Any initial commitment shall not exceed three (3) months.

**Comment to U.R.Y.C.P. 32(a)(7)**

The standard of proof for civil commitments is by clear and convincing evidence. See Addington v. Texas, 441 U.S. 418, 432-33 (1979) ("To meet due process demands

[required in civil commitment proceedings], the standard . . . must be greater than the preponderance-of-the-evidence standard applicable to other categories of civil cases.").

Alternatives to commitment to inpatient care may include, but shall not be limited to: voluntary or court-ordered outpatient commitment for treatment with specific reference to a treatment regimen; day treatment in a hospital; night treatment in a hospital; or placement in the custody of a friend or relative or the provision of home health services. See Miss. Code Ann. § 41-21-73(4) (2008).

**§ 41-21-73**

(4) If the court finds by clear and convincing evidence that the proposed patient is a person with mental illness or a person with an intellectual disability and, if after careful consideration of reasonable alternative dispositions, including, but not limited to, dismissal of the proceedings, the court finds that there is no suitable alternative to judicial commitment, the court shall commit the patient for treatment in the least restrictive treatment facility that can meet the patient's treatment needs. Treatment before admission to a state-operated facility shall be located as closely as possible to the patient's county of residence and the county of residence shall be responsible for that cost. Admissions to state-operated facilities shall be in compliance with the catchment areas established by the State Department of Mental Health. A nonresident of the state may be committed for treatment or confinement in the county where the person was found.
Alternatives to commitment to inpatient care may include, but shall not be limited to: voluntary or court-ordered outpatient commitment for treatment with specific reference to a treatment regimen, day treatment in a hospital, night treatment in a hospital, placement in the custody of a friend or relative or the provision of home health services.

➤ **If admission is ordered at a treatment facility**

**§ 41–21–77**

If admission is ordered at a treatment facility, the sheriff, his or her deputy or any other person appointed or authorized by the court shall immediately deliver the respondent to the director of the appropriate facility. Neither the Board of Mental Health or its members, nor the Department of Mental Health or its related facilities, nor any employee of the Department of Mental Health or its related facilities, shall be appointed, authorized or ordered to deliver the respondent for treatment, and no person shall be so delivered or admitted until the director of the admitting institution determines that facilities and services are available. Persons who have been ordered committed and are awaiting admission may be given any such treatment in the facility by a licensed physician as is indicated by standard medical practice. Any county facility used for providing housing, maintenance and medical treatment for involuntarily committed persons pending their transportation and admission to a state treatment facility shall be certified by the State Department of Mental Health under the provisions of Section 41–4–7(kk). No person

shall be delivered or admitted to any non-Department of Mental Health treatment facility unless the treatment facility is licensed and/or certified to provide the appropriate level of psychiatric care for persons with mental illness. It is the intent of this Legislature that county-owned hospitals work with regional community mental health/intellectual disability centers in providing care to local patients. The clerk shall provide the director of the admitting institution with a certified copy of the court order, a certified copy of the physicians' or the physician's and psychologist's, nurse practitioner's or physician assistant's certificate, a certified copy of the affidavit, and any other information available concerning the physical and mental condition of the respondent. Upon notification from the United States Veterans Administration or other agency of the United States government, that facilities are available and the respondent is eligible for care and treatment in those facilities, the court may enter an order for delivery of the respondent to or retention by the Veterans Administration or other agency of the United States government, and, in those cases the chief officer to whom the respondent is so delivered or by whom he is retained shall, with respect to the respondent, be vested with the same powers as the director of the Mississippi State Hospital at Whitfield, or the East Mississippi State Hospital at Meridian, with respect to retention and discharge of the respondent.

➤ **Liability for costs**

**§ 42-21-79**

The costs incidental to the court proceedings including, but not limited to, court costs, prehearing hospitalization costs, cost of transportation, reasonable physician's, psychologist's, nurse practitioner's or physician assistant's fees set by the court, and reasonable attorney's fees set by the court, shall be paid out of the funds of the county of residence of the respondent in those instances where the patient is indigent unless funds for those purposes are made available by the state. However, if the respondent is not indigent, those costs shall be taxed against the respondent or his or her estate. The total amount that may be charged for all of the costs incidental to the court proceedings shall not exceed Four Hundred Dollars ($400.00).

## *601 A CHILD IN NEED OF SPECIAL CARE WHO IS IN NEED OF MENTAL TREATMENT*

**U.R.Y.C.P. 32**

(b) A child in need of special care who is in need of mental treatment. 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 rule shall be in compliance with the requirements for civil commitment as set forth in section 41-21-61 et seq.

**§ 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:
. . .
(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.

## *602 PERMANENCY HEARINGS AND PERMANENCY REVIEW HEARINGS NOT SUSPENDED*

**U.R.Y.C.P. 32**

(c) Permanency hearings and permanency review hearings not suspended. The court shall conduct permanency hearings and permanency review hearings as required under these rules without regard to whether a child has been referred for mental health services or committed for inpatient treatment.

## *603 HEARINGS CONCERNING CONTINUED COMMITMENT*

**§ 41-21-83**

If a hearing is requested as provided in Section 41-21-74, 41-21-81 or 41-21-99, the court shall not make a determination of the need for continued commitment unless a hearing is held and the court finds by clear and convincing evidence that (a) the person continues to have mental illness or have an intellectual disability; and (b) involuntary commitment is necessary for the protection of the patient or others; and (c) there is no alternative to involuntary commitment. Hearings held under this section shall be held in the chancery court of the county where the facility is located; however, if the patient is confined at the Mississippi State Hospital at Whitfield, Mississippi, the hearing shall be conducted by the Chancery Court of the First Judicial District of Hinds County, Mississippi.
The hearing shall be held within fourteen (14) days after receipt by the court of the request for a hearing. The court may continue the hearing for good cause shown. The

clerk shall ascertain whether the patient is represented by counsel, and, if the patient is not represented, shall notify the chancellor who shall appoint counsel for him if the chancellor determines that the patient for any reason does not have the services of an attorney; however, the patient may waive the appointment of counsel subject to the approval of the court. Notice of the time and place of the hearing shall be served at least seventy-two (72) hours before the time of the hearing upon the patient, his attorney, the director, and the person requesting the hearing, if other than the patient, and any witnesses requested by the patient or his attorney, or any witnesses the court may deem necessary or desirable.
The patient must be present at the hearing unless the chancellor determines that the patient is unable to attend and makes that determination and the reasons therefor part of the record.
The court shall put its findings and the reasons supporting its findings in writing and shall have copies delivered to the patient, his attorney, and the director of the treatment facility.
An appeal from the final commitment order by either party may be had on the terms prescribed for appeals in civil cases; however, such appeal shall be without supersedeas. The record on appeal shall include the transcript of the commitment hearing.

*See also* Alexander V. Tsesis, *Protecting Children Against Unnecessary Institutionalization*, 39 S. Tex. L. Rev. 995, 996 (1998) ("Adolescents often exhibit unconventional and quite provocative behavior during puberty. Some mental health professionals have sought to avert the development of severe psychoses by committing children to mental health institutions. Although it is honorable to intervene in order to prevent severe future psychological problems, such a drastic method is often counterproductive. Many individuals confined to locked mental wards as adolescents sustain lasting psychological trauma from such a significant limitation of their liberty.").

## *604 DISCHARGE FROM TREATMENT FACILITY*

### § 41-21-87

(1) The director of either the treatment facility where the patient is committed or the treatment facility where the patient resides while awaiting admission to any other treatment facility may discharge any civilly committed patient upon filing his certificate of discharge with the clerk of the committing court, certifying that the patient, in his judgment, no longer poses a substantial threat of physical harm to himself or others.
(2) A director of a treatment facility specified in subsection (1) above may return any patient to the custody of the committing court upon providing seven (7) days' notice and upon filing his certificate of same as follows:
(a) When, in the judgment of the director, the patient may be treated in a less restrictive environment; however, treatment in such less restrictive environment shall be implemented within seven (7) days after notification of the court; or

(b) When, in the judgment of the director, adequate facilities or treatment are not available at the treatment facility.
(3) Except as provided in Section 41-21-88, no committing court shall enjoin or restrain any director of a treatment facility specified in subsection (1) above from discharging a patient under this section whose treating professionals have determined that the patient meets one (1) of the criteria for discharge as outlined in subsection (1) or (2) of this section. The director of the treatment facility where the patient is committed may transfer any civilly committed patient from one (1) facility operated directly by the Department of Mental Health to another as necessary for the welfare of that or other patients. Upon receiving the director's certificate of transfer, the court shall enter an order accordingly.
(4) Within twenty-four (24) hours prior to the release or discharge of any civilly committed patient, other than a temporary pass due to sickness or death in the patient's family, the director shall give or cause to be given notice of such release or discharge to one (1) member of the patient's immediate family, provided the member of the patient's immediate family has signed the consent to release form provided under subsection (5) and has furnished in writing a current address and telephone number, if applicable, to the director for such purpose. The notice of release shall also be provided to any victim of such person and/or to any person to whom a restraining order has been entered to protect from such person. The notice to the family member shall include the psychiatric diagnosis of any chronic mental disorder incurred by the civilly committed patient and any medications provided or prescribed to the patient for such conditions.
(5) All providers of service in a treatment facility, whether in a community mental health/intellectual disability center, region or state psychiatric hospital, are authorized and directed to request a consent to release information from all patients which will allow that entity to involve the family in the patient's treatment. Such release form shall be developed by the Department of Mental Health and provided to all treatment facilities, community mental health/intellectual disability centers and state facilities. All such facilities shall request such a release of information upon the date of admission of the patient to the facility or at least by the time the patient is discharged.
(6) Each month the Department of Mental Health-operated facilities shall provide the directors of community mental health centers the names of all individuals who were discharged to their catchment area with referral for community-based services. The department shall require community mental health care providers to report monthly the date that service(s) were initiated and type of service(s) initiated.

## *605 PATIENT RIGHTS*

### § 41-21-102

(1) A patient has the right to be free from restraints. Restraints shall not be applied to a patient unless the director of the treatment facility or a member of the medical staff determines that they are necessary for the safety of the patient or others. Each use of a

restraint and reason for such use shall be made part of the clinical record of the patient under the signature of the director of the treatment facility.
(2) A patient has the right to correspond freely without censorship. The director of the treatment facility may restrict receipt of correspondence if he determines that the medical welfare of the patient requires it. Any limitation imposed on the exercise of patient's correspondence rights and the reason for it shall be made a part of the clinical record of the patient. Any communication which is not delivered to a patient shall be immediately returned to the sender. No restriction shall be placed upon correspondence between a patient and his attorney or any court of competent jurisdiction.
(3) Subject to the general rules of the treatment facility, a patient has the right to receive visitors and make phone calls. The director of the treatment facility may restrict visits and phone calls if he determines that the medical welfare of the patient requires it. Any limitation imposed on the exercise of the patient's visitation and phone call rights and the reason for it shall be made a part of the clinical record of the patient. No restriction shall be placed upon a patient's visitation at the treatment facility with or upon calls to or from his attorney.
(4) A patient has the right to meet with or call his personal physician, spiritual advisor, and counsel at all reasonable times. The patient has the right to reasonable accommodation of religious practice.
(5) A patient has the right to periodic medical assessment. The director of a treatment facility shall have the physical and mental condition of every patient assessed as frequently as necessary, but not less often than every six (6) months.
(6) A person receiving services under sections 41-21-61 through 41-21-107 has the right to receive proper care and treatment, best adapted, according to contemporary professional standards, to rendering further custody, institutionalization, or other services unnecessary. The treatment facility shall devise a written program plan for each person which describes in behavioral terms the case problems, the precise goals, and to modify the program plan as necessary. The program plan shall be reviewed with the patient.
(7) Unless disclosure is determined to be detrimental to the physical or mental health of the patient, and unless notation to that effect is made in the patient's record, a patient has the right of access to his medical records.
(8) A patient has the right to be represented by counsel at any proceeding under sections 41-21-61 through 41-21-107. The court shall appoint counsel to represent the proposed patient if neither the proposed patient nor others provide counsel. In all proceedings under section 41-21-61 through 41-21-107, counsel shall: (a) consult with the person prior to any hearing; (b) be given adequate time to prepare for all hearings; (c) continue to represent the person throughout any proceedings under this charge unless released as counsel by the court; and (d) be a vigorous advocate on behalf of his client.
(9) All persons admitted or committed to a treatment facility shall be notified in writing of their rights under sections 41-21-61 through 41-21-107 at the time of admission.

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## *CHAPTER 7*

## *SCHOOL LAWS*


***700 MISSISSIPPI COMPULSORY ATTENDANCE LAW***

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***706 ALTERNATIVE SCHOOL PROGRAMS***

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***708 PROSECUTION FOR REFUSAL OR FAILURE TO COMPLY WITH THE MISSISSIPPI COMPULSORY ATTENDANCE LAW (CRIMINAL COURTS, NOT YOUTH COURT)***

***709 SEARCHES BY PUBLIC SCHOOL OFFICIALS***

**Governing laws**
**Determining if the search by public school officials was reasonable**
**Random drug testing of students who voluntarily participate in extra-curricular activities**
**Internet and e-mail searches**

➤ **Definitions**

**§ 37-13-91**

(1) This section shall be referred to as the "Mississippi Compulsory School Attendance Law."
(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.
(b) "Guardian" means a guardian of the person of a child, other than a parent, who is legally appointed by a court of competent jurisdiction.
(c) "Custodian" means any person having the present care or custody of a child, other than a parent or guardian of the child.
(d) "School day" means not less than five (5) and not more than eight (8) hours of actual teaching in which both teachers and pupils are in regular attendance for scheduled schoolwork.
(e) "School" means any public 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.
(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. Provided, however, that the parent or guardian of any child enrolled in a full-day public school kindergarten program shall be allowed to disenroll the child from the program on a one-time basis, and such child shall not be deemed a compulsory-school-age child until the child attains the age of six (6) years.
(g) "School attendance officer" means a person employed by the State Department of Education pursuant to Section 37-13-89.
(h) "Appropriate school official" means the superintendent of the school district, or his designee, or, in the case of a nonpublic school, the principal or the headmaster.
(i) "Nonpublic school" means 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.

➤ **Enrollment requirements**

**§ 37-13-91**

(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.
The form of the certificate of enrollment shall be prepared by the Office of Compulsory School Attendance Enforcement of the State Department of Education and shall be designed to obtain the following information only:
(i) The name, address, telephone number and date of birth of the compulsory-school-age child;
(ii) The name, address and telephone number of the parent, guardian or custodian of the compulsory-school-age child;
(iii) A simple description of the type of education the compulsory-school-age child is receiving and, if the child is enrolled in a nonpublic school, the name and address of the school; and
(iv) The signature of the parent, guardian or custodian of the compulsory-school-age child or, for any or all compulsory-school-age child or children attending a nonpublic school, the signature of the appropriate school official and the date signed.
The certificate of enrollment shall be returned to the school attendance officer where the child resides on or before September 15 of each year. Any parent, guardian or custodian found by the school attendance officer to be in noncompliance with this section shall comply, after written notice of the noncompliance by the school attendance officer, with this subsection within ten (10) days after the notice or be in violation of this section. However, in the event the child has been enrolled in a public school within fifteen (15) calendar days after the first day of the school year as required in subsection (6), the parent or custodian may, at a later date, enroll the child in a legitimate nonpublic school or legitimate home instruction program and send the certificate of enrollment to the school attendance officer and be in compliance with this subsection.

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

*See also* Robin Cheryl Miller, *Validity, Construction, and Application of Statute, Regulation, or Policy Governing Home Schooling or Affecting Rights of Home-Schooled Students*, 70 A.L.R. 5th 169 (1999) (analyzing state and federal cases discussing substantive validity, construction, or application of statutes, regulations, and policies governing or affecting rights of home-schooled students).

➤ **Unlawful absences**

**§ 37-13-91**

(4) An "unlawful absence" is an absence for an entire school day or during part of a school day by a compulsory-school-age child, which absence is not due to a valid excuse for temporary nonattendance. For purposes of reporting absenteeism under subsection (6) of this section, if a compulsory-school-age child has an absence that is more than thirty-seven percent (37%) of the instructional day, as fixed by the school board for the school at which the compulsory-school-age child is enrolled, the child must be considered absent the entire school day. Days missed from school due to disciplinary suspension shall not be considered an "excused" absence under this section. This subsection shall not apply to children enrolled in a nonpublic school.
Each of the following shall constitute a valid excuse for temporary nonattendance of a compulsory-school-age child enrolled in a non-charter public school, provided satisfactory evidence of the excuse is provided to the superintendent of the school district, or his designee:
(a) An absence is excused when the absence results from the compulsory-school-age child's attendance at an authorized school activity with the prior approval of the superintendent of the school district, or his designee. These activities may include field trips, athletic contests, student conventions, musical festivals and any similar activity.
(b) An absence is excused when the absence results from illness or injury which prevents the compulsory-school-age child from being physically able to attend school.
(c) An absence is excused when isolation of a compulsory-school-age child is ordered by the county health officer, by the State Board of Health or appropriate school official.
(d) An absence is excused when it results from the death or serious illness of a member of the immediate family of a compulsory-school-age child. The immediate family members of a compulsory-school-age child shall include children, spouse, grandparents, parents, brothers and sisters, including stepbrothers and stepsisters.
(e) An absence is excused when it results from a medical or dental appointment of a compulsory-school-age child.
(f) An absence is excused when it results from the attendance of a compulsory-school-age child at the proceedings of a court or an administrative tribunal if the child is a party to the action or under subpoena as a witness.

(g) An absence may be excused if the religion to which the compulsory-school-age child or the child's parents adheres, requires or suggests the observance of a religious event. The approval of the absence is within the discretion of the superintendent of the school district, or his designee, but approval should be granted unless the religion's observance is of such duration as to interfere with the education of the child.
(h) An absence may be excused when it is demonstrated to the satisfaction of the superintendent of the school district, or his designee, that the purpose of the absence is to take advantage of a valid educational opportunity such as travel, including vacations or other family travel. Approval of the absence must be gained from the superintendent of the school district, or his designee, before the absence, but the approval shall not be unreasonably withheld.
(i) An absence may be excused when it is demonstrated to the satisfaction of the superintendent of the school district, or his designee, that conditions are sufficient to warrant the compulsory-school-age child's nonattendance. However, no absences shall be excused by the school district superintendent, or his designee, when any student suspensions or expulsions circumvent the intent and spirit of the compulsory attendance law.
(j) An absence is excused when it results from the attendance of a compulsory-school-age child participating in official organized events sponsored by the 4–H or Future Farmers of America (FFA). The excuse for the 4–H or FFA event must be provided in writing to the appropriate school superintendent by the Extension Agent or High School Agricultural Instructor/FFA Advisor.
(k) An absence is excused when it results from the compulsory-school-age child officially being employed to serve as a page at the State Capitol for the Mississippi House of Representatives or Senate.

*Case law:*

In re T.H., 681 So. 2d 110, 117 (Miss. 1996) ("[A] school may not force a student to be absent, then count those absences against him to lower his grade. Such a policy violates the purpose of our state's compulsory attendance law.").

➤ **Reporting non-enrollments and unlawful absences**

**§ 37-13-91**

(6) If a compulsory-school-age child has not been enrolled in a school within fifteen (15) calendar days after the first day of the school year of the school which the child is eligible to attend or the child has accumulated five (5) unlawful absences during the school year of the public school in which the child is enrolled, the school district superintendent or his designee shall report, within two (2) school days or within five (5) calendar days, whichever is less, the absences to the school attendance officer. The State Department of Education shall prescribe a uniform method for schools to utilize in reporting the unlawful absences to the school attendance officer. The superintendent, or his designee,

also shall report any student suspensions or student expulsions to the school attendance officer when they occur.

➤ **State Board of Education to adopt rules and regulations**

**§ 37-13-91**

(8) The State Board of Education shall adopt rules and regulations for the purpose of reprimanding any school superintendents who fail to timely report unexcused absences under the provisions of this section.

➤ **Mississippi Compulsory Attendance Law limitations**

**§ 37-13-91**

(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, and nothing in this section shall ever be construed to grant, by implication or otherwise, to the State of Mississippi, any of its officers, agencies or subdivisions any right or authority to control, manage, supervise or make any suggestion as to the control, management or supervision of any private or parochial school or institution for the education or training of children, of any kind whatsoever that is not a public school according to the laws of this state; and this section shall never be construed so as to grant, by implication or otherwise, any right or authority to any state agency or other entity to control, manage, supervise, provide for or affect the operation, management, program, curriculum, admissions policy or discipline of any such school or home instruction program.

➤ **Filing a report of a truant child alleged as a child in need of supervision**

**U.R.Y.C.P. 33**

(a) Truant child alleged as child in need of supervision.
(1) Filing a report of a truant child alleged as a child in need of supervision. When a school attendance officer has made all attempts to secure enrollment and/or attendance of a compulsory-school-age child and is unable to effect the enrollment and/or attendance, the attendance officer shall file a report with the youth court intake unit. Sheriffs, deputy sheriffs and municipal law enforcement officers shall be fully authorized to investigate all cases of nonattendance and unlawful absences by compulsory-school-age children and to file a report with the youth court intake unit.

**Comment to U.R.Y.C.P. 33(a)(1)**

A school attendance officer should not file a report until all attempts have been made to secure enrollment and/or attendance of the truant child. See Miss. Code Ann. §§ 37-13-89(4), -91(7).

**§ 37-13-89**

(4) It shall be the duty of each school attendance officer to:
(a) Cooperate with any public agency to locate and identify all compulsory-school-age children who are not attending school;
(b) Cooperate with all courts of competent jurisdiction;
(c) Investigate all cases of nonattendance and unlawful absences by compulsory-school-age children not enrolled in a nonpublic school;
(d) Provide appropriate counseling to encourage all school-age children to attend school until they have completed high school;
(e) Attempt to secure the provision of social or welfare services that may be required to enable any child to attend school;
(f) Contact the home or place of residence of a compulsory-school-age child and any other place in which the officer is likely to find any compulsory-school-age child when the child is absent from school during school hours without a valid written excuse from school officials, and when the child is found, the officer shall notify the parents and school officials as to where the child was physically located;
(g) Contact promptly the home of each compulsory-school-age child in the school district within the officer's jurisdiction who is not enrolled in school or is not in attendance at public school and is without a valid written excuse from school officials; if no valid reason is found for the nonenrollment or absence from the school, the school attendance officer shall give written notice to the parent, guardian or custodian of the requirement for the child's enrollment or attendance;

(h) Collect and maintain information concerning absenteeism, dropouts and other attendance-related problems, as may be required by law or the Office of Compulsory School Attendance Enforcement; and
(i) Perform all other duties relating to compulsory school attendance established by the State Department of Education or district school attendance supervisor, or both.

**§ 37-13-91**

(7) When a school attendance officer has made all attempts to secure enrollment and/or attendance of a compulsory-school-age child and is unable to effect the enrollment and/or attendance, the attendance officer shall file a petition with the youth court under Section 43-21-451 or shall file a petition in a court of competent jurisdiction as it pertains to parent or child. Sheriffs, deputy sheriffs and municipal law enforcement officers shall be fully authorized to investigate all cases of nonattendance and unlawful absences by compulsory-school-age children, and shall be authorized to file a petition with the youth court under Section 43-21-451 or file a petition or information in the court of competent jurisdiction as it pertains to parent or child for violation of this section. The youth court shall expedite a hearing to make an appropriate adjudication and a disposition to ensure compliance with the Compulsory School Attendance Law, and may order the child to enroll or re-enroll in school. The superintendent of the school district to which the child is ordered may assign, in his discretion, the child to the alternative school program of the school established pursuant to Section 37-13-92.

➤ **Intake**

**U.R.Y.C.P. 33**

(a)(2) Intake. Intake procedures shall be conducted pursuant to Rule 8(a) of these rules.

➤ **Court orders upon intake recommendations**

**U.R.Y.C.P. 33**

(a)(3) Court orders upon intake recommendations. Court orders upon intake recommendations shall be conducted pursuant to Rule 9(a) of these rules, except that if the court orders that an informal adjustment process be made it shall be initiated as expeditiously as possible.

➤ **Petition**

**U.R.Y.C.P. 33**

(a)(4) Petition. Procedures for filing a petition shall be conducted pursuant to Rule 20(b) of these rules.

➤ **Proper venue**

**U.R.Y.C.P. 33**

(a)(5) Proper venue. Proper venue shall be pursuant to Rule 21(a) of these rules.

➤ **Summons for adjudicatory hearings**

**U.R.Y.C.P. 33**

(a)(6) Summons for adjudicatory hearings. Service of summons shall be made pursuant to Rule 22(a) of these rules.

**Comment to U.R.Y.C.P. 33(a)(6)**

Persons who may be appointed by the court to serve summons under these provisions include: a sheriff, deputy sheriff, a municipal law enforcement officer, a constable, a school attendance officer, a school official, a youth court counselor, or any other person deemed appropriate.

➤ **Summons for disposition hearings**

**U.R.Y.C.P. 33**

(a)(7) Summons for disposition hearings. Service of summons shall be made pursuant to Rule 22(b) of these rules.

**Comment to U.R.Y.C.P. 33(a)(7)**

Persons who may be appointed by the court to serve summons under these provisions include: a sheriff, deputy sheriff, a municipal law enforcement officer, a constable, a school attendance officer, a school official, a youth court counselor, or any other person deemed appropriate.

