

4/18/16

11:03 A.M.

Chapter No. 438

16/SS26/R650SG

LR 12/12

SENATE BILL NO. 2364

Originated in Senate

[Handwritten Signature]

Secretary

SENATE BILL NO. 2364

AN ACT TO CREATE THE MISSISSIPPI JUVENILE DETENTION FACILITIES LICENSING ACT; TO PROVIDE CERTAIN DEFINITIONS; TO PRESCRIBE CERTAIN DUTIES OF THE JUVENILE FACILITIES MONITORING UNIT IN ITS ROLE AS A LICENSING AGENCY; TO REQUIRE THE DEPARTMENT OF EDUCATION TO PROMULGATE CERTAIN RULES AS THEY PERTAIN TO THE EDUCATION OF CHILDREN HOUSED IN JUVENILE DETENTION FACILITIES; TO PROVIDE THAT JUVENILE DETENTION FACILITIES MUST HAVE A LICENSE TO OPERATE AS OF OCTOBER OF 2017; TO REQUIRE THE LICENSING AGENCY TO MAKE INSPECTIONS; TO PROVIDE A HEARING AND APPEALS PROCESS IF A JUVENILE DETENTION FACILITY'S LICENSE IS SUSPENDED, REVOKED OR RESTRICTED; TO AMEND SECTION 43-21-321, MISSISSIPPI CODE OF 1972, TO REMOVE CERTAIN MINIMUM STANDARDS FOR THE JUVENILE DETENTION CENTER; TO AMEND SECTION 43-21-323, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO PROVIDE THAT NO STATEMENTS, ADMISSIONS OR CONFESSIONS OR INCRIMINATING INFORMATION OBTAINED FROM A YOUTH DURING A SCREENING OR ASSESSMENT SHALL BE ADMITTED INTO EVIDENCE AGAINST THE CHILD ON THE ISSUE OF WHETHER THE CHILD COMMITTED A DELINQUENT ACT; TO AMEND SECTION 43-21-105, MISSISSIPPI CODE OF 1972, TO ADD THE TERMS "ASSESSMENT" AND "SCREENING" UNDER THE YOUTH COURT LAW; TO AMEND SECTIONS 43-21-559 AND 43-21-561, MISSISSIPPI CODE OF 1972, TO PROHIBIT STATEMENTS, ADMISSIONS OR CONFESSIONS FROM BEING ADMITTED INTO EVIDENCE TO DETERMINE DELINQUENCY; TO AMEND SECTION 43-21-603, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. Sections 1 through 8 and Section 11 of this act shall be cited as the "Mississippi Juvenile Detention Facilities Licensing Act."

SECTION 2. The purpose of this act is to protect and promote the health and safety of the children who are detained in juvenile detention centers in this state by providing for the licensing of juvenile detention facilities to assure that certain minimum standards are maintained.

SECTION 3. As used in this act, the following words shall have the following meanings:

(a) "Facility administrator" means the principal official of the facility.

(b) "Facility staff" means all employees of the facility who are under the supervision of the facility administrator.

(c) "Juvenile detention facility" and "facility" are synonymous and each means a secure facility that house children who are charged with a delinquent act as defined in Section 43-21-105(j).

(d) "Licensing agency" means the Juvenile Facilities Monitoring Unit of the Department of Public Safety.

SECTION 4. (1) The licensing agency shall have the following powers and duties, in addition to the other duties prescribed by law:

(a) To adopt the licensing standards set forth by the Juvenile Detention and Alternatives Taskforce's 2014 report;

(b) To promulgate future rules and regulations concerning the licensing and regulation of juvenile detention facilities;

(c) To issue, deny, suspend, revoke, restrict, or otherwise take disciplinary action against juvenile detention facilities;

(d) To provide the training required by the rules and regulations promulgated by the licensing agency to all facility administrators and facility staff; and

(e) To have such other powers as may be required to carry out the provisions of this act.

(2) The licensing agency shall require a criminal records background check and a child abuse registry check for all facility administrators and facility staff of a juvenile detention facility. The Department of Human Services has the authority to disclose to the licensing agency any potential applicant whose name is listed on the Child Abuse Central Registry or has a pending administrative review. That information shall remain confidential.

