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Chapter No. 493
15/HR40/R1531SG
EW Gobi

HOUSE BILL NO. 959

Originated in House _____ Clerk

HOUSE BILL NO. 959

AN ACT TO AMEND SECTION 43-21-121, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT WHEN A COUNTY COURT IS SERVING AS A YOUTH COURT THEN THE COUNTY COURT MAY APPOINT A SUITABLE ATTORNEY OR LAYMAN AS A GUARDIAN AD LITEM; TO CREATE NEW SECTION 99-43-101, MISSISSIPPI CODE OF 1972, TO ENACT CHILD WITNESS STANDARDS OF PROTECTION IN ORDER TO GRANT APPROPRIATE ACCOMMODATIONS TO CHILDREN TESTIFYING IN COURT TO LESSEN THE EFFECT OF MENTAL AND EMOTIONAL SUFFERING UPON THE CHILD AND TO ENSURE AN ENVIRONMENT IN THE LEGAL OR CRIMINAL PROCEEDING THAT IS CONDUCIVE TO THE SEARCH FOR THE TRUTH; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 43-21-121, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

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

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

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

(4) The court<u>, including a county court serving as a youth court,</u> may appoint either a suitable attorney or a suitable layman

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

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

(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.

(7) 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.

SECTION 2. The following shall be codified as Section 99-43-101, Mississippi Code of 1972:

99-43-101. (1) The following terms have the meanings ascribed:

(a) "Child" means any individual under the age of eighteen (18) years of age who must testify in any legal or criminal proceeding.

(b) "Proceeding," "criminal proceeding" or "legal proceeding" means:

(i) Any criminal hearing, criminal trial or other criminal proceeding in the circuit or county court in which a child testifies as a victim of a crime or as a witness as to a material issue; or

(ii) A youth court proceeding in which a child testifies as a victim of a crime or delinquent act or as a witness to a crime or delinquent act.

(2) In any proceeding in which a child testifies, a child shall have the following rights to be enforced by the court on its own motion or upon motion or notice of an attorney in the proceeding:

(a) To be asked questions in a manner a child of that age can reasonably understand, including, but not limited to, a child-friendly oath.

(b) To be free of nuisance, vexatious or harassment tactics in the proceeding.

(c) To have present in the courtroom and in a position clearly visible in close proximity to the child, a support person, if the support person is not a witness in the proceeding.

(d) To have the courtroom or the hearing room adjusted to ensure the comfort and protection of the child.

(e) To have the relaxation of the formalities of the proceedings in an effort to ensure the comfort of the child.

(f) To permit a properly trained facility animal or comfort item or both to be present inside the courtroom or hearing room.

(g) To permit the use of a properly constructed screen that would permit the judge and jury in the courtroom or hearing room to see the child but would obscure the child's view of the defendant or the public or both.

(h) To have a secure and child-friendly waiting area provided for the child during court proceedings and to have a support person stay with the child while waiting.

(i) To have an advocate or support person inform the court about the child's ability to understand the nature of the proceedings, special accommodations that may be needed for the

child's testimony, and any other testimony relevant to any of the rights set forth in this section.

(3) In circumstances where a defendant in a proceeding has chosen to proceed without counsel, the court may appoint standby counsel for that party and may order standby counsel to question a child on behalf of the pro se party if the court finds that there is a substantial likelihood that emotional harm would come to the child if the pro se party were allowed to question the child directly.

(4) (a) If the child is the victim of a crime, the court shall ensure that all steps necessary to secure the physical safety of the child, both in the courtroom and during periods of time that the child may spend waiting for court, have been taken.

(b) The court and all attorneys involved in a proceeding involving a child shall not disclose to any third party any discovery, including, but not limited to, the personal information of the child including the child's name, address and date of birth, any and all interviews of the child, and any other identifying information of a child. Upon written motion by a party, the court may authorize by written order the production of any discovery to a third party, if the third party agrees to maintain the security and nondisclosure of the discovery and return the discovery to the party upon conclusion of the case. The court shall enforce any violations of this section through its contempt powers.

(c) In any proceeding in which a child is alleged to have been emotionally, sexually, or physically abused, the child shall be given notice of all pretrial discovery motions, and the notice must be given in sufficient time to allow the guardian ad litem or counsel for the child to file any pleadings deemed appropriate to that situation.

(5) (a) In a proceeding involving an alleged offense against a child, the prosecuting attorney, the child's attorney, the child's parent or legal guardian, or the guardian ad litem may apply for an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape and by stenographic means.

(b) The court shall make a preliminary finding as to whether, at the time of trial, the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, or public for any of the following reasons:

(i) The child will be unable to testify because of fear.

(ii) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court.

(iii) The child suffers a mental or other infirmity or medical condition which could potentially prevent the child from being present to testify at the trial.

(iv) Conduct of the defendant or defense counsel may cause or already has caused the child to be unable to testify or continue to testify out of fear or emotional distress.

(c) If the court finds that the child is likely to be unable to testify in open court for any of the reasons stated in paragraph (b) of this subsection (5), the court shall order that the child's deposition be taken and preserved by videotape and stenographic means.

(d) The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are:

(i) The prosecuting attorney or attorneys;

(ii) The attorney or attorneys for the defendant;

(iii) The child's attorney or attorneys and guardian ad litem;

(iv) Persons necessary to operate the videotape equipment; and

(v) Other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

(e) (i) If the court finds the child is unable to testify in open court, based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented pro se, be excluded from the room in which the deposition is conducted. If the court orders that the defendant be excluded from the deposition room, the court shall order that two-way closed-circuit television equipment be used as provided in Section 13-1-405.

(ii) The complete record of the examination of the child, including the image and voices of all persons who in any way participated in the examination, shall be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

(f) If, at the time of trial, the court finds that the child is unable to testify for a reason described in subsection (5)(b), the court may admit into evidence the child's videotaped deposition in lieu of the child's testimony at trial. The court's ruling must be supported by findings on the record.

(g) Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the court, for good cause shown, may order an

additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

(h) In connection with the taking of a videotaped deposition, the court may enter a protective order for the purpose of protecting the privacy or emotional well-being of the child or for any other purposes.

(i) The videotape of a deposition taken under this paragraph shall be destroyed five (5) years after the date on which the trial court entered its judgment, but not before a final judgment is entered on appeal, including Supreme Court review. The videotape shall become part of the court record and be kept by the court until it is destroyed.

SECTION 3. This act shall take effect and be in force from and July 1, 2015.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 29, 2015

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 1, 2015

Tate Reeves

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

4/23/15
3:42pm