➤ **Adjudication hearings**

**U.R.Y.C.P. 33**

(a)(8) Adjudication hearings. Adjudication hearings alleging a truant child as a child in need of supervision shall be conducted pursuant to Rule 24(a) of these rules, except that such hearings shall be conducted as expeditiously as possible and no later than twenty-one (21) days of the petition being filed.

**Comment to U.R.Y.C.P. 33(a)(8)**

This provision departs from the usual time requirements for conducting an adjudication hearing, but is consistent with the statutory directive requiring that "[t]he youth court shall expedite a hearing to make an appropriate adjudication and a disposition to ensure compliance with the Compulsory School Attendance Law." See Miss. Code Ann. § 37-13-91(7) (2008).

*Case law:*

In re I.G., 467 So. 2d 920, 922 (Miss. 1985) ("The youth court did not inform I.G.'s mother and step-father of their right to counsel, as mandated by our legislature, and for this reason the cause must be reversed.").

➤ **Adjudication orders**

**U.R.Y.C.P. 33**

(a)(9) Adjudication orders. Adjudication orders shall comply with Rule 25(a) of these rules.

➤ **Disposition hearings**

**U.R.Y.C.P. 33**

(a)(10) Disposition hearings. Disposition hearings for a truant child adjudicated as a child in need of supervision shall be conducted pursuant to Rule 26(b) of these rules, except that such hearings shall be conducted as expeditiously as possible and no later than twenty-one (21) days of the petition being filed.

➤ **Disposition orders**

**U.R.Y.C.P. 33**

(a)(11) Disposition orders. The disposition order may include any disposition allowed under Rule 27(b) of these rules. The court shall make an appropriate disposition to ensure compliance with Mississippi's Compulsory School Attendance Law, including enrollment or re-enrollment in school pursuant to sections 37-13-91 and 43-21-621 of the Mississippi Code.

**§ 43-21-621**

(1) The youth court may, in compliance with the laws governing education of children, order any state-supported public school in its jurisdiction after notice and hearing to

enroll or reenroll any compulsory-school-age child in school, and further order appropriate educational services. Provided, however, that the youth court shall not order the enrollment or reenrollment of a student that has been suspended or expelled by a public school pursuant to Section 37-9-71 or 37-7-301 for possession of a weapon on school grounds, for an offense involving a threat to the safety of other persons or for the commission of a violent act. For the purpose of this section "violent act" means any action which results in death or physical harm to another or an attempt to cause death or physical harm to another. The superintendent of the school district to which such child is ordered may, in his discretion, assign such child to the alternative school program of such school established pursuant to Section 37-13-92, Mississippi Code of 1972. The court shall have jurisdiction to enforce school and education laws. Nothing in this section shall be construed to affect the attendance of a child in a legitimate home instruction program.

➤ **Modification of disposition orders and annual reviews**

**U.R.Y.C.P. 33**

(a)(12) Modification of disposition orders and annual reviews. Modification of disposition orders and annual reviews shall be conducted pursuant to Rule 28(a) of these rules.

## *702 TRUANCY - CHILD ALLEGED AS A NEGLECTED CHILD*

➤ **Filing a report of a truant child alleged as a neglected child**

**U.R.Y.C.P. 33**

(b) Truant child alleged as a neglected child.
(1) Filing a report of a truant child alleged as a neglected child. When a school attendance officer has made all attempts to secure enrollment and/or attendance of a compulsory-school-age child and is unable to effect the enrollment and/or attendance, the attendance officer shall file a report with the youth court intake unit. Sheriffs, deputy sheriffs and municipal law enforcement officers shall be fully authorized to investigate all cases of nonattendance and unlawful absences by compulsory-school-age children and to file a report with the youth court intake unit.

**Comment to U.R.Y.C.P. 33(b)(1)**

A school attendance officer should not file a report until all attempts have been made to secure enrollment and/or attendance of the truant child. See Miss. Code Ann. §§ 37-13-89(4), -91(7).

**§ 37-13-89**

(4) It shall be the duty of each school attendance officer to:
(a) Cooperate with any public agency to locate and identify all compulsory-school-age children who are not attending school;
(b) Cooperate with all courts of competent jurisdiction;
(c) Investigate all cases of nonattendance and unlawful absences by compulsory-school-age children not enrolled in a nonpublic school;
(d) Provide appropriate counseling to encourage all school-age children to attend school until they have completed high school;
(e) Attempt to secure the provision of social or welfare services that may be required to enable any child to attend school;
(f) Contact the home or place of residence of a compulsory-school-age child and any other place in which the officer is likely to find any compulsory-school-age child when the child is absent from school during school hours without a valid written excuse from school officials, and when the child is found, the officer shall notify the parents and school officials as to where the child was physically located;
(g) Contact promptly the home of each compulsory-school-age child in the school district within the officer's jurisdiction who is not enrolled in school or is not in attendance at public school and is without a valid written excuse from school officials; if no valid reason is found for the nonenrollment or absence from the school, the school attendance officer shall give written notice to the parent, guardian or custodian of the requirement for the child's enrollment or attendance;
(h) Collect and maintain information concerning absenteeism, dropouts and other attendance-related problems, as may be required by law or the Office of Compulsory School Attendance Enforcement; and
(i) Perform all other duties relating to compulsory school attendance established by the State Department of Education or district school attendance supervisor, or both.

**§ 37-13-91**

(7) When a school attendance officer has made all attempts to secure enrollment and/or attendance of a compulsory-school-age child and is unable to effect the enrollment and/or attendance, the attendance officer shall file a petition with the youth court under Section 43-21-451 or shall file a petition in a court of competent jurisdiction as it pertains to parent or child. Sheriffs, deputy sheriffs and municipal law enforcement officers shall be fully authorized to investigate all cases of nonattendance and unlawful absences by compulsory-school-age children, and shall be authorized to file a petition with the youth court under Section 43-21-451 or file a petition or information in the court of competent jurisdiction as it pertains to parent or child for violation of this section. The youth court shall expedite a hearing to make an appropriate adjudication and a disposition to ensure compliance with the Compulsory School Attendance Law, and may order the child to enroll or re-enroll in school. The superintendent of the school district to which the child is ordered may assign, in his discretion, the child to the alternative school program of the school established pursuant to Section 37-13-92.

➤ **Intake**

**U.R.Y.C.P. 33**

(b)(2) Intake. Intake procedures shall be conducted pursuant to Rule 8(b) of these rules.

➤ **Court orders upon intake recommendations**

**U.R.Y.C.P. 33**

(b)(3) Court orders upon intake recommendations. Court orders upon intake recommendations shall be conducted pursuant to Rule 9(b) of these rules, except that if the court orders that an informal adjustment process be made it shall be initiated as expeditiously as possible.

➤ **Petition**

**U.R.Y.C.P. 33**

(b)(4) Petition. Procedures for filing a petition shall be conducted pursuant to Rule 20(c) of these rules.

➤ **Proper venue**

**U.R.Y.C.P. 33**

(b)(5) Proper venue. Proper venue shall be pursuant to Rule 21(b) of these rules.

➤ **Summons for adjudicatory hearings**

**U.R.Y.C.P. 33**

(b)(6) Summons for adjudicatory hearings. Service of summons shall be made pursuant to Rule 22(a) of these rules.

**Comment to U.R.Y.C.P. 33(b)(6)**

Persons who may be appointed by the court to serve summons under these provisions include: a sheriff, deputy sheriff, a municipal law enforcement officer, a constable, a school attendance officer, a school official, a youth court counselor, or any other person deemed appropriate.

➤ **Summons for disposition hearings**

**U.R.Y.C.P. 33**

(b)(7) Summons for disposition hearings. Service of summons shall be made pursuant to Rule 22(b) of these rules.

**Comment to U.R.Y.C.P. 33(b)(7)**

Persons who may be appointed by the court to serve summons under these provisions include: a sheriff, deputy sheriff, a municipal law enforcement officer, a constable, a school attendance officer, a school official, a youth court counselor, or any other person deemed appropriate.

➤ **Adjudication hearings**

**U.R.Y.C.P. 33**

(b)(8) Adjudication hearings. Adjudication hearings alleging a truant child as a neglected child shall be conducted pursuant to Rule 24(b) of these rules, except that such hearings shall be conducted as expeditiously as possible and no later than twenty-one (21) days of the petition being filed.

**Comment to U.R.Y.C.P. 33(b)(8)**

This provision departs from the usual time requirements for conducting an adjudication hearing, but is consistent with the statutory directive requiring that "[t]he youth court shall expedite a hearing to make an appropriate adjudication and a disposition to ensure compliance with the Compulsory School Attendance Law." See Miss. Code Ann. § 37-13-91(7) (2008).

*Case law:*

In re I.G., 467 So. 2d 920, 922 (Miss. 1985) ("The youth court did not inform I.G.'s mother and step-father of their right to counsel, as mandated by our legislature, and for this reason the cause must be reversed.").

➤ **Adjudication orders**

**U.R.Y.C.P. 33**

(b)(9) Adjudication orders. Adjudication orders shall comply with Rule 25(b) of these rules.

➤ **Disposition hearings**

**U.R.Y.C.P. 33**

(b)(10) Disposition hearings. Disposition hearings for a truant child adjudicated as a neglected child shall be conducted pursuant to Rule 26(c) of these rules, except that such hearings shall be conducted as expeditiously as possible and no later than twenty-one (21) days of the petition being filed.

➤ **Disposition orders**

**U.R.Y.C.P. 33**

(b)(11) Disposition orders. The disposition order may include any disposition allowed under Rule 27(c) of these rules. The court shall make an appropriate disposition to ensure compliance with Mississippi's Compulsory School Attendance Law, including enrollment or re-enrollment in school pursuant to sections 37-13-91 and 43-21-621 of the Mississippi Code.

**§ 43-21-621**

(1) The youth court may, in compliance with the laws governing education of children, order any state-supported public school in its jurisdiction after notice and hearing to enroll or reenroll any compulsory-school-age child in school, and further order appropriate educational services. Provided, however, that the youth court shall not order the enrollment or reenrollment of a student that has been suspended or expelled by a public school pursuant to Section 37-9-71 or 37-7-301 for possession of a weapon on school grounds, for an offense involving a threat to the safety of other persons or for the commission of a violent act. For the purpose of this section "violent act" means any action which results in death or physical harm to another or an attempt to cause death or physical harm to another. The superintendent of the school district to which such child is ordered may, in his discretion, assign such child to the alternative school program of such school established pursuant to Section 37-13-92, Mississippi Code of 1972. The court shall have jurisdiction to enforce school and education laws. Nothing in this section shall be construed to affect the attendance of a child in a legitimate home instruction program.

➤ **Modification of disposition orders and annual reviews**

**U.R.Y.C.P. 33**

(b)(12) Modification of disposition orders and annual reviews. Modification of disposition orders and annual reviews shall be conducted pursuant to Rule 28(b) of these rules.

➤ **Permanency hearings**

**U.R.Y.C.P. 33**

(b)(13) Permanency hearings. Permanency hearings shall be conducted pursuant to Rule 29 of these rules.

➤ **Foster care review hearings**

**U.R.Y.C.P. 33**

(b)(14) Foster care review hearings. Foster care review hearings shall be conducted pursuant to Rule 30 of these rules.

➤ **Permanency review hearings**

**U.R.Y.C.P. 33**

(b)(15) Permanency review hearings. Permanency review hearings shall be conducted pursuant to Rule 31 of these rules.

## *703 SUSPENDING OR EXPELLING A CHILD FROM SCHOOL*

➤ **Power of the school board to suspend or expel**

**§ 37-7-301**

The school boards of all school districts shall have the following powers, authority and duties in addition to all others imposed or granted by law, to wit:
. . .
(e) To suspend or to expel a pupil or to change the placement of a pupil to the school district's alternative school or homebound program for misconduct in the school or on school property, as defined in Section 37–11–29, on the road to and from school, or at any school-related activity or event, or for conduct occurring on property other than school property or other than at a school-related activity or event when such conduct by a pupil, in the determination of the school superintendent or principal, renders that pupil's presence in the classroom a disruption to the educational environment of the school or a detriment to the best interest and welfare of the pupils and teacher of such class as a whole, and to delegate such authority to the appropriate officials of the school district;
. . .
(kk) To exercise such powers as may be reasonably necessary to carry out the provisions of this section;

*Case law:*

In re T.H., 681 So. 2d 110, 117 (Miss. 1996) ("The Mississippi Compulsory School Attendance Law makes it clear that children should be kept in school (regular or alternate) when suspended or expelled . . . Where the school does not allow the student to attend an alternate school [excepting situations that mandate total expulsion], the youth court has authority to place the student in school. Furthermore, where the school does not allow the suspended student to attend an alternate program, these absences are considered excused as a matter of statutory law. It is only where the student is suspended or expelled and does not take advantage of the alternate programs that the absence is unexcused.").

➤ **Power of the school superintendent or principal to suspend**

**§ 37-9-71**

The superintendent of schools and the principal of a school shall have the power to suspend or expel a pupil for good cause, including misconduct in the school or on school property, as defined in Section 37–11–29, on the road to and from school, or at any school-related activity or event when such conduct by a pupil, in the determination of the superintendent or principal, renders that pupil's presence in the classroom a disruption to the educational environment of the school or a detriment to the best interest and welfare of the pupils and teacher of such class as a whole, or for any reason for which such pupil might be suspended, dismissed or expelled by the school board under state or federal law or any rule, regulation or policy of the local school district. For any suspension of more than ten (10) days or expulsions, a student shall have the right to a due process hearing, be represented by legal counsel, to present evidence and cross-examine witnesses presented by the district. The student and the student's parent, legal guardian or person in custody of the student may appeal suspension of more than ten (10) days and expulsions to the school board. The standard of proof in all disciplinary proceedings shall be substantial evidence. The parent or guardian of the child shall be advised of this right to a hearing by the appropriate superintendent or principal and the proper form shall be provided for requesting such a hearing.

**§ 37-13-91**

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

**§ 43-21-151**

(1) . . . When a child is expelled from the public schools, the youth court shall be notified of the act of expulsion and the act or acts constituting the basis for expulsion.

## *704 SUBSTANTIVE DUE PROCESS ON SCHOOL DISCIPLINE*

➤ **Federal laws**

**Fourteenth Amendment**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*Case law:*

Brewer v. Austin Indep. School Dist., 779 F.2d 260, 264 (5th Cir.1985) ("To the extent that Brewer has implicitly raised an argument that the length of his suspension denied him substantive due process, it is without merit. Review and revision of a school suspension on substantive due process grounds would only be available in a rare case where there was no "rational relationship between the punishment and the offense." Mitchell v. Board of Trustees, 625 F.2d 660, 664 n. 8 (5th Cir.1980).").

Hill v. Mississippi School District, 843 F. Supp. 1112, 1115 (S.D. Miss. 1993) ("Although assuredly students have rights under the fifth and fourteenth amendments, education is not a fundamental right under the Constitution, and, as such, in determining whether a plaintiff's substantive due process right has been violated, the proper test is merely whether the government action is rationally related to a legitimate government interest.").

➤ **Mississippi laws**

**Art. 3 § 14**

No person shall be deprived of life, liberty, or property except by due process of law.

**Art. 3 § 24**

All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice shall be administered without sale, denial, or delay.

**§ 37-1-2**

The legislature finds and determines that the quality of public education and its effect upon the social, cultural and economic enhancement of the people of Mississippi is a matter of public policy, the object of which is the education and performance of its children and youth. The legislature hereby declares the following to be the policy of the State of Mississippi:
(a) That the students, parents, general citizenry, local schoolteachers and administrators, local governments, local school boards, and state government have a joint and shared responsibility for the quality of education delivered through the public education system in the State of Mississippi;
(b) To produce a functionally literate school population;
(c) To ensure that all students master the most essential parts of a basic education;
(d) To establish, raise and maintain educational standards;
(e) To improve the quality of education by strengthening it and elevating its goals;
(f) To provide quality education for all school-age children in the state;
(g) That excellence and high achievement of all students should be the ultimate goal;
(h) To encourage the common efforts of students, parents, teachers, administrators and business and professional leaders for the establishment of specific goals for performance;
(i) To improve instructional and administrative quality, to relate the education community to other policymakers, to achieve increased competency among students, teachers and administrators, to provide for continuing professional development for teachers, counselors and administrators, to assure that the budget process, the planning function and the allocation of personnel of the state department of education are commensurate with its educational goals;
(j) That the return on public education which is the single largest investment for the state be the effectiveness of the delivery system and the product it is designed to produce;
(k) That the investment in public education can be justified on the basis of the economic benefits that will accrue both to the individual and to society, recognizing that the return on such investment is long term and dramatic progress is not immediate;
(l) That emphasis must be placed upon early mastery of the skills necessary to success in school and that quality, performance-based early childhood education programs are an essential element of a comprehensive education system;
(m) That local school districts and their public schools be required to account for the product of their efforts;
(n) That the children of this state receive a period of instruction sufficient to train each in the basic educational skills adequate for the student to take his or her place in society and

make a contribution as a citizen of this state, and that all children be encouraged to continue their education until they have completed high school;
(o) To establish an accreditation system based upon measurable elements in school known to be related to instructional effectiveness, to establish a credible process for measuring and rating schools, to establish a method for monitoring continued performance, and to provide for a state response when performance is inadequate;
(p) That the teachers of this state, to the extent possible, receive salaries that are at least equal to the average of the salaries received by teachers in the southeastern United States.
*Case law:*

Clinton Municipal Separate School District v. Byrd, 477 So. 2d 237, 240-41 (Miss. 1985) ("As a matter of state substantive due process, a school board's disciplinary rule or scheme is constitutionally enforceable where fairly viewed it furthers a substantial legitimate interest of the school district. The authority vested in school boards consistent with this constitutional limitation includes substantial discretion with respect to the administration of punishments to students who violate school rules. This Court has heretofore determined that it will not interfere with school boards in the exercise of such discretion so long as constitutional parameters are not transgressed.").

## *705 PROCEDURAL DUE PROCESS ON SCHOOL DISCIPLINE*

➤ **Federal laws**

**Fourteenth Amendment**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*Case law:*

Bethel School District No. 403 v. Fraser, 478 U.S. 675, 686 (1986) ("Two day suspension from school [for violating school disciplinary rule proscribing "obscene" language] does not rise to the level of a penal sanction calling for the full panoply of procedural due process protections applicable to a criminal prosecution.").

Goss v. Lopez, 419 U.S. 565, 581 (1975) ("We do not believe that school authorities must be totally free from notice and hearing requirements if their schools are to operate with acceptable efficiency. Students facing temporary suspension have interests

qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. The Clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school.”).

Keough v. Tate County Board of Education, 748 F.2d 1077, 1080-81 (5th Cir. 1984), (“Keough's argument that more formal procedures were required in this particular ten-day suspension because final examinations took place during the suspension period is unpersuasive. Goss makes no distinction between ten-day suspensions that occur during examination periods and those that do not, and, it seems to us, for obvious reasons. In any school year, a number of examinations may take place at various times throughout a given semester which are crucial to a student's performance for the semester. Thus, to hold that the Goss guidelines do not apply to suspension periods that include scheduled examinations would significantly undermine, if not nullify, its definitive holding. We therefore decline to construe it as requiring formal proceedings for short-term suspensions occurring during scheduled examinations.”).

Lee v. Macon County Board of Education, 490 F.2d 458, 460 (5th Cir. 1974) (“When a serious penalty is at stake a school board must provide a higher degree of due process than when the student is threatened only with a minor sanction.”).

Colvin v. Lowndes County, Mississippi School District, 114 F. Supp. 2d 504, 512 (N.D. Miss. 1999) (“It appears clear that the aim of the Fifth’s Circuit’s decision [in Lee v. Macon County Board of Education], was to require school boards to fully consider the circumstances surrounding the misdeed as well as the penalty to be prescribed in an effort to provide students with full due process. Employing a blanket policy of expulsion, clearly a serious penalty, precludes the use of independent consideration of relevant facts and circumstances.”).

➤ **Mississippi laws**

**Art. 3 § 14**

No person shall be deprived of life, liberty, or property except by due process of law.

**Art. 3 § 24**

All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice shall be administered without sale, denial, or delay.

**§ 37–7–301**

The school boards of all school districts shall have the following powers, authority and duties in addition to all others imposed or granted by law, to wit:
. . .
(e) To suspend or to expel a pupil or to change the placement of a pupil to the school district's alternative school or homebound program for misconduct in the school or on school property, as defined in Section 37–11–29, on the road to and from school, or at any school-related activity or event, or for conduct occurring on property other than school property or other than at a school-related activity or event when such conduct by a pupil, in the determination of the school superintendent or principal, renders that pupil's presence in the classroom a disruption to the educational environment of the school or a detriment to the best interest and welfare of the pupils and teacher of such class as a whole, and to delegate such authority to the appropriate officials of the school district;

*Case law:*

Covington County v. G.W., 767 So. 2d 187, 190-91 (Miss. 2000) ("The Mississippi Legislature has provided the governing bodies of local schools with substantial authority to regulate the activities of students and punish students for violation of school policies. Miss.Code Ann. § 37–7–301 (Supp.1999). "While school boards have substantial disciplinary authority, that authority is legal in its derivation and its exercise is subject to the Constitution of the United States." Clinton Mun. Separate Sch. Dist. v. Byrd, 477 So.2d 237, 240 (Miss.1985). Consequently, there is no question that a student facing suspension or expulsion has a property interest that qualifies for protection under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Warren County Bd. of Educ. v. Wilkinson, 500 So.2d 455, 458 (Miss.1986).").

Jones v. Pascagoula Municipal School District, 524 So. 2d 968, 973 (Miss. 1988), ("Since how much process is due depends on the particular circumstances, a denial of a list of witnesses will not always amount to a prejudicial denial of due process. Particularly, this must be so with student witnesses, since a school board has not been given the power of subpoena. . . . Though confrontation may not be an absolute necessity--or even advisable--in every case, written statements should ordinarily be provided. Especially where there are multiple allegations, findings of facts should be made. School boards should take note that though courts should not become involved in running schools, expulsion and suspension are severe sanctions requiring solemn attention to a pupil's rights. ").

Warren County Board of Education v. Wilkinson, 500 So. 2d 455, 460-62 (Miss. 1986) ("Here, in order to protect the constitutional rights of the students, the school board properly adopted a procedure for a de novo hearing before the school board, and further provided that a student would be informed of the charges against him, "the possible penalties therefor, that he will have the right to confront and cross-examine witnesses against him, his right to call witnesses in his own behalf, his right to be represented by

counsel, and advise him that he may request in writing that names of the witnesses that may testify against him. . . . [However, the] school's rule affording due process was ignored and the hearing became no more than an inquiry and discussion. . . . The Constitution of the State of Mississippi and the Constitution of the United States mandate due process.").

## *706 ALTERNATIVE SCHOOL PROGRAMS*

**§ 37-13-92**

(1) Beginning with the school year 2004-2005, the school boards of all school districts shall establish, maintain and operate, in connection with the regular programs of the school district, an alternative school program or behavior modification program as defined by the State Board of Education for, but not limited to, the following categories of compulsory-school-age students:
(a) Any compulsory-school-age child who has been suspended for more than ten (10) days or expelled from school, except for any student expelled for possession of a weapon or other felonious conduct;
(b) Any compulsory-school-age child referred to such alternative school based upon a documented need for placement in the alternative school program by the parent, legal guardian or custodian of such child due to disciplinary problems;
(c) Any compulsory-school-age child referred to such alternative school program by the dispositive order of a chancellor or youth court judge, with the consent of the superintendent of the child's school district;
(d) Any compulsory-school-age child whose presence in the classroom, in the determination of the school superintendent or principal, is a disruption to the educational environment of the school or a detriment to the interest and welfare of the students and teachers of such class as a whole; and
(e) No school district is required to place a child returning from out-of-home placement in the mental health, juvenile justice or foster care system in alternative school. Placement of a child in the alternative school shall be done consistently, and for students identified under the Individuals with Disabilities Education Act (IDEA), shall adhere to the requirements of the Individuals with Disabilities Education Improvement Act of 2004. If a school district chooses to place a child in alternative school the district will make an individual assessment and evaluation of that child in the following time periods:
(i) Five (5) days for a child transitioning from a group home, mental health care system, and/or the custody of the Department of Human Services, Division of Youth and Family Services custody;
(ii) Ten (10) days for a child transitioning from a dispositional placement order by a youth court pursuant to Section 43-21-605; and
(iii) An individualized assessment for youth transitioning from out-of-home placement to the alternative school shall include:

1. A strength needs assessment.
2. A determination of the child's academic strengths and deficiencies.
3. A proposed plan for transitioning the child to a regular education placement at the earliest possible date.

(2) The principal or program administrator of any such alternative school program shall require verification from the appropriate guidance counselor of any such child referred to the alternative school program regarding the suitability of such child for attendance at the alternative school program. Before a student may be removed to an alternative school education program, the superintendent of the student's school district must determine that the written and distributed disciplinary policy of the local district is being followed. The policy shall include standards for:

(a) The removal of a student to an alternative education program that will include a process of educational review to develop the student's individual instruction plan and the evaluation at regular intervals of the student's educational progress; the process shall include classroom teachers and/or other appropriate professional personnel, as defined in the district policy, to ensure a continuing educational program for the removed student;

(b) The duration of alternative placement; and

(c) The notification of parents or guardians, and their appropriate inclusion in the removal and evaluation process, as defined in the district policy. Nothing in this paragraph should be defined in a manner to circumvent the principal's or the superintendent's authority to remove a student to alternative education.