(3) The licensing agency shall have the authority to exclude individuals or entities for prospective or current employment on the basis of a particular crime or crimes or a substantiated finding of child abuse or neglect.

(4) Information in the possession of the licensing agency concerning the license of a juvenile detention facility may be disclosed to the public, but the information shall not be disclosed in a manner that would identify children detained in the facility. Nothing in this section affects the agency's authority to release findings of investigations into allegations of abuse under either Section 43-21-353(8) or Section 43-21-257.

(5) The Mississippi Department of Education is responsible for promulgating rules and regulations related to the education of all children housed in a juvenile detention facility. The Mississippi Department of Education must conduct inspections of the facility's educational services at least annually or more often as deemed necessary. After each inspection, the department must provide the licensing agency with its determination of the facility's compliance with the education provisions. The licensing agency shall use the information in its determination of the facility's eligibility for licensure.

SECTION 5. Beginning October 1, 2016, the licensing agency shall conduct mock reviews of all juvenile detention facilities and determine what, if any, issues exist that may prevent licensure pursuant to the adopted rules and regulations. From and after October 1, 2017, no county or state entity shall establish, own, operate, and maintain a juvenile detention facility without a license issued under this act.

SECTION 6. A license issued under this act must be renewed every two (2) years.

SECTION 7. The licensing agency shall make inspections to determine ongoing compliance with the laws and regulations governing the licensure of juvenile detention facilities. Inspections shall be made at least twice a year, but additional inspections may be made as often as deemed necessary by the licensing agency. The licensing agency is not required to provide any notice to the facility before making an inspection.

SECTION 8. (1) The licensing agency may deny or refuse to renew a license for any of the reasons set forth in subsection (3) of this section.

(2) Before the licensing agency may deny or refuse to renew a license, the county or contractor operating the juvenile detention facility is entitled to a hearing before the director of the licensing agency in order to show cause why the license should not be denied or should be renewed.

(3) The licensing agency may suspend, revoke, or restrict the license of any juvenile detention center upon one or more of the following grounds:

(a) Fraud, misrepresentation or concealment of material facts;

(b) Violation of any of the provisions of this act or any of the regulations governing the licensing and regulation of juvenile detention facilities promulgated by the licensing agency;

124 (c) Any conduct, or failure to act that is found or
125 determined by the licensing agency to threaten the health and
126 safety of children at the facility;

127 (d) Failure of a juvenile detention facility to conduct
128 background checks as required under Section 4 of this act.

129 (e) Information that is received by the licensing
130 agency as a result of the criminal records background check and
131 the child abuse registry check on all facility administrators and
132 facility staff under Section 4 of this act.

133 (4) The licensing agency shall develop rules and regulations
134 related to the development and implementation of corrective action
135 plans to address violations at facilities before a revocation,
136 suspension, or restriction of the facility's license.

137 (5) Before the licensing agency may suspend, revoke or
138 restrict the license of a facility, the county or contractor
139 affected by that decision is entitled to a hearing before the
140 director of the licensing agency in which it may show cause why
141 the license should not be suspended, revoked, or restricted.

142 (6) A juvenile detention facility that disagrees with or is
143 aggrieved by the licensing agency in regard to the denial, refusal
144 to renew, or the suspension, revocation, or restriction of the
145 license for the juvenile detention facility may appeal to the
146 chancery court of the county in which the facility is located.
147 The appeal shall be filed no later than thirty (30) days after the



licensee receives written notice of the final administrative action by the licensing agency.

SECTION 9. Section 43-21-321, Mississippi Code of 1972, is amended as follows:

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.

* * *

(* * *2) If a student's detention will cause * * * the student to miss one or more days of school during the academic school year, the detention center staff shall notify school district officials where the detainee last attended school by the first school day following the student's placement in the facility. Detention center staff shall not disclose youth court records to the school district, except as provided by Section 43-21-261.

(* * *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 * * *.