(3) The local school board or the superintendent shall provide for the continuing education of a student who has been removed to an alternative school program.

(4) A school district, in its discretion, may provide a program of general educational development (GED) preparatory instruction in the alternative school program. However, any GED preparation program offered in an alternative school program must be administered in compliance with the rules and regulations established for such programs under Sections 37-35-1 through 37-35-11 and by the State Board for Community and Junior Colleges. The school district may administer the General Educational Development (GED) Testing Program under the policies and guidelines of the GED Testing Service of the American Council on Education in the alternative school program or may authorize the test to be administered through the community/junior college district in which the alternative school is situated.

(5) Any such alternative school program operated under the authority of this section shall meet all appropriate accreditation requirements of the State Department of Education.

(6) The alternative school program may be held within such school district or may be operated by two (2) or more adjacent school districts, pursuant to a contract approved by the State Board of Education. When two (2) or more school districts contract to operate an alternative school program, the school board of a district designated to be the lead district shall serve as the governing board of the alternative school program. Transportation for students attending the alternative school program shall be the responsibility of the local school district. The expense of establishing, maintaining and operating such alternative school program may be paid from funds contributed or

otherwise made available to the school district for such purpose or from local district maintenance funds.
(7) The State Board of Education shall promulgate minimum guidelines for alternative school programs. The guidelines shall require, at a minimum, the formulation of an individual instruction plan for each student referred to the alternative school program and, upon a determination that it is in a student's best interest for that student to receive general educational development (GED) preparatory instruction, that the local school board assign the student to a GED preparatory program established under subsection (4) of this section. The minimum guidelines for alternative school programs shall also require the following components:
(a) Clear guidelines and procedures for placement of students into alternative education programs which at a minimum shall prescribe due process procedures for disciplinary and general educational development (GED) placement;
(b) Clear and consistent goals for students and parents;
(c) Curricula addressing cultural and learning style differences;
(d) Direct supervision of all activities on a closed campus;
(e) Attendance requirements that allow for educational and workforce development opportunities;
(f) Selection of program from options provided by the local school district, Division of Youth Services or the youth court, including transfer to a community-based alternative school;
(g) Continual monitoring and evaluation and formalized passage from one (1) step or program to another;
(h) A motivated and culturally diverse staff;
(i) Counseling for parents and students;
(j) Administrative and community support for the program; and
(k) Clear procedures for annual alternative school program review and evaluation.
(8) On request of a school district, the State Department of Education shall provide the district informational material on developing an alternative school program that takes into consideration size, wealth and existing facilities in determining a program best suited to a district.
(9) Any compulsory-school-age child who becomes involved in any criminal or violent behavior shall be removed from such alternative school program and, if probable cause exists, a case shall be referred to the youth court.
(10) The State Board of Education shall promulgate guidelines for alternative school programs which provide broad authority to school boards of local school districts to establish alternative education programs to meet the specific needs of the school district.
(11) Each school district having an alternative school program shall submit a report annually to the State Department of Education describing the results of its annual alternative school program review and evaluation undertaken pursuant to subsection (7)(k). The report shall include a detailed account of any actions taken by the school district during the previous year to comply with substantive guidelines promulgated by the State Board of Education under subsection (7)(a) through (j).

*Case law:*

In re T.H.., 681 So. 2d 110, 117 (Miss. 1996) ("Here, the Board of Trustees formed an alternate program for suspended students, but refused to allow T.H. to attend. We hold that the Board of Trustees may not use its absences policy to fail the student. Such a result runs contrary to the purpose and intent of the Mississippi Compulsory School Attendance Law. This is not to say that the punishment for an infraction of a school's disciplinary policy cannot be the lowering of a semester grade. The Legislature has given school boards this power to use in their discretion. See Clinton Municipal Separate School District v. Byrd, 477 So.2d 237 (Miss.1985). But where the Boards of Trustees created an authorized alternate program to out-of-school suspension, a school may not force a student to be absent, then count those absences against him to lower his grade. Such a policy violates the purpose of our state's compulsory attendance law.").

## *707 COURT ORDERED ENROLLMENT*

**§ 43-21-621**

(1) The youth court may, in compliance with the laws governing education of children, order any state-supported public school in its jurisdiction after notice and hearing to enroll or reenroll any compulsory-school-age child in school, and further order appropriate educational services. Provided, however, that the youth court shall not order the enrollment or reenrollment of a student that has been suspended or expelled by a public school pursuant to Section 37-9-71 or 37-7-301 for possession of a weapon on school grounds, for an offense involving a threat to the safety of other persons or for the commission of a violent act. For the purpose of this section "violent act" means any action which results in death or physical harm to another or an attempt to cause death or physical harm to another. The superintendent of the school district to which such child is ordered may, in his discretion, assign such child to the alternative school program of such school established pursuant to Section 37-13-92, Mississippi Code of 1972. The court shall have jurisdiction to enforce school and education laws. Nothing in this section shall be construed to affect the attendance of a child in a legitimate home instruction program.
(2) The youth court may specify the following conditions of probation related to any juvenile ordered to enroll or reenroll in school: That the juvenile maintain passing grades in up to four (4) courses during each grading period and meet with the court counselor and a representative of the school to make a plan for how to maintain those passing grades.
(3) If the adjudication of delinquency was for an offense involving a threat to the safety of the juvenile or others and school attendance is a condition of probation, the youth court judge shall make a finding that the principal of the juvenile's school should be notified. If the judge orders that the principal be notified, the youth court counselor shall within five (5) days or before the juvenile begins to attend school, whichever occurs first, notify the

principal of the juvenile's school in writing of the nature of the offense and the probation requirements related to school attendance. A principal notified by a juvenile court counselor shall handle the report according to the guidelines and rules adopted by the State Board of Education.
(4) The Administrative Office of the Courts shall report to the Legislature on the number of juveniles reported to principals in accordance with this section no later than January 1, 1996.

**§ 43-21-605**

(7) The youth court shall not place a child in another school district who has been expelled from a school district for the commission of a violent act. For the purpose of this subsection, "violent act" means any action which results in death or physical harm to another or an attempt to cause death or physical harm to another.

*Case law:*

Lauderdale County School Board v. Brown, 106 So. 3d 807, 810 (Miss. 2013) ("[T]he youth court did not have power over the students [who were not of compulsory school age] to order their reenrollment under [Section 43-21-621].").

In re T.H., 681 So. 2d 110, 113 (Miss. 1996) ("In this case, T.H. asserts, correctly, that in 1989 the Legislature passed § 43-21-621 to provide the youth court with jurisdiction to order a Board of Trustees to enroll a child.").

In re R.D.W., 987 So. 2d 1038, 1039 (Miss. Ct. App. 2008) ("While section 43-21-621(1) empowers a youth court to order a state-supported public school within its jurisdiction to enroll or reenroll any compulsory-school-age child in school, the statute does not grant to the youth court the power to designate the specific school in which the child is to be enrolled.").

## *708 PROSECUTION FOR REFUSAL OR FAILURE TO COMPLY WITH THE MISSISSIPPI COMPULSORY ATTENDANCE LAW (CRIMINAL COURTS, NOT YOUTH COURT)*

**§ 37-13-91**

(5) Any parent, guardian or custodian of a compulsory-school-age child subject to this section who refuses or willfully fails to perform any of the duties imposed upon him or her under this section or who intentionally falsifies any information required to be contained in a certificate of enrollment, shall be guilty of contributing to the neglect of a child and, upon conviction, shall be punished in accordance with Section 97-5-39.

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

**§ 97-5-39**

(1)(a) Except as otherwise provided in this section, any parent, guardian or other person who willfully commits any act or omits the performance of any duty, which act or omission contributes to or tends to contribute to the neglect or delinquency of any child or which act or omission results in the abuse of any child, as defined in Section 43-21-105(m) of the Youth Court Law, or who knowingly aids any child in escaping or absenting himself from the guardianship or custody of any person, agency or institution, or knowingly harbors or conceals, or aids in harboring or concealing, any child who has absented himself without permission from the guardianship or custody of any person, agency or institution to which the child shall have been committed by the youth court shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00), or by imprisonment not to exceed one (1) year in jail, or by both such fine and imprisonment.
. . .
(3) Nothing contained in this section shall prevent proceedings against the parent, guardian or other person under any statute of this state or any municipal ordinance defining any act as a crime or misdemeanor. Nothing in the provisions of this section shall preclude any person from having a right to trial by jury when charged with having violated the provisions of this section.
(4) After consultation with the Department of Human Services, a regional mental health center or an appropriate professional person, a judge may suspend imposition or execution of a sentence provided in subsections (1) and (2) of this section and in lieu thereof require treatment over a specified period of time at any approved public or private treatment facility. A person may be eligible for treatment in lieu of criminal penalties no more than one (1) time.
(5) In any proceeding resulting from a report made pursuant to Section 43-21-353 of the Youth Court Law, the testimony of the physician making the report regarding the child's injuries or condition or cause thereof shall not be excluded on the ground that the physician's testimony violates the physician-patient privilege or similar privilege or rule

against disclosure. The physician's report shall not be considered as evidence unless introduced as an exhibit to his testimony.
(6) Any criminal prosecution arising from a violation of this section shall be tried in the circuit, county, justice or municipal court having jurisdiction; provided, however, that nothing herein shall abridge or dilute the contempt powers of the youth court.

## *709 SEARCHES BY PUBLIC SCHOOL OFFICIALS*

### ➤ Governing laws

**Fourth Amendment**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Art. 3 § 23**

The people shall be secure in their persons, houses, and possessions, from unreasonable seizure or search; and no warrant shall be issued without probable cause, supported by oath or affirmation, specially designating the place to be searched and the person or thing to be seized.

*See also* Miss. Code Ann. § 97-37-17 (setting forth criminal penalties for weapons possession on educational property).

### ➤ Determining if the search by public school officials was reasonable

The Fourth Amendment's prohibition against unreasonable searches and seizures applies to searches conducted by public school officials. Determining whether a warrantless search by a public school official is reasonable requires a two-fold inquiry:

- Was the search justified at its inception? and
- Was the search, as actually conducted, reasonably related in scope to the circumstances which justified the interference in the first place?

*Case law:*

*See* New Jersey v. T.L.O., 469 U.S. 325, 341-42 (1985) ("Under ordinary circumstances, a search of a student by a teacher or other school official will be "justified at its inception" when there are reasonable grounds for suspecting that the search will turn up

evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.”).

Doe v. Little Rock School District, 380 F.3d 352-53 (8th Cir. 2004) (“Students presumptively have a legitimate, though limited, expectation of privacy in the personal belongings that they bring into public schools. Because subjecting students to full-scale, suspicionless searches eliminates virtually all of their privacy in their belongings, and there is no evidence in the record of special circumstances that would justify so considerable an intrusion, we hold that the search practice is unconstitutional.”).

Mary Beth G. v. City of Chicago, 723 F.2d 1263, 1272 (7th Cir. 1983) (“[S]trip searches involving the visual inspection of the anal and genital areas [are] “demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission . . . .” The testimony given . . . here ratifies this description. Even the Supreme Court has stated that a strip search and visual inspection “instinctively gives us the most pause.” Bell v. Wolfish, 441 U.S. at 558, 99 S.Ct. at 1884;”).

Covington County v. G.W., 767 So. 2d 187, 194 (Miss. 2000) (“In the present case, there was reasonable suspicion to believe that G.W. had been in the parking lot drinking before class. A student reported the incident, and several other students confirmed the report. Empty beer cans were found in the back of G.W.'s truck. A reasonable school official under these circumstances would and should have regarded this information sufficient to take action. The search was justified and was reasonably related to the student's assertion that G.W. had been in the parking lot drinking. Therefore, we conclude that the chancellor erred by finding the search of G.W.'s vehicle to be illegal under the Fourth Amendment.”).

In re S.C., 583 So. 2d 188, 192 (Miss. 1991) (“Here Laster reported to the assistant principal that S.C. had offered to sell him two handguns. The assistant principal asked Laster to verify that S.C. had the guns at school. Laster returned a while later and reported he had talked to S.C., and S.C. had confirmed he had the guns at school. A responsible school official under the circumstances would and should have regarded this information sufficient that he take action. The school officials had reasonable grounds to search S.C.'s locker without a warrant, . . . .”).

State v. Mark Anthony B., 433 S.E. 2d 41, 49 (W. Va. 1993) (“Applying [the *T.L.O.*] criteria . . . we cannot uphold the strip search of the [student] as reasonable. The [student] was suspected of stealing money. Such activity should never be condoned or encouraged in our schools. However, in evaluating the nature of the suspected infraction strictly in terms of the danger it presents to other students, it does not begin to approach the threat posed by the possession of weapons or drugs. Quite simply, the [student’s]

suspected conduct did not pose the type of immediate danger to others that might conceivably necessitate and justify a warrantless strip search.”).

People v. Pruitt, 662 N.E.2d 540, 547 (Ill. App. Ct. 1996) (“The purpose of the screening was to protect and maintain a proper educational environment for all students, not to investigate and secure evidence of a crime. Because all students were required to walk through the detectors no official discretion or opportunity to harass was involved. The intrusion was minimal, not involving any physical touching until the metal detector reacted. . . . Once the metal detector reacted, the facts were sufficient to justify a frisk.”).

➤ **Random drug testing of students who voluntarily participate in extra-curricular activities**

The following factors are decisive to the Fourth Amendment analysis on random drug testing of students wanting to participate in competitive extracurricular activities:

- the nature of the privacy allegedly compromised by the drug testing;
- the character of the intrusion imposed by the School District’s Policy; and
- the nature and immediacy of the government’s concerns and the efficacy of the School District’s Policy in meeting them.

*Case law:*

Board of Education of Independent School District No. 92 of Pottawatomie County, 536 U.S. 822, 834 (2002) (“Given the minimally intrusive nature of the sample collection and the limited uses to which the test results are put, we conclude that the invasion of students' privacy is not significant.”).

Vernonia School District v. Acton, 515 U.S. 646, 657 (1995) (“Students who voluntarily participate in school athletics have reason to expect intrusions upon normal rights and privileges, including privacy.”).

➤ **Internet and e-mail searches**

*T.L.O., Pottawatomie*, and *Acton* are applicable to internet and e-mail searches as in other school searches. *See* Nancy Willard, *Legal and Ethical Issues Related to the Use of the Internet in K-12 Schools*, 2000 B.Y.U. Educ. & L.J. 225, 231 (2000) (“Students’ expectation of privacy related to their Internet use will depend on a number of factors, including how the district has structured the Internet services, what the district has told the students, and the natural expectations that relate to specific uses of the Internet.”).

## *CHAPTER 8*

## *CONTEMPT OF COURT*


***800 YOUTH COURT'S POWER TO PUNISH FOR CONTEMPT***

***801 DIRECT CONTEMPT VERSUS CONSTRUCTIVE CONTEMPT***

**General distinction**
**Direct contempt**
**Constructive contempt**

***802 CIVIL CONTEMPT VERSUS CRIMINAL CONTEMPT***

**General distinction**
**Civil contempt**
**Criminal contempt**

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**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.

**§ 43-21-153**

(1) The youth court shall have full power and authority to issue all writs and processes including injunctions necessary to the exercise of jurisdiction and to carrying out the purpose of this chapter.
(2) Any person who wilfully violates, neglects or refuses to obey, perform or comply with any order of the youth court shall be in contempt of court and punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in jail not to exceed ninety (90) days, or by both such fine and imprisonment.

S*ee also* Maggie L. Hughey, *Holding a Child in Contempt*, 46 Duke L.J. 353, 366-67 (1996) ("[R]egardless of inherent or statutory authority to punish child contemnors, courts are bound by the social policies attending juvenile justice.").

**§ 43-21-615**

(2) Whenever a child is adjudicated delinquent and committed by the youth court to the custody of any person or agency other than the custody of a state training school, the youth court, after giving the responsible parent or guardian a reasonable opportunity to be heard, may order that the parent or guardian pay, upon such terms or conditions as the youth court may direct, such sum or sums as will cover, in whole or in part, the support of the child including any necessary medical treatment. The parent shall be provided an itemized bill of all costs and shall be given an opportunity to request an adjustment of the costs. If the parent or guardian shall willfully fail or refuse to pay such sum, he may be proceeded against for contempt of court as provided in this chapter.

*Case law:*

Baltimore City Department of Social Services v. Bouknight, 493 U.S. 549, 551 (1990) ("In this action, we must decide whether a mother, the custodian of a child pursuant to a court order, may invoke the Fifth Amendment privilege against self-incrimination to resist an order of the juvenile court to produce the child. We hold that she may not.").

In re Hines, 978 So. 2d 1275, 1279 (Miss. 2008) ("This Court finds that a youth court judge cannot compel a non-party's attendance in court for a hearing to review a no-contact order in the absence of official written notification commanding his presence in court.").

In re M.I., 519 So. 2d 433, 436 (Miss. 1988) ("Just as clearly the injunctions were not complied with, and so Wills has placed himself in contempt of court. The lower court, although citing Wills with contempt, declined to impose any punishment as is provided for under [section 43-21-153]. We leave the youth court's order to stand as it is, and impose no further fine or sentence upon appellant.").

## *801 DIRECT CONTEMPT VERSUS CONSTRUCTIVE CONTEMPT*

➤ **General distinction**

> Cases of direct contempt, where a personal attack has been made on the court necessitating an instantaneous response, may be dealt with by the judge offended. In other criminal contempt cases, particularly those in which the allegedly contemptuous actions were committed outside the presence of the court and where the trial judge has substantial personal involvement in the prosecution, the accused contemnor must be tried by another judge.

Cook v. State, 483 So. 2d 371, 376 (Miss.1986).

➤ **Direct contempt**

Direct contempt is words spoken or an act done in the presence of the court which tends to embarrass or prevent the orderly administration of justice. *See* Jordan v. State, 62 So. 2d 886, 887-88 (Miss. 1953).

The disruptive behavior can be offensive words:

> [T]he statements made toward the judge about how he can better get along with lawyers in the future, about the judge's "henchmen", about being proud to be thrown out of the courtroom, and about paying the judge for justice were made to embarrass the court or impede the administration of justice.

Lumumba v. State, 868 So. 2d 1018, 1021 (Miss. Ct. App. 2003).

Or, offensive conduct:

> The fight began in the foyer leading into the courtroom, and actually spilled over into the courtroom. . . . The record shows beyond a reasonable doubt that Lamar is guilty of direct contempt.

Lamar v. State, 607 So. 2d 129, 130 (Miss. 1992).

Since direct contempt necessitates an instantaneous response, ordinarily no specific charges, notice, or a hearing is required. *See* Varvaris v. State, 512 So. 2d 886, 888 (Miss. 1987). But punishment must be imposed without undue delay:

> It is apparent that the trial court found the appellant guilty of direct criminal contempt . . . and ordered summary punishment. Even though punishment was not imposed until the day following the conclusion of the trial, we find nothing wrong with this procedure. There was no undue delay.

Hentz v. State, 496 So. 2d 668, 674 (Miss. 1986).

Also, the judgment of guilt must specifically set out the substantial acts for which the accused is convicted. *See* Brannon v. State, 29 So. 2d 916, 584 (Miss. 1947). Almost without exception, direct contempt is criminal contempt.

➤ **Constructive contempt**

Constructive contempt are acts done (at least in part) beyond the presence of the court that is calculated to impede, embarrass, obstruct, defeat or corrupt the orderly administration of justice. *See* Terry v. State, 718 So. 2d 1097, 1102 (Miss. 1998).

Specific charges, notice and a hearing are required:

> A defendant in [constructive criminal] contempt proceedings is entitled to notice and is entitled to be informed of the nature and cause of the accusation, of his rights to be heard, to counsel, to call witnesses, to an unbiased judge, to a jury trial, and against self-incrimination, and that he is presumed innocent until proven guilty beyond reasonable doubt.

Dennis v. Dennis, 824 So. 2d 604, 609 (Miss. 2002).

*See also* Graves v. State, 66 So. 3d 148, 154 (Miss. 2011) ("Judge Smith was the complainant for alleged criminal contempt that occurred, at least in part, outside his presence, so Graves was entitled to due-process notice and a hearing."); In re Holmes, 355 So. 2d 677, 679 (Miss. 1978) ("[The mother's act in failing] to have the child present [as ordered by the court], if willful, was one which resisted, from a distance, . . . falls squarely within the definition of constructive contempt. . . . [Therefore,] the trial court should have afforded [her] a hearing at which she could have the assistance of counsel, the right to call witnesses, the right to be heard in her own behalf, and the right to make a record.").

Constructive contempt can be either civil or criminal contempt.

➤ **General distinction**

The same contemptuous act may constitute both civil and criminal contempt. *See* Moore v. Moore, 558 So. 2d 834, 836 (Miss. 1990). Whether an act is to be regarded as civil or criminal contempt is determined by the purpose and character of the penalty imposed.

> In practice, the distinction between criminal and civil contempt generally turns on two factors. First, a criminal contempt charge typically carries a fixed sentence or fine, while a civil contemnor "carries the keys to his prison in his own pocket" through his ability to comply with the court's orders and end his sentence.
> Second, in criminal contempt, the court is the aggrieved party, so the fine is paid to the court. In civil contempt, the opposing party is the aggrieved party and the one who is paid.

Illinois Central Railroad Company v. Winters, 815 So. 2d 1168, 1180 (Miss. 2002).

➤ **Civil contempt**

If the primary purpose of the contempt penalty is to coerce compliance with a court order, the contempt is civil. In civil contempt, once the court order is complied with the contemnor is released. *See* In re Nichols, 749 So. 2d 68, 71 (Miss. 1999). Civil contempt must be proven by a preponderance of the evidence. *See* Gillentine v. Gillentine, 734 So. 2d 310, 311 (Miss. Ct. App. 1999). Defenses to civil contempt include: a showing with particularity an inability to pay; a showing that the violation was not willful or deliberate; and the vagueness or lack of specificity of the order. *See* Knowles v. State, 708 So. 2d 549, 557 (Miss. 1998); Newell v. Hinton, 556 So. 2d 1037, 1044 (Miss. 1990).

➤ **Criminal contempt**

If the primary purpose of the contempt penalty is to punish for past offenses directed against the dignity and authority of the court, the contempt is criminal. *See* Premeaux v. Smith, 569 So. 2d 681, 684 (Miss. 1990). The conduct must be directed at the judge acting in his judicial capacity, not individually:

> [T]he defendant's conduct [in calling the judge a 'cold blooded, cruel perverted bastard' and accusing him of taking pay-offs] was directed at the judge in his judicial capacity. Such conduct is unexcusable and it offends the dignity and authority of the court. The defendant was indeed guilty of [direct contempt of court] beyond a reasonable doubt.

Shields v. State, 702 So. 2d 380, 385 (Miss. 1997).

But there are occasions requiring a public trial before another judge:

> Many of the words leveled at the judge in the instant case were highly personal aspersions, even 'fighting words'-'dirty sonofabitch', 'dirty tyrannical old dog,' 'stumbling dog,' and 'fool.' He was charged with running a Spanish Inquisition and told to 'Go to hell' and 'Keep your mouth shut.' Insults of that kind are apt to strike 'at the most vulnerable and human qualities of a judge's temperament.' . . . In the present case, [the Due Process Clause] can be satisfied only if . . . another judge, not bearing the sting of these slanderous remarks and having the impersonal authority of the law, sits in judgment on the conduct of petitioner as shown by the record.

Mayberry v. Pennsylvania, 400 U.S. 455, 463-66 (1970).

In criminal contempt, even if the court order is complied with the contemnor must still serve the entire contempt sentence. *See* In re Nichols, 749 So. 2d 68, 71 (Miss. 1999). Criminal contempt must be proven beyond a reasonable doubt. *See* Mabry v. Howington, 569 So. 2d 1165, 1167 (Miss. 1990). Defense to criminal contempt includes a showing that the violation was not willful or deliberate. *See* Brame v. State, 755 So. 2d 1090, 1094 (Miss. 2000) ("Gross negligence does not rise to the level of willful conduct which is required to support a finding of criminal contempt.").

*See also* Bennett v. State, 738 So. 2d 300, 305-06 (Miss. Ct. App. 1999) (attorney found guilty of direct criminal contempt for violating trial court's motion in limine order); Thomas v. State, 734 So. 2d 339, 341-42 (Miss. Ct. App. 1999) (defendant found guilty of direct criminal contempt for making profane remarks and gestures directed at judge in open court).

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## *CHAPTER 9*

## *RECORDS INVOLVING CHILDREN*


***900 CONFIDENTIALITY IN DELINQUENCY AND CHILD IN NEED OF SUPERVISION PROCEEDINGS***

**Confidential records**
**Disclosure of records involving children by court order**
**Disclosure of records involving children not requiring a court order**
**Media and electronic media access to proceedings**

***901 CONFIDENTIALITY IN CHILD PROTECTION PROCEEDINGS***

**Confidential records**
**Disclosure of records involving children by court order**
**Disclosure of records involving children not requiring a court order**
**Media and electronic media access to proceedings**

***902 SUBPOENA DUCES TECUM***

**Procedures for issuing a subpoena duces tecum**
**Hearing on access to confidential files**

***903 SANCTIONS FOR UNLAWFUL DISCLOSURE***

***904 SEALING AND UNSEALING OF RECORDS***

***905 DESTRUCTION OF RECORDS***

**Steps for the destruction of records involving children**
**Destruction of records in criminal courts**

***906 IMPEACHMENT BY EVIDENCE OF JUVENILE ADJUDICATIONS***

**Impeachment in criminal cases**
**Impeachment in youth court proceedings**

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➤ **Confidential records**

**U.R.Y.C.P. 5**

(a) Delinquency and child in need of supervision 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.

**Comment to U.R.Y.C.P. 5(a)(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 the 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 of records involving children by court order**

**U.R.Y.C.P. 5**

(a)(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.

**Comment to U.R.Y.C.P. 5(a)(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, or 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, ot to identify a person who knowingly made a false allegation of child 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;

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;

(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).

(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.

**§ 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.

*Case law:*

In re R.J.M.B., 133 So. 3d 335, 340 (Miss. 2013) ("Orders for disclosure, furthermore, 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 of records involving children not requiring a court order**

**U.R.Y.C.P. 5**

(a)(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 sections 43-21-261(1) through (18) and 43-21-623 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.

**Comment to U.R.Y.C.P. 5(a)(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).

**§ 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, or 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, ot to identify a person who knowingly made a false allegation of child 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;
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;
(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).
(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.

**§ 43-21-623**

Any juvenile who is adjudicated a delinquent on or after July 1, 1994, as a result of committing a sex offense as defined in Section 45-33-23 or any offense involving the crime of rape and placed in the custody of the Mississippi Department of Human Services, Office of Youth Services, shall be tested for HIV and AIDS. Such tests shall be conducted by the State Department of Health in conjunction with the Office of Youth Services, Mississippi Department of Human Services at the request of the victim or the victim's parents or guardian if the victim is a juvenile. The results of any positive HIV or AIDS tests shall be reported to the victim or the victim's parents or guardian if the victim is a juvenile as well as to the adjudicated offender. The State Department of Health shall provide counseling and referral to appropriate treatment for victims of a sex offense when the adjudicated offender tested positive for HIV or AIDS if the victim so requests.

*Case law:*

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.").

Reeder v. State, 783 So. 2d 711, 717 (Miss. 2001) ("[A] circuit judge may consider a party's youth court record in sentencing him.").

Roberson v. State, 61 So. 3d 204, 224 (Miss. Ct. App. 2011) ("[T]here is nothing in the record to indicate the existence of any *Brady* materials among the youth court records that were sought. [Roberson] was not entitled to engage in a fishing expedition, as he was not entitled to view all of Jane's youth court records.").

➤ **Media and electronic media access to proceedings**

**First Amendment**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**Fourteenth Amendment**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Art. 3 § 13**

The freedom of speech and of the press shall be held sacred; and in all prosecutions for libel the truth may be given in evidence, and the jury shall determine the law and the facts under the direction of the court; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted.

**U.R.Y.C.P. 5**

(a)(4) Media and electronic media access to proceedings. Media and electronic media coverage, as such terms are defined under Rule 2 of the Rules for Electronic and Photographic Coverage of Judicial Proceedings, in delinquency or child in need of supervision proceedings is strictly prohibited except upon findings of facts and conclusions of law by the court of extraordinary and compelling circumstances.

**Comment to U.R.Y.C.P. 5(a)(4)**

Media and electronic media access to youth court proceedings is seldom consistent with the philosophy expressed in section 43-21-103 of the Mississippi Code.

*Case law:*

Smith v. Daily Mail Publishing Co., 443 U.S. 97, 103-04 (1979) ("Here respondents relied upon routine newspaper reporting techniques to ascertain the identity of the alleged assailant. . . . If the information is lawfully obtained, as it was here, the state may not punish its publication except when necessary to further an interest more substantial than is present here.").

Oklahoma Publishing Company v. District Court, 430 U.S. 308, 311-12 (1977) ("[M]embers of the press were in fact present at the hearing with the full knowledge of the presiding judge, the prosecutor, and the defense counsel. No objection was made to the presence of the press in the courtroom or to the photographing of the juvenile as he left the courthouse. There is no evidence that petitioner acquired the information unlawfully or even without the State's implicit approval. . . . [T]he District Court's order [enjoining members of the news media from publishing the child's name or picture in connection with that juvenile proceeding] abridges the freedom of the press in violation of the First and Fourteenth Amendments.").

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 496 (1975) ("[T]he First and Fourteenth Amendments will not allow exposing the press to liability for truthfully publishing information released to the public in official court records. . . . Once true information is disclosed in public court documents open to public inspection, the press cannot be sanctioned for publishing it. In this instance as in others reliance must rest upon the judgment of those who decide what to publish or broadcast.").
Jeffries v. State, 724 So. 2d 897, 899 (Miss. 1998) ("To overcome [the] presumption [of a prior restraint], the United States Supreme Court has instructed trial courts to determine: (1) whether the publication would result in damage to a "near sacred right" (2) whether the prior restraint would be effective and (3) whether less extreme measures were available.").

In re S.C., 583 So. 2d 188, 188 n.1 (Miss. 1991) ("[Under the Youth Court Law], the case at bar is deemed confidential. . . . The lower court should be admonished for allowing the child's name to appear on court records.").

➤ **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.

**Comment to U.R.Y.C.P. 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 the 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 of records involving children 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.

**Comment to U.R.Y.C.P. 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, or 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, ot to identify a person who knowingly made a false allegation of child 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;

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;

(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).

(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.

**§ 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.

*Case law:*

In re R.J.M.B., 133 So. 3d 335, 340 (Miss. 2013) ("Orders for disclosure, furthermore, 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 of records involving children 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.

**Comment to U.R.Y.C.P. 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).

**§ 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, or 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, ot to identify a person who knowingly made a false allegation of child 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;
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;
(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).
(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.
(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.

*Case law:*

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.”).

➤ **Media and electronic media access to proceedings**

**First Amendment**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**Fourteenth Amendment**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Art. 3 § 13**

The freedom of speech and of the press shall be held sacred; and in all prosecutions for libel the truth may be given in evidence, and the jury shall determine the law and the facts under the direction of the court; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted.

**U.R.Y.C.P. 5**

(b)(4) Media and electronic media access to proceedings. Media or electronic media coverage, as such terms are defined under Rule 2 of the Rules for Electronic and Photographic Coverage of Judicial Proceedings, is strictly prohibited except upon findings of facts and conclusions of law by the court of extraordinary and compelling circumstances.

**Comment to U.R.Y.C.P. 5(b)(4)**

Media and electronic media access to youth court proceedings is seldom consistent with the philosophy expressed in section 43-21-103 of the Mississippi Code.

*Case law:*

Smith v. Daily Mail Publishing Co., 443 U.S. 97, 103-04 (1979) ("If the information is lawfully obtained, as it was here, the state may not punish its publication except when necessary to further an interest more substantial than is present here.").

Oklahoma Publishing Company v. District Court, 430 U.S. 308, 311-12 (1977) ("[M]embers of the press were in fact present at the hearing with the full knowledge of the presiding judge, the prosecutor, and the defense counsel. No objection was made to the presence of the press in the courtroom or to the photographing of the juvenile as he left the courthouse. There is no evidence that petitioner acquired the information unlawfully or even without the State's implicit approval. . . . [T]he District Court's order [enjoining members of the news media from publishing the child's name or picture in connection with that juvenile proceeding] abridges the freedom of the press in violation of the First and Fourteenth Amendments.").

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 496 (1975) ("[T]he First and Fourteenth Amendments will not allow exposing the press to liability for truthfully publishing information released to the public in official court records. . . . Once true information is disclosed in public court documents open to public inspection, the press cannot be sanctioned for publishing it. In this instance as in others reliance must rest upon the judgment of those who decide what to publish or broadcast.").

Jeffries v. State, 724 So. 2d 897, 899 (Miss. 1998) ("To overcome [the] presumption [of a prior restraint], the United States Supreme Court has instructed trial courts to determine: (1) whether the publication would result in damage to a "near sacred right" (2) whether the prior restraint would be effective and (3) whether less extreme measures were available.").

In re S.C., 583 So. 2d 188, 188 n.1 (Miss. 1991) ("[Under the Youth Court Law], the case at bar is deemed confidential. . . . The lower court should be admonished for allowing the child's name to appear on court records.").

➤ **Procedures for issuing 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.

➤ **Hearing on access to confidential files**

**U.R.Y.C.P. 6**

(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.

**Comment to U.R.Y.C.P. 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).

## *903 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.

## *904 SEALING AND UNSEALING OF RECORDS*

**§ 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.

## *905 DESTRUCTION OF RECORDS*

### ➤ Steps for the destruction of records involving children

Steps for the destruction of records involving children are as follows:

① A youth court order. The order shall be directed to all persons maintaining the records, specify the physical destruction of the records, and require a written report of compliance.
② Send the Mississippi Department of Archives and History (MDAH) a request for the destruction of records as set forth in the order. No records may be destroyed without the approval of the Director of MDAH.
③ MDAH sends a disposal authorization form.
④ Person maintaining the records destroys the records authorized by the disposal authorization form, then files a written report of compliance to the court. The preferred, but not required, method of destruction is shredding.
⑤ The disposal authorization form and written report of compliance become a permanent record.

MDHA will not authorize for destruction the following records:

1. general docket records;
2. minute books; and
3. medical examinations and mental health examinations as defined in sections 43-21-251(1)(c)(ii) and (iii). Exception: If the records involve a child who has since turned twenty-eight years of age and is not under a medical status disability. A prudent practice is to set apart medical examinations and mental health examinations from other youth court records (e.g., a separate folder or pocket). This will facilitate the disposal of other records at a later time.

Authorization to destroy computer records requires the approval of the Administrative Office of Courts. For more information contact the Mississippi Department of Archives and History, P.O. Box 571, Jackson, Mississippi 39205-0571 or www.mdah.state.ms.us.

### ➤ Destruction of records in criminal courts

**§ 43-21-159**

(1) When a person appears before a court other than the youth court, and it is determined that the person is a child under jurisdiction of the youth court, such court shall, unless the jurisdiction of the offense has been transferred to such court as provided in this chapter, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted, immediately dismiss the

proceeding without prejudice and forward all documents pertaining to the cause to the youth court; and all entries in permanent records shall be expunged. The youth court shall have the power to order and supervise the expunction or the destruction of such records in accordance with Section 43–21–265. Upon petition therefor, the youth court shall expunge the record of any case within its jurisdiction in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped, there was no disposition of such case, or the person was found not delinquent.

. . .

(2) After conviction and sentence of any child by any other court having original jurisdiction on a misdemeanor charge, and within the time allowed for an appeal of such conviction and sentence, the youth court of the county shall have the full power to stay the execution of the sentence and to release the child on good behavior or on other order as the youth court may see fit to make unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted. When a child is convicted of a misdemeanor and is committed to, incarcerated in or imprisoned in a jail or other place of detention by a criminal court having proper jurisdiction of such charge, such court shall notify the youth court judge or the judge's designee of the conviction and sentence prior to the commencement of such incarceration. The youth court shall have the power to order and supervise the destruction of any records involving children maintained by the criminal court in accordance with Section 43–21–265. However, the youth court shall have the power to set aside a judgment of any other court rendered in any matter over which the youth court has exclusive original jurisdiction, to expunge or destroy the records thereof in accordance with Section 43–21–265, and to order a refund of fines and costs.

**§ 43-21-265**

The youth court, in its discretion, may order the destruction of any records involving children except medical or mental health examinations as defined in section 43-21-253. This order shall be directed to all persons maintaining the records, shall order their physical destruction by an appropriate means specified by the youth court and shall require the persons to file with the youth court a written report of compliance with the order. No records, however, may be destroyed without the approval of the director of the department of archives and history.

➤ **Impeachment in criminal cases**

**Sixth Amendment**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

**Fourteenth Amendment**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Art. 3 § 26**

In all criminal prosecutions the accused shall have a right to be heard by himself or counsel, or both, to demand the nature and cause of the accusation, to be confronted by the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, in all prosecutions by indictment or information, a speedy and public trial by an impartial jury of the county where the offense was committed;

**M.R.E. 609**

(d) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this rule only if:
(1) it is offered in a criminal case;
(2) the adjudication was of a witness other than the defendant;
(3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and
(4) admitting the evidence is necessary to fairly determine guilt or innocence.

**Comment to M.R.E. 609(d)**

Subdivision (d) prohibits impeachment based on juvenile adjudications. Reasons for this rule include the wish to free an adult from bearing the burden of a youthful mistake, the

informality of youth court proceedings, and the confidential nature of those proceedings. See FRE 609, Advisory Committee Notes.

In pre-rule Mississippi practice, the use of juvenile adjudications for impeachment purposes has been governed by M.C.A. § 43-21-561 which provides that no adjudication against a child shall be deemed a criminal conviction. Indeed, the juvenile offender is permitted by statute to deny the fact of the prior adjudication. However, the statute permits cross-examination by either the state or the defendant in a criminal action or the respondent in a juvenile adjudication proceeding regarding prior juvenile offenses for the limited purpose of showing bias and interest. In short, the evidence could be used in these limited circumstances but not to attack the general credibility of the witness.

Under Rule 609(d) the court has the discretion to allow impeachment of a witness, other than a criminal defendant, by a prior juvenile adjudication if the judge determines that it is necessary. The court's discretion extends only to witnesses other than the accused in a criminal case.

**§ 43-21-561**

(5) No adjudication upon the status of any child shall operate to impose any of the civil disabilities ordinarily imposed on an adult because of a criminal conviction, nor shall any child be deemed a criminal by reason of adjudication, nor shall that adjudication be deemed a conviction. A person in whose interest proceedings have been brought in the youth court may deny, without any penalty, the existence of those proceedings and any adjudication made in those proceedings. Except for the right of a defendant or prosecutor in criminal proceedings and a respondent or a youth court prosecutor in youth court proceedings to cross-examine a witness, including a defendant or respondent, to show bias or interest, no adjudication shall be used for impeachment purposes in any court.

*Case law:*

Davis v. Alaska, 415 U.S. 308, 320 (1974) ("The State's policy interest in protecting the confidentiality of a juvenile offender's record cannot require yielding of so vital a constitutional right as the effective cross-examination for bias of an adverse witness.").

Pointer v. Texas, 380 U.S. 400, 403 (1965) ("[T]he Sixth Amendment's right of an accused to confront the witnesses against him is likewise a fundamental right and is made obligatory on the States by the Fourteenth Amendment.").

Bass v. State, 597 So. 2d 182, 188 (Miss. 1992) ("Miss. Code Ann. § 43-21-561(5) and Rule 609(d) serve the same purpose, have the same objective, and although worded differently, provide the same general criterion for a trial judge in exercising his discretion to determine whether or not a previous youth court adjudication shall be admissible in the cross-examination of a minor witness. The only difference is that under the Rule an accused may not be cross-examined as to his prior youth court adjudications.").

➤ **Impeachment in youth court proceedings**

**§ 43-21-203**

(10) Except as provided by section 43-21-561(5) or as otherwise provided by this chapter, the disposition of a child's cause or any evidence given in the youth court in any proceedings concerning the child shall not be admissible against the child in any case or proceeding in any court other than a youth court.

**§ 43-21-561**

(5) No adjudication upon the status of any child shall operate to impose any of the civil disabilities ordinarily imposed on an adult because of a criminal conviction, nor shall any child be deemed a criminal by reason of adjudication, nor shall that adjudication be deemed a conviction. A person in whose interest proceedings have been brought in the youth court may deny, without any penalty, the existence of those proceedings and any adjudication made in those proceedings. Except for the right of a defendant or prosecutor in criminal proceedings and a respondent or a youth court prosecutor in youth court proceedings to cross-examine a witness, including a defendant or respondent, to show bias or interest, no adjudication shall be used for impeachment purposes in any court.

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# *CHAPTER 10*

# *INTERSTATE COMPACTS*


***1000 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)***

**Governing laws**
**Execution of compact**
**Authority under Article III**
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**Definition of "executive head"**
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***1001 INTERSTATE COMPACT FOR JUVENILES (ICJ)***

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## *1000 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)*

➤ **Governing laws**

**U.R.Y.C.P. 34**

Procedures for the orderly and timely interstate placement of children shall be pursuant to sections 43-18-1 through 43-18-17 of the Mississippi Code.

**Comment to U.R.Y.C.P. 34**

In accordance with Mississippi Department of Human Services policies, DFCS workers must complete the incoming ICPC home study within forty-five (45) days and directly send it to the ICPC unit at the State Office. The ICPC unit will then review the home study and, if needed, request additional information from the county staff, prior to sending it to the requesting state on or before the sixty (60) day deadline.

*See also* 42 U.S.C. § 671.

**§ 93-17-3**

(7) No person may be adopted by a person or persons who reside outside the State of Mississippi unless the provisions of the Interstate Compact for Placement of Children (Section 43–18–1 et seq.) have been complied with. In such cases Forms 100A, 100B (if applicable) and evidence of Interstate Compact for Placement of Children approval shall be added to the permanent adoption record file within one (1) month of the placement, and a minimum of two (2) post-placement reports conducted by a licensed child placing agency shall be provided to the Mississippi Department of Human Services Interstate Compact for Placement of Children office.

Information on the Association of Administrators of the Interstate Compact on the Placement of Children is available at http://icpc.aphsa.org/.

➤ **Execution of compact**

**§ 43-18-1**

The governor, on behalf of this state, is hereby authorized to execute a compact in substantially the following form with all other jurisdictions legally joining therein; and the legislature hereby signifies in advance its approval and ratification of such compact, which compact is as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I.
It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:
(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.
(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.
(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis on which to evaluate a projected placement before it is made.
(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II.
As used in this compact:
(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.
(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to another party state.
(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies and whether for placement with state or local public authorities or for placement with private agencies or persons.
(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill or mentally defective or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III.
(a) No sending agency shall send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.
(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring or place the child in the receiving state. The notice shall contain:
(1) The name, date and place of birth of the child.
(2) The identity and address or addresses of the parents or legal guardian.
(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.
(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.
(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.
(d) The child shall not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV.
The sending, bringing or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

ARTICLE V.
(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also

include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.
(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.
(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI.
A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:
(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII.
The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII.
This compact shall not apply to:
(a) The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.
(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX.
This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X.
The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

➤ **Authority under Article III**

**§ 43-18-3**

The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the state department of public welfare. Any county department of public welfare, likewise, when directed by the commissioner of the state department of public welfare shall be authorized to receive and act with reference to notices required by said Article III.

➤ **Authority under Article V**

**§ 43-18-5**

As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the state department of public welfare or, with the approval of the commissioner of the state department of public welfare, any county department of public welfare.

➤ **Definition of “executive head”**

**§ 43-18-7**

As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the governor of the state of Mississippi. The governor of the state of Mississippi is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

➤ **Determining financial responsibility**

**§ 43-18-9**

Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of any other state laws fixing responsibility for the support of children also may be invoked.

➤ **Agreements with other states**

**§ 43-18-11**

The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state, or subdivision or agency thereof, shall not be binding unless it has the approval in writing of the state department or agency with funds for that purpose or with the approval of the county department or agency with funds for that purpose.

➤ **Meeting requirements in other state**

**§ 43-18-13**

Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under any statutes or court decisions of this state shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

➤ **State laws not applicable**

**§ 43-18-15**

The provisions of state laws restricting out-of-state placement of children shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

➤ **Retained jurisdiction**

**§ 43-18-17**

Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

## *1001 INTERSTATE COMPACT FOR JUVENILES (ICJ)*

**§ 43-25-101**

The Governor, on behalf of this state, may execute a compact in substantially the following form, and the Legislature signifies in advance its approval and ratification of the compact:

THE INTERSTATE COMPACT FOR JUVENILES

ARTICLE I
PURPOSE

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 USCS Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:
(a) Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;
(b) Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected.
(c) Return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return;
(d) Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;
(e) Provide for the effective tracking and supervision of juveniles;
(f) Equitably allocate the costs, benefits and obligations of the compacting states;
(g) Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders;
(h) Ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;
(i) Establish procedures to resolve pending charges (detainers) against juvenile offenders before transfer or release to the community under the terms of this compact.
(j) Establish a system of uniform data collection on information pertaining to juveniles

subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state, executive, judicial, and legislative branches and juvenile and criminal justice administrators;
(k) Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;
(l) Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in that activity; and
(m) Coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise.
It is the policy of the compacting states that the activities conducted by the Interstate Commission created by this compact are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

## ARTICLE II
## DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:
(a) “Bylaws” means those bylaws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.
(b) “Compact administrator” means the individual in each compacting state appointed under the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.
(c) “Compacting state” means any state that has enacted the enabling legislation for this compact.
(d) “Commissioner” means the voting representative of each compacting state appointed pursuant to Article III of this compact.
(e) “Court” means any court having jurisdiction over delinquent, neglected or dependent children.
(f) “Deputy compact administrator” means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator under the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.
(g) “Interstate Commission” means the Interstate Commission for Juveniles created by Article III of this compact.

(h) “Juvenile” means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:
(i) Accused delinquent, which is a person charged with an offense that, if committed by an adult, would be a criminal offense;
(ii) Adjudicated delinquent, which is a person found to have committed an offense that, if committed by an adult, would be a criminal offense;
(iii) Accused status offender, which is a person charged with an offense that would not be a criminal offense if committed by an adult;
(iv) Adjudicated status offender, which is a person found to have committed an offense that would not be a criminal offense if committed by an adult; and
(v) Nonoffender, which is a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.
(i) “Noncompacting state” means any state that has not enacted the enabling legislation for this compact.
(j) “Probation or parole” means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.
(k) “Rules” means a written statement by the Interstate Commission promulgated under Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal or suspension of an existing rule.
(l) “State” means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa and the Northern Marianas Islands.

ARTICLE III
INTERSTATE COMMISSION FOR JUVENILES

(1) The compacting states create the “Interstate Commission for Juveniles.” The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth in this compact, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.
(2) The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created under this compact. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under the applicable law of the compacting state.
(3) In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Those noncommissioner members must include a

member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio nonvoting members. The Interstate Commission may provide in its bylaws for additional ex officio nonvoting members, including members of other national organizations, in such numbers as determined by the commission.
(4) Each compacting state represented at any meeting of the commission is entitled to one (1) vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.
(5) The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.
(6) The Interstate Commission shall establish an executive committee, which shall include commission officers, members and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules and performs such other duties as directed by the Interstate Commission or set forth in the bylaws.
(7) Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the State Council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.
(8) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.
(9) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds ( 2/3 ) vote that an open meeting would be likely to:
(a) Relate solely to the Interstate Commission's internal personnel practice and procedures;
(b) Disclose matters specifically exempted from disclosure by statute;

(c) Disclose trade secrets or commercial or financial information that is privileged or confidential;
(d) Involve accusing any person of a crime, or formally censuring any person;
(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
(f) Disclose investigative records compiled for law enforcement purposes;
(g) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of the person or entity;
(h) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or
(i) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.
(10) For every meeting closed under this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes that shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in the minutes.
(11) The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules, which shall specify the data to be collected, the means of collection, data exchange and reporting requirements. Those methods of data collection, exchange and reporting shall, insofar as is reasonably possible, conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

## ARTICLE IV
## POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The commission shall have the following powers and duties:
(a) To provide for dispute resolution among compacting states.
(b) To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.
(c) To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission.
(d) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

(e) To establish and maintain offices, which shall be located within one or more of the compacting states.
(f) To purchase and maintain insurance and bonds.
(g) To borrow, accept, hire or contract for services of personnel.
(h) To establish and appoint committees and hire staff that it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties under this compact.
(i) To elect or appoint officers, attorneys, employees, agents or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation and qualifications of personnel.
(j) To accept any and all donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of it.
(k) To lease, purchase, accept contributions or donations of or otherwise to own, hold, improve or use any property, real, personal or mixed.
(l) To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed.
(m) To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.
(n) To sue and be sued.
(o) To adopt a seal and bylaws governing the management and operation of the Interstate Commission.
(p) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.
(q) To report annually to the legislatures, governors, judiciary, and State Councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Those reports also shall include any recommendations that may have been adopted by the Interstate Commission.
(r) To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in that activity.
(s) To establish uniform standards of the reporting, collecting and exchanging of data.
(t) To maintain its corporate books and records in accordance with the bylaws.