* * *

(* * *4) Local school districts shall work collaboratively with juvenile detention center staff to provide special education services as required by state and federal law. Upon the written request of the youth court judge for the county in which the detention center is located, a local school district in the county in which the detention center is located, or a private provider agreed upon by the youth court judge and sponsoring school district, shall provide a certified teacher to provide educational services to detainees. The youth court judge shall designate the

school district which shall be defined as the sponsoring school district. The local home school district shall be defined as the school district where the detainee last attended prior to detention. Teacher selection shall be in consultation with the youth court judge. The Legislature shall annually appropriate sufficient funds for the provision of educational services, as provided under this section, to detainees in detention centers * * *.

(* * *5) The sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district, shall be responsible for providing the instructional program for the detainee while in detention. After forty-eight (48) hours of detention, excluding legal holidays and weekends, the detainee shall receive the following services which may be computer-based:

(* * *a) Diagnostic assessment of grade-level mastery of reading and math skills;

(* * *b) Individualized instruction and practice to address any weaknesses identified in the assessment conducted under * * * paragraph (a) of this subsection if the detainee is in the center for more than forty-eight (48) hours; and

(* * *c) Character education to improve behavior * * *.

(* * *6) No later than the tenth day of detention, the detainee shall begin an extended detention education program. A

team consisting of a certified teacher provided by the local sponsoring school district or a private provider agreed upon by the youth court judge and sponsoring school district, the appropriate official from the local home school district, and the youth court counselor or representative will develop an individualized education program for the detainee, where appropriate as determined by the teacher of the sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district. The detainee's parent or guardian shall participate on the team unless excused by the youth court judge. Failure of any party to participate shall not delay implementation of this education program * * *.

(* * *7) The sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district, shall provide the detention center with an appropriate and adequate computer lab to serve detainees. The Legislature shall annually appropriate sufficient funds to equip and maintain the computer labs. The computer lab shall become the property of the detention centers and the sponsoring school districts shall maintain and update the labs * * *.

(* * *8) The Mississippi Department of Education will collaborate with the appropriate state and local agencies, juvenile detention centers and local school districts to ensure the provision of educational services to every student placed in a juvenile detention center. The Mississippi Department of

Education has the authority to develop and promulgate policies and procedures regarding financial reimbursements to the sponsoring school district from school districts that have students of record or compulsory-school-age residing in said districts placed in a youth detention center. Such services may include, but not be limited to: assessment and math and reading instruction, character education and behavioral counseling. The Mississippi Department of Education shall work with the appropriate state and local agencies, juvenile detention centers and local school districts to annually determine the proposed costs for educational services to youth placed in juvenile detention centers and annually request sufficient funding for such services as necessary * * *.

* * *

(* * *9) Juvenile detention centers 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 detention center 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; the transition team will work together to help the detainee successfully transition back into the home school district once released from detention. The transition team will consist of a

certified teacher provided by the local sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district, the appropriate official from the local home school district, the school attendance officer assigned to the local home school district, and the youth court counselor or representative. The detainee's parent or guardian shall participate on the team unless excused by the youth court judge. Failure of any party to participate shall not delay implementation of this education program * * *.

(* * *10) The Juvenile Detention Facilities Monitoring Unit shall monitor the detention facilities for compliance with these minimum standards, and no child shall be housed in a detention facility the monitoring unit determines is substantially out of compliance with the standards prescribed in this subsection.

* * *

SECTION 10. Section 43-21-323, Mississippi Code of 1972, is amended as follows:

43-21-323. (1) There is established the Juvenile Detention Facilities Monitoring Unit within the Department of Public Safety to work in cooperation with the Council of Youth Court Judges and Referees and the Juvenile Justice Advisory Committee described in Sections 45-1-33 and 43-21-125; the Juvenile Detention Facilities Monitoring Unit is the licensing agency for juvenile detention facilities, as defined in Section 3 of this act. The unit shall be responsible for investigating, evaluating and securing the

rights of children held in juvenile justice facilities, including detention centers, training schools and group homes throughout the state to ensure that the facilities operate in compliance with national best practices and state and federal law. The monitoring unit shall only monitor group homes that serve as a dispositional placement for delinquent youth pursuant to Section 43-21-605. Nothing in this section shall be construed as giving the monitoring unit authority to monitor foster care or shelter care placements. All monitors shall be employees of the Department of Public Safety. The inspections by the unit shall encompass the following:

(a) To review and evaluate (i) all procedures set by detention centers, training schools and group homes and (ii) all records containing information related to the operations of the detention centers, training schools and group homes;

(b) To review and investigate all complaints filed with the monitoring unit concerning children's treatment in detention centers, training schools and group homes;

(c) To conduct quarterly monitoring visits of all detention centers, training schools and group homes. The monitor shall have access to an entire facility and shall conduct confidential interviews with youth and facility staff;

(d) To advise a facility on how to meet the needs of children who require immediate attention;

(e) To provide technical assistance and advice to juvenile detention facilities, which will assist the facilities in complying with state and federal law.