## ARTICLE V
## ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(1) Bylaws. The Interstate Commission shall, by a majority of the members present and voting, within twelve (12) months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:
(a) Establishing the fiscal year of the Interstate Commission;
(b) Establishing an executive committee and such other committees as may be necessary;

(c) Providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;
(d) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;
(e) Establishing the titles and responsibilities of the officers of the Interstate Commission;
(f) Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;
(g) Providing "start-up" rules for initial administration of the compact; and
(h) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.
(2) Officers and Staff. (a) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; however, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.
(b) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.
(3) Qualified Immunity, Defense and Indemnification. (a) The commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property, personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; however, any such person shall not be protected from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.
(b) The liability of any commissioner, or the employee of an agent of a commissioner, acting within the scope of the person's employment or duties for acts, errors or omissions occurring within the person's state, may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.
(c) The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend the commissioner or the commissioner's representatives or employees in any civil action

seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant has a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of the person.
(d) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against those persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that those persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI
RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(1) The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.
(2) Rule making shall occur using the criteria set forth in this article and the bylaws and rules adopted under this article. That rule making shall substantially conform to the principles of the “Model State Administrative Procedures Act,” 1981 Act, Uniform Laws Annotated, Volume 15, page 1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the commission.
(3) When promulgating a rule, the Interstate Commission shall, at a minimum:
(a) Publish the proposed rule's entire text stating the reason(s) for that proposed rule;
(b) Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record, and be made publicly available;
(c) Provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and
(d) Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.
(4) Allow not later than sixty (60) days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of the rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rule making record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it

would be considered substantial evidence under the Model State Administrative Procedures Act.
(5) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that the rule shall have no further force and effect in any compacting state.
(6) The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this act shall be null and void twelve (12) months after the first meeting of the Interstate Commission created under this compact.
(7) Upon determination by the Interstate Commission that a state of emergency exists, it may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided under this article retroactively applied to the rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

ARTICLE VII
OVERSIGHT, ENFORCEMENT AND DISPUTES RESOLUTION BY THE INTERSTATE COMMISSION

(1) Oversight. (a) The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor those activities being administered in noncompacting states that may significantly affect compacting states.
(b) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact shall be received by all the judges, public officers, commissions and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.
(2) Dispute Resolution. (a) The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact, as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.
(b) The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.
(c) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII
FINANCE

(1) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.
(2) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff, which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state, and shall promulgate a rule binding upon all compacting states which governs the assessment.
(3) The Interstate Commission shall not incur any obligations of any kind before securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.
(4) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE IX
THE STATE COUNCIL

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own State Council, its membership must include at least one (1) representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each State Council will advise and may exercise oversight and advocacy concerning the state's participation in Interstate Commission activities and other duties as may be determined by that state, including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE X
COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

(1) Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa and the Northern

Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.
(2) The compact shall become effective and binding upon legislative enactment of the compact into law by no less that thirty-five (35) of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis before adoption of the compact by all states and territories of the United States.
(3) The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI
WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT

(1) Withdrawal. (a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; however, a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.
(b) The effective date of withdrawal is the effective date of the repeal.
(c) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.
(d) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.
(e) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.
(2) Technical Assistance, Fines, Suspension, Termination and Default. (a) If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:
(i) Remedial training and technical assistance as directed by the Interstate Commission;
(ii) Alternative dispute resolution;
(iii) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and
(iv) Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules

have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature and the State Council. The grounds for default include, but are not limited to, failure of a compacting state to perform the obligations or responsibilities imposed upon it by this compact, the bylaws or duly promulgated rules and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

(b) Within sixty (60) days of the effective date of termination of a defaulting state, the commission shall notify the governor, the chief justice or the chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the State Council of that termination.

(c) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(d) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(e) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(3) Judicial Enforcement. The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district court where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of the litigation, including reasonable attorney's fees.

(4) Dissolution of Compact. (a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one (1) compacting state.

(b) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII
SEVERABILITY AND CONSTRUCTION

(1) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.
(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII
BINDING EFFECT OF COMPACT AND OTHER LAWS

(1) Other Laws. (a) Nothing in this compact prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.
(b) All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.
(2) Binding Effect of the Compact. (a) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.
(b) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.
(c) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding that meaning or interpretation.
(d) If any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the Interstate Commission shall be ineffective and those obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Information on the Association of Juvenile Compact Administrators (AJCA) is available at http://ajca.us/.

## *CHAPTER 11*

## *TERMINATION OF PARENTAL RIGHTS*

### *1100 TERMINATION OF PARENTAL RIGHTS*

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## *1100 TERMINATION OF PARENTAL RIGHTS*

### ➤ Governing laws

**§ 93-15-101**

This chapter shall be known and may be cited as the "Mississippi Termination of Parental Rights Law."

### ➤ 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.

➤ **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.

*Case law:*

In re M.A.S., 245 So.3d 410, 415 (Miss. 2018) (“If the youth court already has jurisdiction over the child in an abuse and neglect proceeding, then the youth court has exclusive original jurisdiction to hear a petition to terminate parental rights. So a person seeking to adopt the abused or neglected child no longer can simply seek the termination of the parents' rights as part of her adoption petition. Instead, the [Mississippi Termination of Parental Rights Law] makes clear she must first petition for the termination of parental rights in youth court, before she can seek an adoption in chancery court.”).

K.M.K. v. S.L.M., 775 So. 2d 115, 118 (Miss. 2000) (“[With the amendment of section 93-15-105], . . . the Legislature has given both chancery and county courts acting as youth courts the power to determine whether parental rights should be terminated. The

Legislature has also stated that the youth court will have exclusive original jurisdiction over "all proceedings" involving abused and neglected children except when the allegation first arose in a pending chancery court action. Miss. Code. Ann. § 43-21-151(1).").

➤ **Involuntary termination of parental rights; 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.

*Case law:*

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 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 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.”).

In re E.M.C., 695 So. 2d 576, 580 (Miss. 1997) (“Appointment of a guardian ad litem is made mandatory by [statute]. 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], as written, is clear and unambiguous. It 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.”).

In re B.E.G., 2019 WL 3166018 (Miss. Ct. App.) (“This Court has upheld petitions to terminate parental rights where there has been one petition and multiple children. The law does not require a petition to be filed for each child.”).

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.”).

➤ **Surrender of child to Department of Child Protection Services 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.

➤ **Written voluntary release; requirements**

**§ 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.

*Case law:*

Simmons v. Harrison Cty. Dep't of Human Servs., 228 So. 3d 347, 351–52 (Miss. Ct. App. 2017) ("[Rule 81 of the Mississippi Rules of Civil Procedure] clearly [defers] to Mississippi's statutory provisions for matters concerning termination of parental rights and adoption. . . . The surrender and release form specified that signing the document would result in a waiver of service of process and further notice of any court proceedings regarding [the child]. Thus, the language used by DHS in the surrender and release form conformed with the requirements of [the Mississippi Termination of Parental Rights Law for written voluntary release.]").

➤ **Conduct of hearing for involuntary termination of parental rights; 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.

*Case law:*

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.").

*See also* Miss. Code Ann. § 99-19-20.1, which provides in part:

> "When determining whether a person [who has failed to pay a fine, restitution, or court costs] is indigent, the court shall use the current Federal Poverty Guidelines and there shall be a presumption of indigence when a defendant's income is at or below one hundred twenty-five percent (125%) of the Federal Poverty Guidelines, subject to a review of his or her assets. A defendant at or below one hundred twenty-five percent (125%) of the Federal Poverty Guidelines without substantial liquid assets available to pay fines, fees, and costs shall be deemed indigent."

- **Involuntary termination when child is in custody or under supervision of Department of Child Protection Services pursuant to youth court proceedings and 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.

*Case law:*

In re A.B., 2019 WL 5168558 (Miss. Ct. App.) ("[T]he instant case is replete with drug addiction, child neglect, crime, and past behavior demonstrating A.B.'s unfitness to raise her minor children.").

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.").

C.S.H. v. Lowndes Cty. Dep't of Human Servs., 246 So.3d 908, 918 (Miss. Ct. App. 2018) ("Even with the extended deadline granted by the county court, CSH failed to make progress on the terms of her service agreement within the time frame provided by the statute. [W]e find substantial credible proof [of] clear and convincing evidence . . . for termination of CSH's parental rights and that [such] termination served [the children's] best interests.").

➤ **Involuntary termination when child is in custody or under supervision of the Department of Child Protection Services pursuant to youth court proceedings and 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.

➤ **Grounds for involuntary termination of parental rights; standard of proof; rebuttal of allegations of desertion; inquiry as to military status**

**§ 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.

*Case law:*

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.").

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.").

➤ **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.

*Case law:*

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 G.Q.A., 771 So. 2d 331, 336 (Miss. 2000) ("We have held that in abandonment cases, the 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.").

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.").

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.").

De La Oliva v. Lowndes County Dept. of Public Welfare, 423 So. 2d 1328, 1331 (Miss. 1993) ("The proof wholly failed to establish appellant 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 appellant or some other substantial erosion of the parent and child relationship . . . Most of the antipathy entertained by the child toward appellant, 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.").

Vance v. Lincoln County Dept. of Public Welfare, 582 So. 2d 414, 418 (Miss. 1991) ("Imprisonment, and the resulting conditions, can be rightfully considered as a significant factor whether [parental] rights may be terminated.").

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.").

Adams v. Powe, 469 So. 2d 76, 79 (Miss. 1985) ("After careful scrutiny of the record, we are convinced, based on the overwhelming evidence of the deplorable, subhuman living conditions afforded the Powe children, that the Powes' parental rights should be terminated.").

J.F.G. v. Pearl River Cty. Dep't of Human Servs., 2017 WL 2559787 (Miss. Ct. App. 2017) ("Only one statutory ground has to be proven to justify termination. If the chancellor is satisfied by clear and convincing evidence that a ground for termination exists, she may order termination of parental rights.").

Brown v. Panola County Dept. of Human Services, 90 So. 3d 662, 666 (Miss. Ct. App. 2012) ("Erica 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

Erica lacked the responsibility to be a successful parent and opined that termination of her parental rights was in the children's best interests. . . . [T]here was substantial evidence to support the chancery court's finding that termination of Erica's parental rights was in Josh's and Kyle's best interests.”).

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 section 93-15-103(3)(b) had been met.”).

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 Mississippi Code 93-15-103(3)(c) to terminate H.D.H.’s parental rights to all three children.”).

B.S.G. v. J.E.H., 958 So. 2d 259, 269-70 (Miss. Ct. App. 2007) (“[W]e find B.S.G.'s history of drug abuse, her inability to complete the court's requirements to regain custody, coupled with her present incarceration and the testimony presented during the hearing, to support the court's determination that reunification with B.S.G. was not in E.D.'s best interest. . . . [W]e find the evidence supports the youth court's findings that termination of parental rights was in E.D.'s best interest.”).

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.”).

In re C.B.Y., 936 So. 2d 974, 980 (Miss. Ct. App. 2006) (“[P]ursuant to Mississippi Code Annotated section 93–15–103(1), involuntary termination of parental rights may be based on one or more of the enumerated factors.”).

N.E. v. L.H., 761 So. 2d 956, 965 (Miss. Ct. App. 2000) (“Without competent lay or medical evidence establishing a mental deficiency sufficient to warrant a termination of parental rights of the ground of “severe mental deficiencies or mental illness,” this finding was made in error. Merely observing a parent's demeanor while she sits idle and silent in the audience, without having testified, will not support a finding that she is mentally deficient, or otherwise, when addressing whether that her parental rights should be terminated on mental grounds.”).

➤ **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.

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## *CHAPTER 12*

## *INTERVENTION COURTS*


***1200 ALYCE GRIFFIN CLARKE INTERVENTION COURT ACT***

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***1201 ADDRESSING ALCOHOL OR DRUG USE***

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➤ **Title**

**§ 9-23-1**

This chapter shall be known and may be cited as the Alyce Griffin Clarke Intervention Court Act.

*See also* Anthony J. Sciolino, *Juvenile Drug Treatment Court Uses "Outside the Box" Thinking to Recover Lives of Youngsters*, 74 May N.Y. St. B.J. 37, 44 (2002) ("Experience in adult drug courts shows that a defendant in court-ordered drug treatment is twice as likely to complete a treatment program as someone who seeks help voluntarily. The same holds true for juveniles."); Robert E. Gaston, *You Want to Change Behaivor? Use the Drug Court Format*, 9-Nov Nev. Law. 10, 10 (2001) ("A startling innovation hit our courts about ten years ago that has had unprecedented success in the battle to stop drug addiction . . . [t]he Drug Court format . . . ."); Pamela L. Simmons, *Solving the Nation's Drug Problem: Drug Courts Signal a Move Toward Therapeutic Jurisprudence*, 35 Gonz. L. Rev. 237, 254 (2000) ("Research has shown that time is one of the most critical factors to drug treatment–the longer an addict is in treatment, the greater the chance of success.").

➤ **Purpose**

**§ 9-23-3**

(1) The Legislature of Mississippi recognizes the critical need for judicial intervention to reduce the incidence of alcohol and drug use, alcohol and drug addiction, and crimes committed as a result of alcohol and drug use and alcohol and drug addiction. It is the intent of the Legislature to facilitate local intervention court alternative orders adaptable to chancery, circuit, county, youth, municipal and justice courts.
(2) The goals of the intervention courts under this chapter include the following:
(a) To reduce alcoholism and other drug dependencies among adult and juvenile offenders and defendants and among respondents in juvenile petitions for abuse, neglect or both;
(b) To reduce criminal and delinquent recidivism and the incidence of child abuse and neglect;
(c) To reduce the alcohol-related and other drug-related court workload;
(d) To increase personal, familial and societal accountability of adult and juvenile offenders and defendants and respondents in juvenile petitions for abuse, neglect or both; and
(e) To promote effective interaction and use of resources among criminal and juvenile justice personnel, child protective services personnel and community agencies.

➤ **Definitions**

**§ 9-23-5**

(a) “Chemical” tests means the analysis of an individual's: (i) blood, (ii) breath, (iii) hair, (iv) sweat, (v) saliva, (vi) urine, or (vii) other bodily substance to determine the presence of alcohol or a controlled substance.
(b) “Crime of violence” means an offense listed in Section 97–3–2.
(c) “Intervention court” means a drug court, mental health court, veterans court or problem-solving court that utilizes an immediate and highly structured intervention process for eligible defendants or juveniles that brings together mental health professionals, substance abuse professionals, local social programs and intensive judicial monitoring.
(d) “Evidence-based practices” means supervision policies, procedures and practices that scientific research demonstrates reduce recidivism.
(e) “Risk and needs assessment” means the use of an actuarial assessment tool validated on a Mississippi corrections population to determine a person's risk to reoffend and the characteristics that, if addressed, reduce the risk to reoffend.

➤ **Certification and monitoring of local intervention courts**

**§ 9-23-7**

The Administrative Office of Courts shall be responsible for certification and monitoring of local intervention courts according to standards promulgated by the State Intervention Courts Advisory Committee.

*See also* U.R.Y.C.P. 35 (“[Intervention] court procedures shall be pursuant to the guidelines developed by the State [Intervention] Court Advisory Committee.”).

➤ **State Intervention Courts Advisory Committee**

**§ 9-23-9**

(1) The State Intervention Courts Advisory Committee is established to develop and periodically update proposed statewide evaluation plans and models for monitoring all critical aspects of intervention courts. The committee must provide the proposed evaluation plans to the Chief Justice and the Administrative Office of Courts. The committee shall be chaired by the Director of the Administrative Office of Courts or a designee of the director and shall consist of eleven (11) members all of whom shall be appointed by the Supreme Court. The members shall be broadly representative of the courts, mental health, veterans affairs, law enforcement, corrections, criminal defense bar, prosecutors association, juvenile justice, child protective services and substance abuse treatment communities.
(2) The State Intervention Courts Advisory Committee may also make recommendations

to the Chief Justice, the Director of the Administrative Office of Courts and state officials concerning improvements to intervention court policies and procedures including the intervention court certification process. The committee may make suggestions as to the criteria for eligibility, and other procedural and substantive guidelines for intervention court operation.
(3) The State Intervention Courts Advisory Committee shall act as arbiter of disputes arising out of the operation of intervention courts established under this chapter and make recommendations to improve the intervention courts; it shall also make recommendations to the Supreme Court necessary and incident to compliance with established rules.
(4) The State Intervention Courts Advisory Committee shall establish through rules and regulations a viable and fiscally responsible plan to expand the number of adult and juvenile intervention 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.
(5) The State Intervention Courts Advisory Committee shall receive and review the monthly reports submitted to the Administrative Office of Courts by each certified intervention court and provide comments and make recommendations, as necessary, to the Chief Justice and the Director of the Administrative Office of Courts.

*See also* U.R.Y.C.P. 35 ("[Intervention] court procedures shall be pursuant to the guidelines developed by the State [Intervention] Court Advisory Committee.").

➤ **Alcohol and drug intervention component**

**§ 9-23-11**

(1) The Administrative Office of Courts shall establish, implement and operate a uniform certification process for all intervention courts and other problem-solving courts including juvenile courts, veterans courts or any other court designed to adjudicate criminal actions involving an identified classification of criminal defendant to ensure funding for intervention courts supports effective and proven practices that reduce recidivism and substance dependency among their participants.
(2) The Administrative Office of Courts shall establish a certification process that ensures any new or existing intervention court meets minimum standards for intervention court operation.
(a) These standards shall include, but are not limited to:
(i) The use of evidence-based practices including, but not limited to, the use of a valid and reliable risk and needs assessment tool to identify participants and deliver appropriate interventions;
(ii) Targeting medium to high-risk offenders for participation;
(iii) The use of current, evidence-based interventions proven to reduce dependency on drugs or alcohol, or both;
(iv) Frequent testing for alcohol or drugs;
(v) Coordinated strategy between all intervention court program personnel involving the use of graduated clinical interventions;

(vi) Ongoing judicial interaction with each participant; and
(vii) Monitoring and evaluation of intervention court program implementation and outcomes through data collection and reporting.
(b) Intervention court certification applications shall include:
(i) A description of the need for the intervention court;
(ii) The targeted population for the intervention court;
(iii) The eligibility criteria for intervention court participants;
(iv) A description of the process for identifying appropriate participants including the use of a risk and needs assessment and a clinical assessment;
(v) A description of the intervention court intervention components, including anticipated budget and implementation plan;
(vi) The data collection plan which shall include collecting the following data:
1. Total number of participants;
2. Total number of successful participants;
3. Total number of unsuccessful participants and the reason why each participant did not complete the program;
4. Total number of participants who were arrested for a new criminal offense while in the intervention court program;
5. Total number of participants who were convicted of a new felony or misdemeanor offense while in the intervention court program;
6. Total number of participants who committed at least one (1) violation while in the intervention court program and the resulting sanction(s);
7. Results of the initial risk and needs assessment or other clinical assessment conducted on each participant; and
8. Total number of applications for screening by race, gender, offenses charged, indigence and, if not accepted, the reason for nonacceptance; and
9. Any other data or information as required by the Administrative Office of Courts.
(c) Every intervention court shall be certified under the following schedule:
(i) An intervention court application submitted after July 1, 2014, shall require certification of the intervention court based on the proposed drug court plan.
(ii) An intervention court initially established and certified after July 1, 2014, shall be recertified after its second year of funded operation on a time frame consistent with the other certified courts of its type.
(iii) A certified adult felony intervention court in existence on December 31, 2018, must submit a recertification petition by July 1, 2019, and be recertified under the requirements of this section on or before December 31, 2019; after the recertification, all certified adult felony intervention courts must submit a recertification petition every two (2) years to the Administrative Office of Courts. The recertification process must be completed by December 31st of every odd calendar year.
(iv) A certified youth, family, misdemeanor or chancery intervention court in existence on December 31, 2018, must submit a recertification petition by July 31, 2020, and be recertified under the requirements of this section by December 31, 2020. After the recertification, all certified youth, family, misdemeanor and chancery intervention courts must submit a recertification petition every two (2) years to the Administrative Office of Courts. The recertification process must be completed by December 31st of every even

calendar year.
(3) All certified intervention courts shall measure successful completion of the drug court based on those participants who complete the program without a new criminal conviction.
(4)(a) All certified drug courts must collect and submit to the Administrative Office of Courts each month, the following data:
(i) Total number of participants at the beginning of the month;
(ii) Total number of participants at the end of the month;
(iii) Total number of participants who began the program in the month;
(iv) Total number of participants who successfully completed the intervention court in the month;
(v) Total number of participants who left the program in the month;
(vi) Total number of participants who were arrested for a new criminal offense while in the intervention court program in the month;
(vii) Total number of participants who were convicted for a new criminal arrest while in the intervention court program in the month; and
(viii) Total number of participants who committed at least one (1) violation while in the intervention court program and any resulting sanction(s).
(b) By August 1, 2015, and each year thereafter, the Administrative Office of Courts shall report to the PEER Committee the information in subsection (4)(a) of this section in a sortable, electronic format.
(5) All certified intervention courts may individually establish rules and may make special orders and rules as necessary that do not conflict with the rules promulgated by the Supreme Court or the Administrative Office of Courts.
(6) A certified intervention court may appoint the full- or part-time employees it deems necessary for the work of the intervention court and shall fix the compensation of those employees. Such employees shall serve at the will and pleasure of the judge or the judge's designee.
(7) The Administrative Office of Courts shall promulgate rules and regulations to carry out the certification and re-certification process and make any other policies not inconsistent with this section to carry out this process.
(8) A certified intervention court established under this chapter is subject to the regulatory powers of the Administrative Office of Courts as set forth in Section 9–23–17.

➤ **Court intervention services**

**§ 9-23-13**

(1) An intervention court's alcohol and drug intervention component shall provide for eligible individuals, either directly or through referrals, a range of necessary court intervention services, including, but not limited to, the following:
(a) Screening using a valid and reliable assessment tool effective for identifying alcohol and drug dependent persons for eligibility and appropriate services;
(b) Clinical assessment; for a DUI offense, if the person has two (2) or more DUI convictions, the court shall order the person to undergo an assessment that uses a standardized evidence-based instrument performed by a physician to determine whether

the person has a diagnosis for alcohol and/or drug dependence and would likely benefit from a court-approved medication-assisted treatment indicated and approved for the treatment of alcohol and/or drug dependence by the United States Food and Drug Administration, as specified in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. Upon considering the results of the assessment, the court may refer the person to a rehabilitative program that offers one or more forms of court-approved medications that are approved for the treatment of alcohol and/or drug dependence by the United States Food and Drug Administration;
(c) Education;
(d) Referral;
(e) Service coordination and case management; and
(f) Counseling and rehabilitative care.
(2) Any inpatient treatment or inpatient detoxification program ordered by the court shall be certified by the Department of Mental Health, other appropriate state agency or the equivalent agency of another state.
(3) All intervention courts shall make available the option for participants to use court-approved medication-assisted treatment while participating in the programs of the court in accordance with the recommendations of the National Drug Court Institute.

➤ **Alternative sentencing eligibility criteria and conditions**

**§ 9-23-15**

(1) In order to be eligible for alternative sentencing through a local intervention court, the participant must satisfy each of the following criteria:
(a) The participant cannot have any felony convictions for any offenses that are crimes of violence.
(b) The crime before the court cannot be a crime of violence.
(c) Other criminal proceedings alleging commission of a crime of violence cannot be pending against the participant.
(d) The participant cannot be charged with burglary of an occupied dwelling.
(e) The crime before the court cannot be a charge of driving under the influence of alcohol or any other drug or drugs that resulted in the death of a person.
(f) The crime charged cannot be one of distribution, sale, possession with intent to distribute, production, manufacture or cultivation of controlled substances, nor can the participant have a prior conviction for same.
(2) Participation in the services of an alcohol and drug intervention component shall be open only to the individuals over whom the court has jurisdiction, except that the court may agree to provide the services for individuals referred from another intervention court. In cases transferred from another jurisdiction, the receiving judge shall act as a special master and make recommendations to the sentencing judge.
(3)(a) As a condition of participation in an intervention court, a participant may be required to undergo a chemical test or a series of chemical tests as specified by the intervention court. A participant is liable for the costs of all chemical tests required under

this section, regardless of whether the costs are paid to the intervention court or the laboratory; however, if testing is available from other sources or the program itself, the judge may waive any fees for testing. The judge may waive all fees if the applicant is determined to be indigent.
(b) A laboratory that performs a chemical test under this section shall report the results of the test to the intervention court.
(4) A person does not have a right to participate in intervention court under this chapter. The court having jurisdiction over a person for a matter before the court shall have the final determination about whether the person may participate in intervention court under this chapter. However, any person meeting the eligibility criteria in subsection (1) of this section shall, upon request, be screened for admission to intervention court.

➤ **Powers of Administrative Office of Courts**

**§ 9-23-17**

With regard to any intervention court, the Administrative Office of Courts shall do the following:
(a) Certify and re-certify intervention court applications that meet standards established by the Administrative Office of Courts in accordance with this chapter.
(b) Ensure that the structure of the intervention component complies with rules adopted under this section and applicable federal regulations.
(c) Revoke the authorization of a program upon a determination that the program does not comply with rules adopted under this section and applicable federal regulations.
(d) Make agreements and contracts to effectuate the purposes of this chapter with:
(i) Another department, authority or agency of the state;
(ii) Another state;
(iii) The federal government;
(iv) A state-supported or private university; or
(v) A public or private agency, foundation, corporation or individual.
(e) Directly, or by contract, approve and certify any intervention component established under this chapter.
(f) Require, as a condition of operation, that each intervention court created or funded under this chapter be certified by the Administrative Office of Courts.
(g) Collect monthly data reports submitted by all certified intervention courts, provide those reports to the State Intervention Courts Advisory Committee, compile an annual report summarizing the data collected and the outcomes achieved by all certified intervention courts and submit the annual report to the Oversight Task Force.
(h) Every three (3) years contract with an external evaluator to conduct an evaluation of the effectiveness of the intervention court program, both statewide and individual intervention court programs, in complying with the key components of the intervention courts adopted by the National Association of Drug Court Professionals.
(i) Adopt rules to implement this chapter.

➤ **Funding sources**

**§ 9-23-19**

(1) All monies received from any source by the intervention court shall be accumulated in a fund to be used only for intervention court purposes. Any funds remaining in this fund at the end of a fiscal year shall not lapse into any general fund, but shall be retained in the Intervention Court Fund for the funding of further activities by the intervention court.
(2) An intervention court may apply for and receive the following:
(a) Gifts, bequests and donations from private sources.
(b) Grant and contract money from governmental sources.
(c) Other forms of financial assistance approved by the court to supplement the budget of the intervention court.
(3) The costs of participation in an alcohol and drug intervention program required by the certified intervention court may be paid by the participant or out of user fees or such other state, federal or private funds that may, from time to time, be made available.
(4) The court may assess such reasonable and appropriate fees to be paid to the local Intervention Court Fund for participation in an alcohol or drug intervention program; however, all fees may be waived if the applicant is determined to be indigent.

➤ **Immunity**

**§ 9-23-21**

The director and members of the professional and administrative staff of the intervention court who perform duties in good faith under this chapter are immune from civil liability for:
(a) Acts or omissions in providing services under this chapter; and
(b) The reasonable exercise of discretion in determining eligibility to participate in the intervention court.

➤ **Record of adjudication to be expunged if program successfully completed**

**§ 9-23-23**

If the participant completes all requirements imposed upon him by the intervention court, including the payment of fines and fees assessed and not waived by the court, the charge and prosecution shall be dismissed. If the defendant or participant was sentenced at the time of entry of plea of guilty, the successful completion of the intervention court order and other requirements of probation or suspension of sentence will result in the record of the criminal conviction or adjudication being expunged. However, no expunction of any implied consent violation shall be allowed.

➤ **Drug Court Fund established**

**§ 9-23-51**

There is created in the State Treasury a special interest-bearing fund to be known as the Drug Court Fund. The purpose of the fund shall be to provide supplemental funding to all drug courts in the state. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Administrative Office of Courts, pursuant to procedures set by the State Drug Courts Advisory Committee to assist both juvenile drug courts and adult drug courts. Funds from other sources shall be distributed to the drug courts in the state based on a formula set by the State Drug Courts Advisory Committee. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of: (a) monies appropriated by the Legislature for the purposes of funding drug courts; (b) the interest accruing to the fund; (c) monies received under the provisions of Section 99-19-73; (d) monies received from the federal government; and (e) monies received from such other sources as may be provided by law.

***The Key Components of Drug Courts***

- Drug courts integrate alcohol and other drug treatment services with justice system case processing.
- Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- Eligible participants are identified early and promptly placed in the drug court program.
- Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- Abstinence is monitored by frequent alcohol and other drug testing.
- A coordinated strategy governs drug court responses to participants' compliance.
- Ongoing judicial interaction with each drug court participant is essential.
- Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
- Continuing interdisciplinary education promotes effective drug court planning, implementation, and operation.
- Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court effectiveness.

*See Defining Drug Courts: The Key Components*, National Ass'n. of Drug Court Professionals, January (1997). https://www.ncjrs.gov/pdffiles1/bja/205621.pdf

## *1201 ADDRESSING ALCOHOL OR DRUG USE*

### ➤ Is alcohol and 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.").

### ➤ Intake options

If the child has an alcohol or drug problem, then taking no action is merely delaying the recovery process. Further, a warning or informal counseling will probably not deter future use. The informal adjustment process, on the other hand, allows for structuring a recovery program. If the child fails to meet its terms, then a petition may be filed.

*See* U.R.Y.C.P. 8.

### ➤ Informal adjustment options

An informal adjustment gives the child and the parent, guardian or custodian the opportunity to voluntarily agree to participate in counseling and other activities in lieu of an adjudication hearing. Such offers a means to address behavioral and environmental concerns on alcohol or drug use. The goal is attaining sobriety, the capstone to responsible, accountable and productive citizenry. But in no event may the informal adjustment counselor offer legal, medical, or psychiatric advice.

*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, . . . ."); Miss. Code Ann. §§ 43-21-401 to -407 (Informal proceedings).

➤ **Disposition alternatives**

At the disposition hearing the court may consider any evidence relevant to the disposition of the case, including hearsay and opinion evidence. As such, the informal adjustment counselor should be permitted to testify on the informal adjustment process. Not only does this help the judge in deciding an appropriate disposition, it also confronts the child with the consequences of alcohol and drug use. In other words, the informal adjustment counselor can convey this message:

> "Judge, we are here today because the child and parent could not meet the simple conditions of the informal adjustment agreement. The child and parent were warned that failure to meet these conditions could result in a formal hearing. The child and parent were told that a formal hearing could result in the loss of driving privileges, drug testing, and possibly detention. When the child and parent broke a condition of the agreement, I gave them another chance. They agreed to abide by the conditions of the agreement from then on. They did not. The child has a drinking and drug problem, but apparently does not see it. The informal adjustment process did not work for this child."

When rendering the disposition, the judge has the opportunity to further break down barriers of denial:

> "You appear to have a drinking and drug problem. It has caused your life to be unmanageable. Your refusal to get help for your problem has resulted in the need for stricter supervision and the loss of certain privileges. If you have an addiction, it will only get worse. Take recovery serious now."

The final disposition should include both rehabilitative and follow-up components as authorized under Mississippi's Youth Court Law.

*See* U.R.Y.C.P. 27; 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.").

## *1202 A.A. AND N.A. RECOVERY PROGRAMS*

Alcoholics Anonymous (A.A.) and Narcotics Anonymous (N.A.) have helped many alcoholics and addicts attain sobriety.[1] Within some communities there are youth meetings structured in the A.A. or N.A. format. 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."[2]

A wall of denial must come down. Alcoholics cannot drink (and addicts cannot use) without suffering bad consequences.[3] Nor can they stop on self-will alone.[4] Addiction is a physical, mental and spiritual disease.[5] Recovery is a life-long effort.[6] It is measured by increments of spiritual progress.[7] Tabulating success or failure in recovery is often

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[1]A.A. recovery literature is available at www.aa.org. N.A. recovery literature is available at http://www.na.org/.

[2]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.").

[3]Physical, mental and spiritual deterioration compels the desire to stop. *See* Narcotics Anonymous, *supra* note 2, 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.").

[4]*See* Alcoholics Anonymous, *supra* note 2, 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, *supra* note 2, 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.").

[5]*See* Narcotics Anonymous, *supra* note 2, at 20 ("Addiction is a physical, mental and spiritual disease that affects every area of our lives.").

[6]*See* Narcotics Anonymous, *supra* note 2, 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.").

[7]*See* Alcoholics Anonymous, *supra* note 2, at 60 ("We claim spiritual progress rather than spiritual perfection."); It Works, How and Why, *supra* note 6, at 10 ("In recovery, we will be introduced to spiritual principals such as the surrender, honesty, and acceptance required for the First Step.").

elusive.[8] Relapse is a painful truth of powerlessness.[9] For some alcoholics and addicts, A.A. or N.A. is not a solution.[10] Still others may suffer from a mental illness independent of their alcoholism or addiction. For them, A.A. or N.A. *and* medical or psychiatric care may be needed. And, then, there are still others for whom A.A. or N.A. is a solution still in progress; recovery for them begins when they apply the spiritual principles of A.A. or N.A. to all areas of their lives.[11] It comes to those who do not give up, despite relapses, and are willing to work for it.[12]

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[8]*See* It Works, How and Why, *supra* note 6, 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."").

[9]*See* Alcoholics Anonymous, *supra* note 2, at 37 (The "jaywalker" anecdote); Narcotics Anonymous, *supra* note 2, 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.").

[10]Alcoholics Anonymous, *supra* note 2, 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.").

[11]*See* Twelve Steps and Twelve Traditions 23 (Alcoholics Anonymous World Services, Inc., 1981); It Works, How and Why, *supra* note 6, 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.").

[12]*See* Alcoholics Anonymous, *supra* note 2, 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."); Narcotics Anonymous, *supra* note 2, at 17 ("If you want what we have, and are willing to make the effort to get it, then you are ready to take certain steps.").

## *CHAPTER 13*

## *YOUTH COURT APPEALS*

### *1300 REHEARING OF REFEREE'S ORDER*

### *1301 APPELLATE PROCEDURES FROM FINAL ORDERS OR DECREES*

**Appeals pursuant to the Mississippi Rules of Appellate Procedures**
**Parties with standing to appeal**
**Filing the notice of appeal**
**Extensions**
**Reopening time for appeal**
**Content of the notice of appeal**
**Service of the notice of appeal**
**Payment of fees**
**Proceeding in forma pauperis**
**Stay or injunction pending appeal**
**Content of the record on appeal**
**Jurisdiction of the Supreme Court and the Court of Appeals**
**Assignment of cases to the Court of Appeals**
**Review in the Supreme Court following decision by the Court of Appeals**

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## *1300 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.

*Case law:*

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.").

➤ **Appeals pursuant to the Mississippi Rules of Appellate Procedures**

**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.

**Comment to U.R.Y.C.P. 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 delinquency, 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 beyond a reasonable doubt that the child committed the delinquent act. See In re L.M., 600 So. 2d 967, 969 (Miss. 1992); In re S.B., 566 So. 2d 1276, 1278 (Miss. 1990). 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.").

*Case law:*

Natural Father v. United Methodist Children's Home, 418 So. 2d 807, 809 (Miss. 1982) ([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.").

In re C.R., 2019 WL 68737330 (Miss. Ct. App.) ("Here, the youth court did not conduct a separate disposition as required by state. . . . Because there is not yet a final appealable order of disposition in this case, we dismiss this appeal for lack of jurisdiction.").

➤ **Parties with standing to appeal**

**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.

*Case law:*

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.").

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.").

➤ **Filing the notice of appeal**

**M.R.A.P. 3**

(a) Filing the Notice of Appeal. In all cases, both civil and criminal, in which an appeal is permitted by law as of right to the Supreme Court, there shall be one procedure for perfecting such appeal. That procedure is prescribed in these rules. All statutes, other sets of rules, decisions or orders in conflict with these rules shall be of no further force or effect. An appeal permitted by law as of right from a trial court to the Supreme Court shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the perfection of the appeal, but is ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. Interlocutory appeals by permission shall be taken in the manner prescribed by Rule 5.

**M.R.A.P. 4**

(a) Appeal and Cross-Appeals in Civil and Criminal Cases. Except as provided in Rules 4(d) and 4(e), in a civil or criminal case in which an appeal or cross-appeal is permitted by law as of right from a trial court to the Supreme Court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. If a notice of appeal is mistakenly filed in the Supreme Court, the clerk of the Supreme Court shall note on it the date on which it was received and transmit it to the clerk of the trial court and it shall be deemed filed in the trial court on the date so noted.

. . .

(f) Parties Under Disability. In the case of parties under a disability of infancy or unsoundness of mind, the various periods of time for which provision is made in this rule and within which periods of time action must be taken shall not begin to run until the date on which the disability of any such party shall have been removed. However, in cases where the appellant infant or person of unsound mind was a plaintiff or complainant, and in cases where such a person was a party defendant and there had been appointed for him or her a guardian ad litem, appeals to the Supreme Court shall be taken in the manner prescribed in this rule within two years of the entry of the judgment or order which would cause to commence the running of the 30 day time period for all other appellants as provided in this rule.

➤ **Extensions**

**M.R.A.P. 4**

(g) Extensions. The trial court may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time otherwise prescribed by this rule. Any such motion which is filed before expiration of the prescribed time may be granted for good cause and may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to other parties, and the motion shall be granted only upon a showing of excusable neglect. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

➤ **Reopening time for appeal**

**M.R.A.P. 4**

(h) Reopening Time for Appeal. The trial court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and (b) that no party would be prejudiced, may, upon motion filed within 180 days of entry of the judgment or order or within 7 days of receipt

of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.
*Case law:*

In re A.M.A., 986 So.2d 999, 1008 (Miss. Ct. App. 2007) ("Paul's notice of appeal was filed more than fourteen days after the August 11, 2005, entry of the relevant order allowing him additional time to file his notice of appeal. Accordingly, the notice was not timely filed pursuant to Rule 4(h).").

➤ **Content of the notice of appeal**

**M.R.A.P. 3**

(c) Content of the Notice of Appeal. The notice of appeal shall specify the party or parties taking the appeal and the party or parties against whom the appeal is taken, and shall designate as a whole or in part the judgment or order appealed from. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

➤ **Service of the notice of appeal**

**M.R.A.P. 3**

(d) Service of the Notice of Appeal. The clerk of the trial court shall serve notice of the filing of a notice of appeal by mailing a copy of the notice to counsel of record for each party other than the appellant, or, if a party is not represented by counsel, to the last known address of that party, and to the court reporter; and the clerk shall transmit to the clerk of the Supreme Court forthwith a copy of the notice of appeal, together with the docket fee as provided in Rule 3(e), and, with cost to the appellant, a certified copy of the trial court docket as of the date of the filing of the notice of appeal, a certified copy of the opinion, if any, and a certified copy of the judgment from which the appeal is being taken and a certified copy of the Civil Case Filing Form in civil cases or the Notice of Criminal Disposition Form in criminal cases. When an appeal is taken by a defendant in a criminal case, the clerk shall also serve a copy of the notice of appeal upon the defendant, either by personal service or by mail addressed to the defendant. The clerk shall note on each copy served the date on which the notice of appeal was filed.
Failure of the clerk to serve notice shall not affect the perfection of the appeal. Service shall be sufficient notwithstanding the death of a party or the party's counsel. The clerk shall note in the docket the names of the parties to whom the clerk mails copies with the date of mailing.

➤ **Payment of fees**

**M.R.A.P. 3**

(e) Payment of Fees. Upon the filing of any separate or joint notice of appeal from the trial court, the appellant shall pay to the clerk of the trial court the docket fee to be received by the clerk of the trial court on behalf of the Supreme Court.

**§ 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.

*Case law:*

In re E.M., 810 So. 2d 596, 598-99 (Miss. 2002) ("[The guardian ad litem] originally had 2 years in which to file an appeal on behalf of E.M. His filing of notice did not toll this period. The appeal was perfected within 2 years as set out in Miss. R.App. P. 4 and we decline to take any action under Miss. R.App. P. 3.").

➤ **Proceeding in forma pauperis**

M.R.A.P. 6 provides appellate proceedings in forma pauperis and appointment of counsel on appeal in criminal cases.

**§ 43-21-651**

(1) . . . 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.

**§ 99-40-1**

(2) . . . At the sole discretion of the State Defender, the office may also represent indigent juveniles adjudicated delinquent on appeals from a county court or chancery court to the Mississippi Supreme Court or the Mississippi Court of Appeals. The office shall provide advice, education and support to attorneys representing persons under felony charges in the trial courts.

*Case law:*

Application of Gault, 387 U.S. 1, 37 (1967) ("A proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution.").

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.").

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.").

➤ **Stay or injunction pending appeal**

M.R.A.P. 8 provides appellate procedures of a stay or injunction pending an appeal.

**§ 43-21-651**

(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.

*Case law:*

In re G.L.H., 843 So. 2d 109, 114 (Miss. Ct. App. 2003) ("This Court has previously concluded that "an appeal does not stay the enforcement of the youth court's disposition of the case unless supersedeas is specifically granted by either the youth court or the appellate court on review if the youth court refuses to grant it." . . . Accordingly, G.L.C. was required to immediately appeal the decision of the trial court refusing his motion to appeal supersedeas to the Mississippi Supreme Court, before proceeding with his appeal on the merits.").

➤ **Content of the record on appeal**

**M.R.A.P. 10**

(a) Content of the Record. The parties shall designate the content of the record pursuant to this rule, and the record shall consist of designated papers and exhibits filed in the trial court, the transcript of proceedings, if any, and in all cases a certified copy of the docket entries prepared by the clerk of the trial court.

**§ 43-21-651**

(1) . . . Only the initials of the child shall appear on the record on appeal.

*Case law:*

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.").

➤ **Jurisdiction of the Supreme Court and the Court of Appeals**

**M.R.A.P. 16**

(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.

➤ **Assignment of cases to the Court of Appeals**

**M.R.A.P. 16**

(c) Transfer of Case or Matter to Court of Appeals. In matters which could be properly handled in either court but which are originally retained by the Supreme Court, that Court may, at any time prior to the issuance of an opinion or ruling disposing of a case or matter before it, transfer the case to the Court of Appeals if the Court determines that expeditious disposition requires the case be decided by the Court of Appeals.

➤ **Review in the Supreme Court following decision by the Court of Appeals**

**M.R.A.P. 17**

(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.

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## *CHAPTER 14*

## *BUDGET*


***1400 BUDGETARY MATTERS***

**Establishment and maintenance of facilities**
**County expenditures authorized**
**Personnel**
**Funding of court**

***1401 YOUTH COURT SUPPORT PROGRAM***

**Establishment and purpose**
**Tony Gobar Individualized Assessment and Comprehensive Community Intervention Initiative (IACCII)**

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➤ **Establishment and maintenance of facilities**

**§ 43-21-109**

Any county or municipality may separately or jointly establish and maintain detention facilities, shelter facilities, foster homes, or any other facility necessary to carry on the work of the youth court. For said purposes, the county or municipality may acquire necessary land by condemnation, by purchase or donation, may issue bonds as now provided by law for the purpose of purchasing, constructing, remodeling or maintaining such facilities; may expend necessary funds from the general fund to construct and maintain such facilities, and may employ architects to design or remodel such facilities. Such facilities may include a place for housing youth court facilities and personnel.

➤ **County expenditures authorized**

**§ 43-21-45**

In any Class 1 county having a total population in excess of eighty thousand (80,000) according to the 1950 census and having a total assessed valuation in excess of Forty-eight Million Dollars ($48,000,000.00), and in which there is both a youth court and a federal military base or encampment; and in any Class 1 county having a total population in excess of fifty-two thousand seven hundred twenty (52,720) in the 1960 federal decennial census and in which there is located both a state-supported university and a Mississippi National Guard Camp, the board of supervisors of any such county may, in its discretion, set aside, appropriate and expend moneys from the general fund to be used in the payment of salaries and/or travel expenses of a youth counsellor, or counsellors, and the salary of a clerk-reporter of the youth court of such county, and such funds shall be expended for no other purpose.

➤ **Personnel**

**§ 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.

➤ **Funding of 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.
The board of supervisors of any county in which there is located a youth court, and the governing authority of any municipality in which there is located a municipal youth court, are each authorized to reimburse the youth court judges and other youth court employees or personnel for reasonable travel and expenses incurred in the performance of their duties and in attending educational meetings offering professional training to such persons as budgeted.

*Case law:*

Moore v. Board of Supervisors of Hinds County, 658 So. 2d 883, 888 (Miss. 1995) ("[P]ursuant to the language of [Miss. Code Ann. § 43- 21-123], the Youth Court judges, who are a non-legislative committee as allowed by [*Alexander v. State By and Through Allain*, 441 So. 2d 1329 (Miss. 1983)] can submit the proposed budget to the Board for their approval by vote which will act in a legislative capacity. Therefore, there is no encroachment upon powers held by either branch since the judges are permitted to be a committee assisting in the development of the budget which is subject to the Board's votes and not the non-legislative committee members who helped prepare it.").

Touart v. Johnston, 656 So. 2d 318, 325-26 (Miss. 1995) ("[A]s the Youth Court is charged with the responsibility to "secure proper care" for each child entering its system, the Youth Court Judge is granted the authority to fulfill this function by appointing various persons to "carry on the professional, clerical and other work of the youth court...." See Miss.Code Ann. § 43-21-119. By these grants of authority, Judge Johnston could appoint youth court referees, special judges, prosecutors, and even persons to function as intake units. With these powers, it appears clear that the youth court judges are placed in charge of the daily *operations* of their courts, as opposed to the Board's power to *establish and maintain* court facilities.").

In re R.G., 632 So. 2d 953, 957-58 (Miss. 1994) ("Clearly, the "core" function of the school attendance officer is to enforce the Compulsory School Attendance Law, an executive function. We find that in selecting and supervising the school attendance officers, the youth court judge is charged with the executive function of administering an existing law, far removed from his judiciary functions. In effect, he would become a "super" superintendent. . . . [G]iven the language of the constitution, regardless of whether the duties are ministerial or discretionary, the prohibitions of art. I, § 2 are applicable.").

## *1401 YOUTH COURT SUPPORT PROGRAM*

➤ **Establishment and purpose**

**§ 43-21-801**

(1) There is established the Youth Court Support Program. The purpose of the program shall be to ensure that all youth courts have sufficient support funds to carry on the business of the youth court. The Administrative Office of Courts shall establish a formula consistent with this section for providing state support payable from the Youth Court Support Fund for the support of the youth courts.
(a)(i) Each regular youth court referee is eligible for youth court support funds so long as the senior chancellor does not elect to employ a youth court administrator as set forth in paragraph (b); a municipal youth court judge is also eligible. The Administrative Office of Courts shall direct any funds to the appropriate county or municipality, but each regular youth court referee or municipal youth court judge shall have the sole individual discretion to appropriate those funds as expense monies to assist in hiring secretarial staff and acquiring materials and equipment incidental to carrying on the business of the court within the private practice of law of the referee or judge, or may direct the use of those funds through the county or municipal budget for court support supplies or services. The regular youth court referee and municipal youth court judge shall be accountable for assuring through private, county or municipal employees the proper preparation and filing of all necessary tracking and other documentation attendant to the administration of the youth court.
(ii) Title to all tangible property, excepting stamps, stationery and minor expendable office supplies, procured with funds authorized by this section, shall be and forever remain in the county or municipality to be used by the judge or referee during the term of his office and thereafter by his successors.
(b)(i) When permitted by the Administrative Office of Courts and as funds are available, the senior chancellor for Chancery Districts One, Two, Three, Four, Six, Seven, Nine, Ten, Thirteen, Fourteen, Fifteen and Eighteen may appoint a youth court administrator for the district whose responsibility will be to perform all reporting, tracking and other duties of a court administrator for all youth courts in the district that are under the chancery

court system. Any chancery district listed in this paragraph in which a chancellor appoints a referee or special master to hear any youth court matter is ineligible for funding under this paragraph (b). The Administrative Office of Courts may allocate to an eligible chancery district a sum not to exceed Thirty Thousand Dollars ($30,000.00) per year for the salary, fringe benefits and equipment of the youth court administrator, and an additional sum not to exceed One Thousand Nine Hundred Dollars ($1,900.00) for the administrator's travel expenses.
(ii) The appointment of a youth court administrator shall be evidenced by the entry of an order on the minutes of the court. The person appointed shall serve at the will and pleasure of the senior chancellor but shall be an employee of the Administrative Office of Courts.
(iii) The Administrative Office of Courts must approve the position, job description and salary before the position can be filled. The Administrative Office of Courts shall not approve any plan that does not first require the expenditure of the funds from the Youth Court Support Fund before expenditure of county funds is authorized for that purpose.
(iv) Title to any tangible property procured with funds authorized under this paragraph shall be and forever remain in the State of Mississippi.
(c)(i) Each county court is eligible for youth court support funds, and the senior county court judge shall have discretion to direct the expenditure of those funds in hiring support staff to carry on the business of the court.
(ii) For the purposes of this paragraph, “support staff” means court administrators, law clerks, legal research assistants, secretaries, resource administrators or case managers appointed by a youth court judge, or any combination thereof, but shall not mean school attendance officers.
(iii) The appointment of support staff shall be evidenced by the entry of an order on the minutes of the court. The support staff so appointed shall serve at the will and pleasure of the senior county court judge but shall be an employee of the county.
(iv) The Administrative Office of Courts must approve the positions, job descriptions and salaries before the positions may be filled. The Administrative Office of Courts shall not approve any plan that does not first require the expenditure of funds from the Youth Court Support Fund before expenditure of county funds is authorized for that purpose.
(v) The Administrative Office of Courts may approve expenditure from the fund for additional equipment for support staff appointed pursuant to this paragraph if the additional expenditure falls within the formula. Title to any tangible property procured with funds authorized under this paragraph shall be and forever remain in the county to be used by the youth court and support staff.
(2)(a)(i) The formula developed by the Administrative Office of Courts for providing youth court support funds shall be devised so as to distribute appropriated funds proportional to caseload and other appropriate factors as set forth in regulations promulgated by the Administrative Office of Courts. The formula will determine a reasonable maximum amount per judge or referee per annum that will not be exceeded in allocating funds under this section.

(ii) The formula shall be reviewed by the Administrative Office of Courts every two (2) years to ensure that the youth court support funds provided herein are proportional to each youth court's caseload and other specified factors.
(iii) The Administrative Office of Courts shall have wide latitude in the first two-year cycle to implement a formula designed to maximize caseload data collection.
(b) Application to receive funds under this section shall be submitted in accordance with procedures established by the Administrative Office of Courts.
(c) Approval of the use of any of the youth court support funds distributed under this section shall be made by the Administrative Office of Courts in accordance with procedures established by the Administrative Office of Courts.
(3)(a) There is created in the State Treasury a special fund to be designated as the "Youth Court Support Fund," which shall consist of funds appropriated or otherwise made available by the Legislature in any manner and funds from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be distributed to the youth courts by the Administrative Office of Courts for the purposes described in this section.
(b)(i) During the regular legislative session held in calendar year 2007, the Legislature may appropriate an amount not to exceed Two Million Five Hundred Thousand Dollars ($2,500.000.00) to the Youth Court Support Fund.
(ii) During each regular legislative session subsequent to the 2007 Regular Session, the Legislature shall appropriate Two Million Five Hundred Thousand Dollars ($2,500,000.00) to the Youth Court Support Fund.
(c) No youth court judge or youth court referee shall be eligible to receive funding from the Youth Court Support Fund who has not received annual continuing education in the field of juvenile justice in an amount to conform with the requirements of the Rules and Regulations for Mandatory Continuing Judicial Education promulgated by the Supreme Court. The Administrative Office of Courts shall maintain records of all referees and youth court judges regarding such training and shall not disburse funds to any county or municipality for the budget of a youth court judge or referee who is not in compliance with the judicial training requirements.
(4) Any recipient of funds from the Youth Court Support Fund shall not be eligible for continuing disbursement of funds if the recipient is not in compliance with the terms, conditions and reporting requirements set forth in the procedures promulgated by the Administrative Office of Courts.