To carry out the duties in this subsection (1) a monitor may consult with an administrator, employee, child, parent, expert or other individual in the course of monitoring or investigating. In addition, the monitor may review court documents and other confidential records as necessary to fulfill these duties.

(2) Additional duties of the monitoring unit are as follows:

(a) To make available on a quarterly basis to the Governor, Lieutenant Governor and each member of the Legislature and each member of a county board of supervisors, a report that describes:

(i) The work of the monitoring unit;

(ii) The results of any review or investigation undertaken by the monitoring unit;

(iii) Any allegations of abuse or injury of a child; and

(iv) Any problems concerning the administration of a detention center.

The reports described in this subsection shall keep the names of all children, parents and employees confidential.

(b) To promote awareness among the public and the children held in detention by providing the following:

(i) How the monitoring unit may be contacted;

(ii) The purpose of the monitoring unit; and
(iii) The services that the monitoring unit provides.

(3) The records of a monitor shall be confidential. Any child, staff member, parent or other interested individual may communicate to a monitor in person, by mail, by phone, or any other means. All communications shall be kept confidential and privileged, except that the youth court and the facility shall have access to such records, but the identity of reporters shall remain confidential.

SECTION 11. (1) 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 act, 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 the Youth Court Act or on the issue of guilt in any criminal proceedings.

(2) The provisions of subsection (1) of this section are in addition to and do not override any existing statutory and constitutional prohibition on the admission into evidence in delinquency or criminal proceedings of information obtained during screening, assessment or treatment.

SECTION 12. Section 43-21-105, Mississippi Code of 1972, is amended as follows:

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.

(b) "Judge" means the judge of the Youth Court Division.

(c) "Designee" means any person that the judge appoints to perform a duty which this chapter requires to be done by the judge or his designee. The judge may not appoint a person who is involved in law enforcement to be his designee.

(d) "Child" and "youth" are synonymous, and each means a person who has not reached his eighteenth birthday. A child who has not reached his eighteenth birthday and is on active duty for a branch of the armed services or is married is not considered a "child" or "youth" for the purposes of this chapter.

(e) "Parent" means the father or mother to whom the child has been born, or the father or mother by whom the child has been legally adopted.

(f) "Guardian" means a court-appointed guardian of the person of a child.

(g) "Custodian" means any person having the present care or custody of a child whether such person be a parent or otherwise.

(h) "Legal custodian" means a court-appointed custodian of the child.

(i) "Delinquent child" means a child who has reached his tenth birthday and who has committed a delinquent act.

(j) "Delinquent act" is any act, which if committed by an adult, is designated as a crime under state or federal law, or municipal or county ordinance other than offenses punishable by life imprisonment or death. A delinquent act includes escape from lawful detention and violations of the Uniform Controlled Substances Law and violent behavior.

(k) "Child in need of supervision" means a child who has reached his seventh birthday and is in need of treatment or rehabilitation because the child:

(i) Is habitually disobedient of reasonable and lawful commands of his parent, guardian or custodian and is ungovernable; or

(ii) While being required to attend school, willfully and habitually violates the rules thereof or willfully and habitually absents himself therefrom; or

(iii) Runs away from home without good cause; or

(iv) Has committed a delinquent act or acts.

(l) "Neglected child" means a child:

(i) Whose parent, guardian or custodian or any person responsible for his care or support, neglects or refuses, when able so to do, to provide for him proper and necessary care or support, or education as required by law, or medical, surgical, or other care necessary for his well-being; however, a parent who

withholds medical treatment from any child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for that reason alone, be considered to be neglectful under any provision of this chapter; or

(ii) Who is otherwise without proper care, custody, supervision or support; or

(iii) Who, for any reason, lacks the special care made necessary for him by reason of his mental condition, whether the mental condition is having mental illness or having an intellectual disability; or

(iv) Who, for any reason, lacks the care necessary for his health, morals or well-being.