- **Tony Gobar Individualized Assessment and Comprehensive Community Intervention Initiative (IACCII)**

**§ 43–21–803**

(1) There is established the Tony Gobar Individualized Assessment and Comprehensive Community Intervention Initiative (IACCII) Program for the purposes of:

(a)(i) Providing comprehensive strength-based needs assessments, individualized treatment plans and community-based services for certain youth who would otherwise be committed to the training schools. The IACCII ensures that youth and their families can access necessary services available in their home communities; and
(ii) Providing grants to faith-based organizations and nonprofit 501(c)(3) organizations that develop and operate community-based alternatives to the training schools and detention centers. In order to be eligible for a grant under this paragraph, a faith-based or nonprofit 501(c)(3) organization in cooperation with a youth court must develop and operate a juvenile justice alternative sanction designed for delinquent youths. The program must be designed to decrease reliance on commitment in juvenile detention facilities and training schools.
(b) Programs established pursuant to this subsection must not duplicate existing programs or services and must incorporate best practices principles and positive behavioral interventions. The Department of Human Services shall have sole authority and power to determine the programs to be funded pursuant to this section.
(2) A faith-based or nonprofit 501(c)(3) must submit an application to the Department of Human Services. The application must include a description of the purpose for which assistance is requested, the amount of assistance requested and any other information required by the Department of Human Services.
(3) The Department of Human Services shall have all powers necessary to implement and administer the program established under this section, and the department shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this section.
(4)(a) There is created in the State Treasury a special fund to be designated as the "Tony Gobar IACCII Fund," which shall consist of funds appropriated or otherwise made available by the Legislature in any manner and funds from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be used by the Division of Youth Services for the purposes described in this section.
(b)(i) During the regular legislative session held in calendar year 2007, the Legislature may appropriate an amount not to exceed Two Million Five Hundred Thousand Dollars ($2,500,000.00) to the Tony Gobar IACCII Fund.
(ii) During each regular legislative session subsequent to the 2007 Regular Session, the Legislature shall appropriate Two Million Five Hundred Thousand Dollars ($2,500,000.00) to the Tony Gobar IACCII Fund.

# *CHAPTER 15*

# *LEGAL RESEARCH SOURCES*

***1500 WEBSITES***

***1501 PUBLICATIONS***

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## *1500 WEBSITES*

**American Bar Association–Center on Children and the Law:** 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."

**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 Institute:** 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. CAI's academic component trains law students and attorneys to be effective child advocates."

**Coalition for Juvenile Justice:** juvjustice.org

"The Coalition for Juvenile Justice (CJJ) envisions a nation where fewer children are at risk of delinquency; and if they are at risk or involved with the justice system, they and their families receive every possible opportunity to live safe, healthy and fulfilling lives. CJJ is a nationwide coalition of State Advisory Groups (SAGs) and allies dedicated to preventing children and youth from becoming involved in the courts and upholding the highest standards of care when youth are charged with wrongdoing and enter the justice system."

**Drug Abuse Resistance Education Program (D.A.R.E.):** www.darems.com

"D.A.R.E. is a police officer-led series of classroom lessons that teaches children from kindergarten through 12th grade how to resist peer pressure and live productive drug and violence-free lives."

**First Star:** 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:** courts.ms.gov/aoc

"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 Attorney General's Office:** http://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:** mde.k12.ms.us

"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:** 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:** 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:** 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:** ssrc.msstate.edu/mskidscount/

"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. MS KIDS COUNT is funded, in part, by the Annie E. Casey Foundation."

**Mississippi State Legislature:** 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):**
courts.ms.gov/youthcourt_mycids/youthcourt_mycids

"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 Drug Court Professionals:** nadcp.org

"The National Association of Drug Court Professionals (NADCP) is a national non-profit 501(c)(3) corporation founded in 1994 by pioneers from the first twelve Drug Courts in the nation. This extraordinary group of innovative judges, prosecutors, defense attorneys, and clinical professionals created a common-sense approach to improving the justice system by using a combination of judicial monitoring and effective treatment to compel drug-using offenders to change their lives."

**National Association of Youth Courts, Inc.:** 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:** 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:** 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 Judicial College:** 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:**
ojp.usdoj.gov/about/offices/ojjdp

"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. The office also supports many research, program, and training initiatives; develops priorities and goals and sets policies to guide juvenile justice issues; disseminates information about juvenile justice issues; and awards funds to states to support local programming nationwide."

**Office of Justice Programs (OJP):** www.ojp.usdoj.gov/index.htm

"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."

**State of Mississippi Judiciary:** 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:**
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."

## *1501 PUBLICATIONS*

Institute of Judicial Administration–American Bar Association, *Juvenile Justice Standards Annotated* (1996).

National Council of Juvenile and Family Court Judges*, Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (2000).

National Council of Juvenile and Family Court Judges*, Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (1995).

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

*APPENDIX*

*DIAGRAMS AND FLOWCHARTS*

**Bifurcated Transfer Hearing (Delinquency)**

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**Intake (Delinquency)**

**Informal Adjustment Process (Delinquency)**

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**Civil Commitments**

**Truancy**

**Sanctions**

**Records Involving Children**

**Appeals**

# *Bifurcated Transfer Hearing (Delinquency)*

*INITIATING THE TRANSFER*

A motion to transfer must be filed prior to the adjudicatory hearing, but within 10 days of the petition. The summons (with an attached copy of the motion and petition) is then served. The youth court may order a transfer study, which is to be made available to the child's counsel.

*CONDUCTING THE BIFURCATED HEARING*

*First:*

A hearing is conducted to determine whether there is probable cause to believe that the child committed the alleged offense.

*Second:*

A separate and distinct hearing is then conducted pursuant to § 43-21-157(5) to determine whether by clear and convincing evidence there are no reasonable prospects for rehabilitation.

*TRANSFER ORDER AND REVIEW*

If the cause is transferred to a criminal court, the youth court must enter a transfer order pursuant to § 43-21-157(6). Upon motion, the circuit court may review the transfer proceedings to determine if there was substantial evidence to support the transfer.

*See U.R.Y.C.P. 23; § 43-21-157.*

# *Guardian Ad Litem*

*WHEN TO APPOINT*

A guardian ad litem is to be appointed if:

- the child has no parent, guardian or custodian,
- the court cannot acquire jurisdiction over a parent, guardian, or custodian,
- the parent is a minor or of unsound mind,
- the parent is indifferent to the child's interests or has conflicting interests,
- the case involves abuse or neglect, or
- the court finds that the appointment is in the best interest of the child.

AOC maintains a roll of all attorneys and laypersons eligible for appointment as a guardian ad litem.

The guardian ad litem must be given a reasonable time to become familiar with the matter, consult with counsel, and prepare the cause.

*DUTIES*

Guardians ad litem, through the direction and oversight of the court, must:

- protect the best interest of the child,
- investigate the cause,
- enter reports, and
- make recommendations.

Additionally, they must inform the parties that their role is to act as an arm of the court and not as the parties' attorney, and that any statements made to them affecting the health, safety, or welfare of the child will be reported to the court.

Guardians ad litem are entitled to a reasonable fee pursuant to § 43-21-121(6).

If the recommendations of the guardian ad litem are not followed, the judge must state the reasons why in the record.

If there is a conflict between the child's preferences and the guardian ad litem's recommendation, the court must retain the guardian ad litem to represent the best interests of the child and appoint an attorney to represent the child's preferences.

*See U.R.Y.C.P. 13; § 43-21-121.*

# *Intake (Delinquency)*

*REPORTS TO INTAKE*

When a written report is filed with the intake unit alleging facts of delinquency, the court must assign it a permanent number according to AOC standards, to wit:

- the Uniform Youth Court Case Identification and Docket Numbering System, and
- the Uniform Youth Court Case Tracking System and Form.

After receiving a report, the intake unit must promptly make a preliminary inquiry pursuant to § 43-21-357.

**THE INTAKE UNIT MAY REQUEST, OR THE COURT MAY ORDER, THE DIVISION OF YOUTH SERVICES TO MAKE AN INVESTIGATION CONCERNING THE CHILD OR OTHER CHILDREN IN THE SAME ENVIRONMENT.**

*INTAKE RECOMMENDATIONS*

After the screening process, the intake unit must recommend:

- no action be taken,
- the informal adjustment process,
- that the child be warned or counseled informally,
- the youth court drug court, or
- the matter be referred to the youth court prosecutor for consideration of initiating formal proceedings.

The court then orders whatever action it deems in the best interest of the child and in the interest of justice, including any necessary emergency medical treatment.

*See U.R.Y.C.P. 8 and 9; §§ 43-21-115, -123, -351, -357 and -403 to -407.*

# *Informal Adjustment Process (Delinquency)*

*COMMENCING AN INFORMAL ADJUSTMENT*

The court may order the Division of Youth Services, or other appointed intake unit, to conduct the informal adjustment process for a delinquent child after the intake unit has completed its screening process and made its recommendations to the court. Such an order is allowable even after the filing of a petition.

**NO INFORMAL ADJUSTMENT PROCESS MAY COMMENCE EXCEPT UPON AN ORDER OF THE COURT.**

*INFORMAL ADJUSTMENT CONFERENCE*

The informal adjustment counselor initiates the process by conducting a conference pursuant to § 43-21-405, which includes:

- informing the parties of their rights,
- informing the parties of information and procedures applicable to the process, and
- discussing recommendations for actions or conduct to correct the existing behavior or environment.

A written agreement is then signed by the informal adjustment counselor and the parties.

To participate the child and the parent, guardian, or custodian must waive speedy trial.

**AN INFORMAL ADJUSTMENT PROCESS MAY NOT CONTINUE BEYOND 6 MONTHS. BUT PRIOR TO ITS EXPIRATION THE COURT MAY GRANT AN EXTENSION FOR 6 MONTHS.**

*IF SATISFACTORILY COMPLETED*

The informal adjustment process is terminated without further proceedings if the parties:

- have complied with the terms and conditions of the agreement, and
- have received the maximum benefit of the informal adjustment process.

Such dismissal must be reported to the court.

*IF NOT SATISFACTORILY COMPLETED*

The informal adjustment process is terminated, which is then followed by:

- the filing of a petition, or
- reinitiating the intake procedure.

Such does not preclude reinitiating the informal adjustment process.

*See U.R.Y.C.P. 8 and 9; §§ 43-21-401 to -407.*

# *Taking Into Custody (Delinquency)*

*CUSTODY ORDERS*

A judge or designee may issue an order to take into custody a child for a period not to exceed 48 hours, excluding Saturdays, Sundays, and statutory state holidays, upon a finding that there is:

- probable cause that the child is within the jurisdiction of the youth court, and
- probable cause that custody is necessary.

The custody order may be written or oral, but if oral it must be reduced to writing within 48 hours. Probable cause shall not be based solely upon a parent's positive test for marijuana--there must be an evidence based finding that its use caused harm to the child or an inability to provide care and supervision.

*ORDER REQUIREMENTS*

Unless an exception applies, custody orders must:

- specify the name and address of the child,
- specify the age of the child,
- state that the child is to be brought before the court or other place as designated in the order,
- state the date issued and the youth court by which the order was issued, and
- be signed by the judge or designee.

After the child is ordered into custody, the court may:

- arrange for custody with a private institution or caring agency,
- commit the child to DMH pursuant to § 41-21-61 et seq., or
- order DHS to provide for custody, care and maintenance.

**CUSTODIAL REQUIREMENTS**

**Custody must comply with:**

- **U.R.Y.C.P. 11(a)(3),**
- **§ 43-21-315, and**
- **Federal laws and regulations that impact funding.**

**Interviews or interrogations are allowed only pursuant to § 43-21-311(4).**

*See U.R.Y.C.P. 7, 11, and 17; §§ 43-21-301, -303, -307, -311, and -315.*

# *Detention Hearings (Delinquency)*

*DETENTION PROCEEDINGS*

A child taken into custody may be held for longer than temporary custody if, pursuant to U.R.Y.C.P. 16, the following procedures are followed:

- a written report, complaint, or petition is filed,
- reasonable oral or written notice of the time, place, and purpose of the hearing is given,
- all parties are afforded the right to present evidence and to cross-examine, and
- there is a probable cause finding as to jurisdiction and 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.

*IF CUSTODY IS ORDERED*

If the court orders custody:

- a petition must be filed, and
- the custody requirements of § 43-21-301 must be met.

The child with advice of counsel may waive in writing the time of the detention hearing or the detention hearing itself.

Factors that may be considered:

- the child's family ties and relationships;
- the child's prior delinquency record;
- the violent nature of the alleged offense;
- the child's prior history of committing acts that resulted in bodily injury to others;
- the child's character and mental condition;
- the court's ability to supervise the child if placed with a parent or relative;
- the child's ties to the community;
- the risk of nonappearance;
- the danger to the child or public if the child is released;
- another petition is pending against the child;
- the home conditions of the child; and
- a violation of a valid court order.

*See U.R.Y.C.P. 16; §§ 43-21-301 and 309.*

# *Petition (Delinquency)*

*FILING THE PETITION*

The petition of delinquency is filed:

- within 5 days from the date of the detention hearing continuing custody, or
- in non-custody cases, unless another period of time is authorized by the court, within 10 days of the court's referral of the matter to the youth court prosecutor for consideration of initiating formal proceedings.

The court may dismiss the petition for failing to comply with this time schedule.

*CONTENTS*

The petition must state:

- the child's name, birth date, sex and residence,
- the name and residence of the child's parents, guardian or custodian, or if not known, the child's nearest relative,
- facts as to jurisdiction and delinquency,
- the statute or ordinance violated,
- the adjudicatory relief sought, and
- the U.R.Y.C.P. 20(a)(4)(vi) notice to the parents, guardian, or custodian.

*See also* Monk v. State, 116 So. 2d 810 (Miss. 1960) ("The youth court is a court of statutory and limited jurisdiction, and the facts vesting jurisdiction should be shown affirmatively.").

Two or more offenses may be alleged in the same petition. But there must be a separate adjudication and disposition for each count admitted or proved, such to run concurrent or consecutive as ordered.

The petition may contain a motion to transfer. It may also be amended if there is good cause shown and no prejudice to the parties. No party is required to file a responsive pleading.

*See U.R.Y.C.P. 20; §§ 43-21-451 to -459.*

# *Adjudication Hearings (Delinquency)*

*FILING THE PETITION*

The petition of delinquency is filed:

- within 5 days from the date of the detention hearing continuing custody, or
- in non-custody cases, unless another period of time is authorized by the court, within 10 days of the court's referral of the matter to the youth court prosecutor for consideration of initiating formal proceedings.

The court may dismiss the petition for failing to comply with this time schedule.

*ISSUING SUMMONS*

The judge orders the clerk to issue an appearance summons for:

- the child,
- the persons with custody or control of the child,
- the parent or guardian if such person is not in custody or control of the child, and
- any other person the court deems necessary.

Unless there is a lawful waiver, the summons must be served not less than 3 days before the date of the adjudication hearing.

If the child is not in detention, the hearing is held within 90 days after the filing of the petition, unless for good cause or an accepted admission to the allegations.

If the child is in detention, the hearing is held as soon as possible but not later than 21 days after the child is first detained by the court unless there is a lawful postponement.

*ADJUDICATION HEARING PROCEDURES*

At the beginning of the adjudicatory hearing, the court must verify information and explain procedures and rights pursuant to U.R.Y.C.P. 24(a)(5).

- If the parties admit the allegations, the judge may accept the admission as set forth in U.R.Y.C.P 24(a)(2).
- If the parties deny the allegations, then an adjudicatory hearing is conducted pursuant to U.R.Y.C.P. 24(a)(4), (6), and (7). Proof is beyond a reasonable doubt. If proved, the judge enters an order adjudicating the child delinquent pursuant to U.R.Y.C.P. 25(a).

*See U.R.Y.C.P. 20, 22, 24, and 25; §§ 43-21-451, -501 to -507, and -551 to -561.*

# *Disposition Hearings (Delinquency)*

*SETTING THE DISPOSITION HEARING*

Following the adjudication of delinquency, the court immediately sets a time and place for the disposition hearing which is separate, distinct, and subsequent to the adjudication hearing.

If the child has been taken into custody, a disposition hearing must be held with 14 days unless good cause be shown for postponement.

*DISPOSITION HEARING PROCEDURES*

At the beginning of the disposition, the judge must inform the parties of the purpose of the hearing, which is then conducted pursuant to U.R.Y.C.P. 26(a)(2), (3), (5), and (6). After considering all the evidence and relevant factors, the court enters a disposition order pursuant to U.R.Y.C.P. 26(a)(7) and 27(a)(2).

*AUTHORIZED DISPOSITIONS*

The disposition order may include any of the alternatives set forth in § 43-21-605(1).

Additionally, the judge may order pursuant to U.R.Y.C.P. 27(a)(1)(i) through (viii):

- drug testing,
- special care needs,
- custodial support payments,
- counseling and parenting classes for parents or guardians if the child is placed in a state-supported training school,
- persons to abide by conduct that is reasonable and necessary for the welfare of the child,
- financially able parents to pay for court ordered medical examinations and treatment, reasonable attorney fees, court costs, and other expenses,
- custodial parents, guardians, or custodians to pay restitution or damages and to receive counseling, and
- enrollment or renrollment in school of a compulsory-school-age child.

*See U.R.Y.C.P. 26 and 27; §§ 43-21-601, -603, and -605.*

# *Intake*
# *(In Need of Supervision)*

*REPORTS TO INTAKE*

When a written report is filed with the intake unit alleging facts of a child in need of supervision, the court must assign it a permanent number according to AOC standards, to wit:

- the Uniform Youth Court Case Identification and Docket Numbering System, and
- the Uniform Youth Court Case Tracking System and Form.

After receiving a report, the intake unit must promptly make a preliminary inquiry pursuant to § 43-21-357.

**VALID COURT ORDER**

**Secure juvenile detention for a status offense must comply with U.R.Y.C.P. 10.**

**THE INTAKE UNIT MAY REQUEST, OR THE COURT MAY ORDER, THE DIVISION OF YOUTH SERVICES TO MAKE AN INVESTIGATION CONCERNING THE CHILD OR OTHER CHILDREN IN THE SAME ENVIRONMENT.**

*INTAKE RECOMMENDATIONS*

After the screening process, the intake unit must recommend:

- no action be taken,
- the informal adjustment process,
- that the child be warned or counseled informally,
- the youth court drug court, or
- the matter be referred to the youth court prosecutor for consideration of initiating formal proceedings.

The court then orders whatever action it deems in the best interest of the child and in the interest of justice, including any necessary emergency medical treatment.

*See U.R.Y.C.P. 8, 9, and 10; §§ 43-21-115, -123, -351, -357, and -403 to -407.*

# *Informal Adjustment Process (In Need of Supervision)*

*COMMENCING AN INFORMAL ADJUSTMENT*

The court may order the Division of Youth Services, or other appointed intake unit, to conduct the informal adjustment process for a child in need of supervision after the intake unit has completed its screening process and made its recommendations to the court. Such an order is allowable even after the filing of a petition.

**NO INFORMAL ADJUSTMENT PROCESS MAY COMMENCE EXCEPT UPON AN ORDER OF THE COURT.**

*INFORMAL ADJUSTMENT CONFERENCE*

The informal adjustment counselor initiates the process by conducting a conference pursuant to § 43-21-405, which includes:

- informing the parties of their rights,
- informing the parties of information and procedures applicable to the process, and
- discussing recommendations for actions or conduct to correct the existing behavior or environment.

A written agreement is then signed by the informal adjustment counselor and the parties.

To participate the child and the parent, guardian, or custodian must waive speedy trial.

**AN INFORMAL ADJUSTMENT PROCESS MAY NOT CONTINUE BEYOND 6 MONTHS. BUT PRIOR TO ITS EXPIRATION THE COURT MAY GRANT AN EXTENSION FOR 6 MONTHS.**

*IF SATISFACTORILY COMPLETED*

The informal adjustment process is terminated without further proceedings if the parties:

- have complied with the terms and conditions of the agreement, and
- have received the maximum benefit of the informal adjustment process.

Such dismissal must be reported to the court.

*IF NOT SATISFACTORILY COMPLETED*

The informal adjustment process is terminated, which is then followed by:

- the filing of a petition, or
- reinitiating the intake procedure.

Such does not preclude reinitiating the informal adjustment process.

*See U.R.Y.C.P. 8 and 9; §§ 43-21-401 to -407.*

# *Taking Into Custody (In Need of Supervision)*

*CUSTODY ORDERS*

A judge or designee may issue an order to take into custody a child for a period not to exceed 48 hours, excluding Saturdays, Sundays, and statutory state holidays, upon a finding that there is:

- probable cause that the child is within the jurisdiction of the youth court, and
- probable cause that custody is necessary.

The custody order may be written or oral, but if oral it must be reduced to writing within 48 hours. Probable cause shall not be based solely upon a parent's positive test for marijuana--there must be an evidence based finding that its use caused harm to the child or an inability to provide care and supervision.

*ORDER REQUIREMENTS*

Unless an exception applies, custody orders must:

- specify the name and address of the child,
- specify the age of the child,
- state that the child is to be brought before the court or other place as designated in the order,
- state the date issued and the youth court by which the order was issued, and
- be signed by the judge or designee.

After the child is ordered into custody, the court may:

- arrange for custody with a private institution or caring agency,
- commit the child to DMH pursuant to § 41-21-61 et seq., or
- order DHS to provide for custody, care and maintenance.

**VALID COURT ORDER**

**Secure juvenile detention for a status offense must comply with U.R.Y.C.P. 10.**

**CUSTODIAL REQUIREMENTS**

**Custody must comply with:**

- **U.R.Y.C.P. 11(a)(3),**
- **§ 43-21-315, and**
- **Federal laws and regulations that impact funding.**

**Interviews or interrogations are allowed only pursuant to § 43-21-311(4).**

*See U.R.Y.C.P. 7, 10, 11, and 17; §§ 43-21-301, -303, -307, -311, and -315.*

# *Detention Hearings (In Need of Supervision)*

*DETENTION PROCEEDINGS*

A child taken into custody may be held for longer than temporary custody if, pursuant to U.R.Y.C.P. 16, the following procedures are followed:

- a written report, complaint, or petition is filed,
- reasonable oral or written notice of the time, place, and purpose of the hearing is given,
- all parties are afforded the right to present evidence and to cross-examine, and
- there is a probable cause finding as to jurisdiction and 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.

Factors that may be considered:

- the child's family ties and relationships;
- the child's prior delinquency record;
- the violent nature of the alleged offense;
- the child's prior history of committing acts that resulted in bodily injury to others;
- the child's character and mental condition;
- the court's ability to supervise the child if placed with a parent or relative;
- the child's ties to the community;
- the risk of nonappearance;
- the danger to the child or public if the child is released;
- another petition is pending against the child;
- the home conditions of the child; and
- a violation of a valid court order.

*IF CUSTODY IS ORDERED*

If the court orders custody:

- a petition must be filed, and
- the custody requirements of § 43-21-301 must be met.

The child with advice of counsel may waive in writing the time of the detention hearing or the detention hearing itself.

*See U.R.Y.C.P. 16; §§ 43-21-301 and -309.*

# Petition
# (In Need of Supervision)

*FILING THE PETITION*

The petition of a child in need of supervision is filed:

- within 5 days from the date of the detention hearing continuing custody, or
- in non-custody cases, unless another period of time is authorized by the court, within 10 days of the court's referral of the matter to the youth court prosecutor for consideration of initiating formal proceedings.

The court may dismiss the petition for failing to comply with this time schedule.

*CONTENTS*

The petition must state:

- the child's name, birth date, sex and residence,
- the name and residence of the child's parents, guardian or custodian, or if not known, the child's nearest relative,
- facts as to jurisdiction and the need of supervision,
- the adjudicatory relief sought, and
- the U.R.Y.C.P. 20(b)(4)(v) notice to the parents, guardian, or custodian.

*See also* Monk v. State, 116 So. 2d 810 (Miss. 1960) ("The youth court is a court of statutory and limited jurisdiction, and the facts vesting jurisdiction should be shown affirmatively.").

Two or more offenses may be alleged in the same petition. But there must be a separate adjudication and disposition for each count admitted or proved, such to run concurrent or consecutive as ordered.

The petition may be amended if there is good cause shown and no prejudice to the parties. No party is required to file a responsive pleading.

*See U.R.Y.C.P. 20; §§ 43-21-451 to -459.*

# *Adjudication Hearings (In Need of Supervision)*

*FILING THE PETITION*

The petition of a child in need of supervision is filed:

- within 5 days from the date of the detention hearing continuing non-secure placement custody, or
- in non-custody cases, unless another period of time is authorized by the court, within 10 days of the court's referral of the matter to the youth court prosecutor for consideration of initiating formal proceedings.

The court may dismiss the petition for failing to comply with this time schedule.

*ISSUING SUMMONS*

The judge orders the clerk to issue an appearance summons for:

- the child,
- the persons with custody or control of the child,
- the parent or guardian if such person is not in custody or control of the child, and
- any other person the court deems necessary.

Unless there is a lawful waiver, the summons must be served not less than 3 days before the date of the adjudication hearing.

If the child is not in detention, the hearing is held within 90 days after the filing of the petition, unless for good cause or an accepted admission to the allegations.

If the child is in detention, the hearing is held as soon as possible but not later than 21 days after the child is first detained by the court unless there is a lawful postponement.

*ADJUDICATION HEARING PROCEDURES*

At the beginning of the adjudicatory hearing, the court must verify information and explain procedures and rights pursuant to U.R.Y.C.P. 24(a)(5).

- If the parties admit the allegations, the judge may accept the admission as set forth in U.R.Y.C.P 24(a)(2).
- If the parties deny the allegations, then an adjudicatory hearing is conducted pursuant to U.R.Y.C.P. 24(a)(4), (6), and (7). Proof is beyond a reasonable doubt. If proved, the judge enters an order adjudicating the child in need of supervision pursuant to U.R.Y.C.P. 25(a).

*See U.R.Y.C.P. 20, 22, 24, and 25; §§ 43-21-451, -501 to -507, and -551 to -561.*

# *Disposition Hearings (In Need of Supervision)*

*SETTING THE DISPOSITION HEARING*

Following the adjudication of child in need of supervision, the court immediately sets a time and place for the disposition hearing which is separate, distinct, and subsequent to the adjudication hearing.

If the child has been taken into custody, a disposition hearing must be held with 14 days unless good cause be shown for postponement.

*DISPOSITION HEARING PROCEDURES*

At the beginning of the disposition, the judge must inform the parties of the purpose of the hearing, which is then conducted pursuant to U.R.Y.C.P. 26(b)(2), (3), (5), and (6). After considering all the evidence and relevant factors, the court enters a disposition order pursuant to U.R.Y.C.P. 26(b)(7) and 27(b)(2).

*AUTHORIZED DISPOSITIONS*

The disposition order may include any of the alternatives set forth in § 43-21-607(1).

Additionally, the judge may order pursuant to U.R.Y.C.P. 27(b)(1)(i) through (vi):

- drug testing,
- special care needs,
- custodial support payments,
- financially able parents to pay for court ordered medical examinations and treatment, reasonable attorney fees, court costs, and other expenses,
- custodial parents, guardians, or custodians to pay restitution or damages and to receive counseling, and
- enrollment or renrollment in school of a compulsory-school-age child.

*See U.R.Y.C.P. 26 and 27; §§ 43-21-601, -603, and -607.*

# Reporting Abuse and Neglect

*REASONABLE CAUSE TO SUSPECT*

Persons with reasonable cause to suspect child abuse or neglect must report that information to the appropriate authorities, and then submit a follow-up written report to DHS.

*DHS TO ACT ON REPORT*

After receiving a report of abuse or neglect, DHS must:

- make an immediate referral to the youth court intake unit, and
- if the report involves abuse, notify the youth court clerk and the youth court prosecutor within 72 hours.

If the report concerns sexual abuse or physical abuse causing serious bodily harm or abuse that is a felony under state or federal law:

- DHS must immediately notify the proper law enforcement agency,
- DHS and the law enforcement agency must immediately investigate the reported abuse, and
- DHS and the law enforcement agency must file, within 24 hours, a preliminary report with the prosecutor's office.

If the report is an out-of-home setting:

- DHS must notify the proper law enforcement agency,
- DHS and the law enforcement agency must investigate the reported abuse, and
- the law enforcement agency must file, within 48 hours, a preliminary report with the prosecutor's office.

For a licensed facility, DHS must also refer the case to the appropriate licensing agency for investigation and report.

*IDENTIFICATION AND DOCKET NUMBER*

After receiving a report of abuse or neglect, the youth court intake unit must assign the case in accordance with:

- the Uniform Youth Court Case Identification and Docket Numbering System, and
- the Uniform Youth Court Case Tracking System and Form.

After an intake screening process has been conducted, the youth court intake must make its recommendations pursuant to U.R.Y.C.P. 8(b).

*See U.R.Y.C.P. 8; §§ 43-21-351 to -357.*

# *Intake (Abuse and Neglect)*

*REPORTS TO INTAKE*

When a written report is filed with the intake unit alleging facts of abuse or neglect, the court must assign it a permanent number according to AOC standards, to wit:

- the Uniform Youth Court Case Identification and Docket Numbering System, and
- the Uniform Youth Court Case Tracking System and Form.

After receiving a report, the intake unit must promptly make a preliminary inquiry pursuant to § 43-21-357.

**WHEN A REPORT IS RECEIVED, THE DIVISION OF FAMILY AND CHILDREN'S SERVICES, OR OTHER APPOINTED INTAKE UNIT, MUST MAKE AN INVESTIGATION CONCERNING THE CHILD AND ANY OTHER CHILDREN IN THE SAME ENVIRONMENT AND THEN PROMPTLY REPORT ITS FINDINGS.**

*INTAKE RECOMMENDATIONS*

After the screening process, the intake unit must recommend:

- no action be taken,
- the informal adjustment process,
- DHS to monitor the child, family, and other children in the same environment,
- that the parents be warned or counseled informally, or
- the matter be referred to the youth court prosecutor for consideration of initiating formal proceedings.

The court then orders whatever action it deems in the best interest of the child and in the interest of justice, including any necessary emergency medical treatment. DHS should conduct a background check and home study prior to making a temporary placement of a child within its custody.

*See U.R.Y.C.P. 8 and 9; §§ 43-21-115, -123, -351, -357, and -403 to -407.*

# *Informal Adjustment Process (Abuse and Neglect)*

*COMMENCING AN INFORMAL ADJUSTMENT*

The court may order the Division of Family and Children's Services to conduct the informal adjustment process for an abused or neglected child after the intake unit has completed its screening process and made its recommendations to the court. Such an order is allowable even after the filing of a petition.

**NO INFORMAL ADJUSTMENT PROCESS MAY COMMENCE EXCEPT UPON AN ORDER OF THE COURT.**

*INFORMAL ADJUSTMENT CONFERENCE*

The informal adjustment counselor initiates the process by conducting a conference pursuant to § 43-21-405, which includes:

- informing the parties of their rights,
- informing the parties of information and procedures applicable to the process, and
- discussing recommendations for actions or conduct to correct the existing behavior or environment.

A written agreement is then signed by the informal adjustment counselor and the parties.

To participate the child and the parent, guardian, or custodian must waive speedy trial. Also, DHS should conduct a background check and home study prior to any temporary placement.

**AN INFORMAL ADJUSTMENT PROCESS MAY NOT CONTINUE BEYOND 6 MONTHS. BUT PRIOR TO ITS EXPIRATION THE COURT MAY GRANT AN EXTENSION FOR 6 MONTHS.**

*IF SATISFACTORILY COMPLETED*

The informal adjustment process is terminated without further proceedings if the parties:

- have complied with the terms and conditions of the agreement, and
- have received the maximum benefit of the informal adjustment process.

Such dismissal must be reported to the court.

*IF NOT SATISFACTORILY COMPLETED*

The informal adjustment process is terminated, which is then followed by:

- the filing of a petition, or
- reinitiating the intake procedure.

Such does not preclude reinitiating the informal adjustment process.

*See U.R.Y.C.P. 8 and 9; §§ 43-21-401 to -407.*

# *Taking Into Custody (Abuse and Neglect)*

*CUSTODY ORDERS*

A judge or designee may issue an order to take into custody a child for a period not to exceed 48 hours, excluding Saturdays, Sundays, and statutory state holidays, upon a finding that there is:

- probable cause that the child is within the jurisdiction of the youth court, and
- probable cause that custody is necessary.

The custody order may be written or oral, but if oral it must be reduced to writing within 48 hours. Probable cause shall not be based solely upon a parent's positive test for marijuana--there must be an evidence based finding that its use caused harm to the child or an inability to provide care and supervision.

*ORDER REQUIREMENTS*

Unless an exception applies, custody orders must:

- specify the name and address of the child,
- specify the age of the child,
- specify why the child's residing at home is contrary to the welfare of the child,
- specify what reasonable efforts were made to maintain the child at home and that there was no reasonable alternative to custody,
- state that the child is to be brought before the court or other place as designated in the order,
- state the date issued and the youth court by which the order was issued, and
- be signed by the judge or designee.

After the child is ordered into custody, the court may:

- arrange for custody with a private institution or caring agency,
- commit the child to DMH pursuant to § 41-21-61 et seq., or
- order DHS to provide for custody, care and maintenance.

**CUSTODIAL REQUIREMENTS**

**Custody must comply with:**

- **U.R.Y.C.P. 11(b)(2),**
- **§§ 43-21-311(4) and -315, and**
- **Federal laws and regulations that impact funding.**

**Except for placement under the foster child relative licensing process, any foster care setting must licensed or approved by DHS.**

*See U.R.Y.C.P. 7 and 11; §§ 43-21-301, -307, -311 and -315.*

# *Shelter Hearings (Abuse and Neglect)*

*SHELTER PROCEEDINGS*

A child taken into custody may be held for longer than temporary custody if, pursuant to U.R.Y.C.P. 16, the following procedures are followed:

- a written report, complaint, or petition is filed,
- reasonable oral or written notice of the time, place, and purpose of the hearing is given,
- all parties are afforded the right to present evidence and to cross-examine,
- there is a probable cause finding as to jurisdiction and that custody is necessary, and
- the court makes the "contrary to the welfare" and 'reasonable efforts" findings required by U.R.Y.C.P. 16(b)(4)(iii).

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.

Factors that may be considered:

- the child's family ties and relationships;
- the child's character and mental condition;
- the court's ability to supervise the child if placed with a parent or relative;
- the child's ties to the community;
- the danger to the child or public if the child is released; and
- the home conditions of the child.

*IF CUSTODY IS ORDERED*

If the court orders custody:

- a petition must be filed, and
- the custody requirements of § 43-21-301 must be met.

The child's guardian ad litem, and parent, guardian or custodian, 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.

*See U.R.Y.C.P. 16; §§ 43-21-301 and 309.*

# *Petition (Abuse and Neglect)*

*FILING THE PETITION*

The petition of abuse or neglect is filed:

- within 5 days from the date of the shelter hearing continuing custody, or
- in non-custody cases, within 10 days of the court order authorizing the filing of the petition.

The court may dismiss the petition for failing to comply with this time schedule.

*CONTENTS*

The petition must state:

- the child's name, birth date, sex and residence,
- the name and residence of the child's parents, guardian or custodian, or if not known, the child's nearest relative,
- facts as to jurisdiction and abuse or neglect,
- the adjudicatory relief sought, and
- the U.R.Y.C.P. 20(c)(4)(v) notice to the parents, guardian, or custodian.

*See also* Monk v. State, 116 So. 2d 810 (Miss. 1960) ("The youth court is a court of statutory and limited jurisdiction, and the facts vesting jurisdiction should be shown affirmatively.").

The court may order that 2 or more children be the subject of the same petition if the children are siblings and the neglect or abuse is from a common source. But there must be a separate adjudication and disposition for each charge admitted or proved.

The petition may be amended if there is good cause shown and no prejudice to the parties. No party is required to file a responsive pleading.

*See U.R.Y.C.P. 20; §§ 43-21-451 to -459.*

# *Adjudication Hearings (Abuse and Neglect)*

*FILING THE PETITION*

The petition of abuse or neglect is filed:

- within 5 days from the date of the shelter hearing continuing custody, or
- in non-custody cases, unless another period of time is authorized by the court, within 10 days of the court's referral of the matter to the youth court prosecutor for consideration of initiating formal proceedings.

The court may dismiss the petition for failing to comply with this time schedule.

*ISSUING SUMMONS*

The judge orders the clerk to issue an appearance summons for:

- the child,
- the persons with custody or control of the child,
- the parent or guardian if such person is not in custody or control of the child, and
- any other person the court deems necessary.

Unless there is a lawful waiver, the summons must be served not less than 3 days before the date of the adjudication hearing.

If the child is not in shelter, the hearing is held within 90 days after the filing of the petition, unless for good cause or an accepted admission to the allegations.

If the child is in shelter, the hearing is held as soon as possible but not later than 30 days after the child is first taken into custody unless there is a lawful postponement.

*ADJUDICATION HEARING PROCEDURES*

At the beginning of the adjudicatory hearing, the court must verify information and explain procedures and rights pursuant to U.R.Y.C.P. 24(b)(4).

- If the parties admit the allegations, the judge may accept the admission as set forth in U.R.Y.C.P 24(b)(2).
- If the parties deny the allegations, then an adjudicatory hearing is conducted pursuant to U.R.Y.C.P. 24(b)(3), (5), and (6). Proof is by a preponderance of the evidence. If proved, the judge enters an order adjudicating the child an abuse or neglected child pursuant to U.R.Y.C.P. 25(b).

*See U.R.Y.C.P. 20, 22, 24, and 25; §§ 43-21-451, -501 to -507, and -551 to -561.*

# *Disposition Hearings (Abuse and Neglect)*

*SETTING THE DISPOSITION HEARING*

Following the adjudication of abuse or neglect, the court immediately sets a time and place for the disposition hearing which is separate, distinct, and subsequent to the adjudication hearing.

If the child has been taken into custody, a disposition hearing must be held with 14 days unless good cause be shown for postponement.

*DISPOSITION HEARING PROCEDURES*

At the beginning of the disposition, the judge must inform the parties of the purpose of the hearing, which is then conducted pursuant to U.R.Y.C.P. 26(c)(2), (3), (5), and (6). After considering all the evidence and relevant factors, the court enters a disposition order pursuant to U.R.Y.C.P. 26(c)(7) and 27(c)(2).

*AUTHORIZED DISPOSITIONS*

The disposition order may include any of the alternatives set forth in § 43-21-609.

Additionally, the judge may order pursuant to U.R.Y.C.P. 27(c)(1)(i) through (vi):

- special care needs,
- custodial support payments,
- persons to abide by conduct that is reasonable and necessary for the welfare of the child,
- financially able parents to pay for court ordered medical examinations and treatment, reasonable attorney fees, court costs, and other expenses, and
- enrollment or renrollment in school of a compulsory-school-age child.

Disposition orders must comply, as applicable, with the requirements of §§ 43-21-603(7) and 43-21-609(f) and (g).

*See U.R.Y.C.P. 26 and 27; §§ 43-21-601, -603, and -609.*

# *Permanency Hearings (Abuse and Neglect)*

*TIME OF HEARING*

To be conducted within 30 days if there is a finding that reasonable efforts to maintain the child within the home are not required. Otherwise, within 6 months after the earlier of:

- the adjudication of abuse or neglect, or
- the removal of the child from the home.

An extension may be granted for extraordinary and compelling reasons.

*ISSUING SUMMONS*

The judge orders the clerk to issue an appearance summons pursuant to U.R.Y.C.P. 29(b). In no event shall summons issue to a parent whose parental rights have been terminated.

**REASONABLE EFFORTS FINDINGS ARE REQUIRED UNTIL THE PERMANENCY PLAN OR CONCURRENT PLAN IS ACHIEVED**

*CONDUCT OF HEARING*

At the hearing, the judge determines by examining the submitted written report and other statements whether the child should be:

- returned to the parent(s),
- placed with suitable relatives,
- referred for termination of parental rights and placed for adoption,
- placed for the purpose of establishing durable legal custody, or
- continued in foster care on a permanent or long-term basis because of the child's special needs or circumstances.

Additionally, unless not required under § 43-21-603, the court must make a finding as to whether reasonable efforts have been made to maintain the child in the home.

If the child is in an out-of-state placement, the court must determine whether that continues to be appropriate and in the best interest of the child.

The court may find that termination of parental rights is not in the child's best interest if:

- the child is being cared for by a relative, and/or
- DHS has documented compelling and extraordinary reasons against terminating parental rights.

*See U.R.Y.C.P. 29; §§ 43-21-603 and -613.*

# *Foster Care Review Hearings (Abuse and Neglect)*

*TIME AND PURPOSE*

To be conducted by DHS (or the court) once every 6 months after the child's initial forty-eight hour shelter hearing. Its purpose is to evaluate:

- extent of care and support by the parents,
- communications by the parents or guardian,
- compliance with the social service plan,
- methods for achieving permanency,
- social services that may be utilized for achieving permanency, and
- relevant testimony and recommendations pertaining to the case.

The review plan is then filed with the court to determine the degree of compliance with the child's social service plan.

**CONCURRENT PLANNING**

**DHS must conduct concurrent planning so that a permanent living arrangement may occur at the earliest opportunity.**

DHS may not change the child's foster care or relative care placement unless there's documentation to the court that the current placement is unsafe, unsuitable, or that another placement is in the child's best interest.

*FILING A PETITION FOR TERMINATION OF PARENTAL RIGHTS*

DHS must file a petition for termination of parental rights if the child has been in foster care for 15 of the last 22 months from the earlier of:

- the finding of abuse or neglect, or
- 60 days of the child's removal from the home.

Exceptions to this filing requirement apply if the child is being cared for by a relative or DHS has documented compelling and extraordinary reasons against terminating parental rights.

*See U.R.Y.C.P. 30; § 43-15-13.*

# *Permanency Review Hearings (Abuse and Neglect)*

*TIME AND PURPOSE*

To be conducted at least annually after each permanency hearing for as long as the child remains in the custody of DHS. At the hearing the court must determine the adequacy of the child's permanency plan and, as deemed in the best interest of the child, make appropriate modifications thereto.

*ISSUING SUMMONS*

The judge orders the clerk to issue an appearance summons pursuant to U.R.Y.C.P. 31(b). In no event shall summons issue to a parent whose parental rights have been terminated.

**REASONABLE EFFORTS FINDINGS ARE REQUIRED UNTIL THE PERMANENCY PLAN OR CONCURRENT PLAN IS ACHIEVED**

*CONDUCT OF HEARING*

At the hearing, the judge determines by examining the submitted written report and other statements whether the child should be:

- returned to the parent(s),
- placed with suitable relatives,
- referred for termination of parental rights and placed for adoption,
- placed for the purpose of establishing durable legal custody, or
- continued in foster care on a permanent or long-term basis because of the child's special needs or circumstances.

Additionally, unless not required under § 43-21-603, the court must make a finding as to whether reasonable efforts have been made to maintain the child in the home.

If the child is in an out-of-state placement, the court must determine whether that continues to be appropriate and in the best interest of the child.

The court may find that termination of parental rights is not in the child's best interest if:

- the child is being cared for by a relative, and/or
- DHS has documented compelling and extraordinary reasons against terminating parental rights.

*See U.R.Y.C.P. 31; §§ 43-21-603 and -613.*

# *Civil Commitments*

*PRE-EVALUTION SCREENING AND TREATMENT*

The youth court must order a pre-evaluation and screening if:

- DHS files an affidavit alleging the need of mental health services, and
- there is probable cause to support the allegations.

The affidavit must be filed in duplicate and include:

- the name and address of the child's nearest relatives, if known,
- the reason for the affidavit, and
- a specific factual description of the child's recent behavior.

*ORDERING A COMMITMENT HEARING*

The youth court must order a commitment hearing if it finds probable cause, based upon the physicians' and any psychologist's certificate and any other relevant evidence, that the child is in need of treatment. The hearing is to be conducted:

- within 7 days of the filing of the certificate, unless an extension is requested by the child's attorney;
- but no later than 10 days of the filing of the certificate.

Summons is issued pursuant to U.R.Y.C.P. 32(a)(5).

If the physicians, or the physician and psychologist, certify that the child is not in need of treatment, the youth court must dismiss the affidavit.

*COMMITMENT HEARING AND ORDER*

The commitment hearing is conducted pursuant to U.R.Y.C.P. 32(a)(6). The child is to be ordered committed only if there is clear and convincing evidence for the need of mental health services and less restrictive alternatives are found not suitable. The initial commitment may not exceed 3 months.

**PERMANENCY HEARINGS AND PERMANENCY REVIEW HEARINGS ARE NOT SUSPENDED WHEN A CHILD IS COMMITTED FOR TREATMENT.**

*See U.R.Y.C.P. 32; §§ 41-21-61 to -109.*

# *Truancy*

*REPORTING TRUANCY VIOLATIONS*

The school superintendent must report to the school attendance officer within 2 school days or 5 calendar days, whichever is less:

- a child not properly enrolled within 15 calendar days after the first day of school, or
- if properly enrolled, a child having 5 unlawful absences.

*FILING A REPORT WITH THE INTAKE UNIT*

The school attendance officer, after diligent but unsuccessful attempts to secure enrollment or attendance, must file a report with the youth court intake unit.

*CHINS ALLEGATIONS*

If the child is alleged a child in need of supervision, the intake procedures are conducted pursuant to U.R.Y.C.P. 8(a).

Proceedings thereafter follow those applicable to a child in need of supervision, except that adjudication and disposition hearings must be conducted no later than 21 days of the petition being filed.

*NEGLECT ALLEGATIONS*

If the child is alleged a neglected child, the intake procedures are conducted pursuant to U.R.Y.C.P. 8(b).

Proceedings thereafter follow those applicable to a neglected child, except that adjudication and disposition hearings must be conducted no later than 21 days of the petition being filed.

**WHO MAY SERVE SUMMONS**

**Person who may be appointed to serve summons in truancy cases include:**

- **sheriff or deputy sheriff,**
- **municipal law enforcement officer,**
- **constable,**
- **school attendance officer,**
- **school official,**
- **youth court counselor, or**
- **any other person deemed appropriate.**

*See U.R.Y.C.P. 33, §§ 37-13-89 and -91.*

# *Sanctions*

*GOVERNING LAWS*

*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.

*§ 43-21-153(2)*

Any person who wilfully violates, neglects or refuses to obey, perform or comply with any order of the youth court shall be in contempt of court and punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in jail not to exceed ninety (90) days, or by both such fine and imprisonment.

*DIRECT CONTEMPT* is an act done in the presence of the court that:

- requires an instantaneous response,
- but not specific charges, notice or a hearing.

Any judgment of guilt must specify the offending conduct.

*CONSTRUCTIVE CONTEMPT* is an act done beyond the presence of the court that:

- does not require an instantaneous response,
- but does require specific charges (i.e., an affidavit or information), notice and a hearing.

*CRIMINAL CONTEMPT* is to punish for past acts directed against the dignity and authority of the court. Burden of proof is beyond a reasonable doubt.

*CIVIL CONTEMPT* is to coerce compliance with a court order. Burden of proof is by a preponderance of the evidence.

*See U.R.Y.C.P. 38; § 43-21-153; Purvis v. Purvis, 657 So. 2d 794 (Miss. 1994); Vavaris v. State, 512 So. 2d 889 (Miss. 1987); Jordan v. State, 62 So. 2d 886 (Miss. 1953).*

# *Records Involving Children*

*CONFIDENTIAL RECORDS*

Records involving children must not be disclosed except as authorized by Mississippi's Youth Court Law or the Uniform Rules of Youth Court Practice.

These records include:

- youth court records (general docket, all papers and pleadings filed, all social records, the minute book, proceedings of the youth court and evidence, and all information obtained by the youth court from the AOC pursuant to a request under § 43-21-261(15));
- law enforcement records (all records involving children made and retained by law enforcement officers and agencies or the youth court prosecutor, including photographs and fingerprints);
- agency records (all records involving children, including valid and invalid complaints, maintained by the DHS or other state agency);
- other confidential records (all other documents maintained by a public agency relating to the apprehension, custody, adjudication, or disposition of the child).

*DISCLOSURE BY COURT ORDER*

The order must:

- comply with § 43-21-261,
- specify the person to whom the records may be disclosed,
- specify the extent of the records which may be disclosed,
- contain a finding that the disclosure is in the best interest of the child, the public safety or the functioning of the youth court.

*DISCLOSURE WITHOUT A COURT ORDER*

Certain records involving children may be disclosed without a court order pursuant to § 43-21-261(1) through (18) and, if applicable, § 43-21-623. Any records so disclosed are subject to the confidentiality requirements of § 43-21-261(2).

**SUBPOENA DUCES TECUM**

**U.R.Y.C.P. 6 must be followed whenever any court other than youth court issues a subpoena duces tecum for records involving children.**

*See U.R.Y.C.P. 5, 6, and 38; §§ 43-21-105, -251 to -267, -605(6) and -623.*

# Appeals

*FROM FINAL ORDERS OR DECREES*

Appeals from final orders or decrees shall be pursuant to the Mississippi Rules of Appellate Procedures.

- M.R.A.P. 3 (Appeal as of Right--How Taken).
- M.R.A.P. 4 (Appeal as of Right--When Taken).

Prepayment of the court costs and filing fees may be waived by filing an affidavit of indigency.

Only the initials of the child may appear on the record on appeal.

*STAY PENDING APPEAL*

M.R.A.P. 8 provides appellate procedures of a stay or injunction pending an appeal.

An appeal does not stay the enforcement of the youth court's disposition of the case unless supersedeas is specifically granted by either the youth court or the appellate court on review.

*See § 43-21-651(2); In re G.L.H., 843 So. 2d 109 (Miss. Ct. App. 2003).*

*STANDARDS OF REVIEW*

Delinquency: No reversal "unless, considering all of the evidence before the youth court in the light most favorable to the State, reasonable persons could not have found beyond a reasonable doubt that the child committed the delinquent act." *In re L.M., 600 So. 2d 967 (Miss. 1992).*

Abuse and neglect: No reversal "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." *In re M.R.L., 488 So. 2d 788 (Miss. 1986).*

*See U.R.Y.C.P. 37; § 43-21-651.*