(m) "Abused child" means a child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused, upon the child, sexual abuse, sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment. However, physical discipline, including spanking, performed on a child by a parent, guardian or custodian in a reasonable manner shall not be deemed abuse under this section.

(n) "Sexual abuse" means obscene or pornographic photographing, filming or depiction of children for commercial

purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened.

(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.

(p) A "dependent child" means any child who is not a child in need of supervision, a delinquent child, an abused child or a neglected child, and which child has been voluntarily placed in the custody of the Department of Human Services by his parent, guardian or custodian.

(q) "Custody" means the physical possession of the child by any person.

(r) "Legal custody" means the legal status created by a court order which gives the legal custodian the responsibilities of physical possession of the child and the duty to provide him with food, shelter, education and reasonable medical care, all subject to residual rights and responsibilities of the parent or guardian of the person.

(s) "Detention" means the care of children in physically restrictive facilities.

(t) "Shelter" means care of children in physically nonrestrictive facilities.

(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 social records as defined in Section 43-21-253;

(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.

(v) "Any person responsible for care or support" means the person who is providing for the child at a given time. This term shall include, but is not limited to, stepparents, foster parents, relatives, nonlicensed baby-sitters or other similar persons responsible for a child and staff of residential care facilities and group homes that are licensed by the Department of Human Services.

(w) The singular includes the plural, the plural the singular and the masculine the feminine when consistent with the intent of this chapter.

(x) "Out-of-home" setting means the temporary supervision or care of children by the staff of licensed day care centers, the staff of public, private and state schools, the staff of juvenile detention facilities, the staff of unlicensed residential care facilities and group homes and the staff of, or individuals representing, churches, civic or social organizations.

(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.

(z) "Status offense" means conduct subject to adjudication by the youth court that would not be a crime if committed by an adult.

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

(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.

SECTION 13. Section 43-21-559, Mississippi Code of 1972, is amended as follows:

43-21-559. (1) In arriving at its adjudicatory decision, the youth court shall consider only evidence which has been formally admitted at the adjudicatory hearing. All testimony shall be under oath and may be in narrative form. In proceedings to determine whether a child is a delinquent child or a child in need of supervision, the youth court shall admit any evidence that would be admissible in a criminal proceeding. In proceedings to determine whether a child is a neglected child or an abused child, the youth court shall admit any evidence that would be admissible in a civil proceeding.

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

(3) Members of the youth court staff may appear as witnesses except that no member of the youth court staff may testify as to an admission or confession made to him.

(4) (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.

SECTION 14. Section 43-21-561, Mississippi Code of 1972, is amended as follows:

43-21-561. (1) If the youth 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.

(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.

(3) If the court finds from a preponderance of the evidence that the child is a neglected child, an abused child, a dependent child or a child in need of special care the youth court shall enter an order adjudicating the child to be a neglected child, an abused child, dependent child or a child in need of special care.

(4) No decree or 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 or a neglected child or an abused child or a sexually abused child or a dependent child or a child in need of special care. 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, a child in need of supervision, a neglected child, an abused child, a dependent child or a child in need of special care.

(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.

(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.

SECTION 15. Section 43-21-603, Mississippi Code of 1972, is amended as follows:

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

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

(3) 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:

- (a) The nature of the offense;
- (b) The manner in which the offense was committed;
- (c) The nature and number of a child's prior adjudicated offenses;
- (d) The child's need for care and assistance;
- (e) The child's current medical history, including medication and diagnosis;
- (f) The child's mental health history, which may include, but not be limited to, the Massachusetts Youth Screening Instrument version 2 (MAYSI-2);
- (g) Copies of the child's cumulative record from the last school of record, including special education records, if applicable;
- (h) Recommendation from the school of record based on areas of remediation needed;
- (i) Disciplinary records from the school of record; and

(j) Records of disciplinary actions outside of the school setting.

(4) 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:

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

(5) 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:

- (a) The child's physical and mental conditions;
- (b) The child's need of assistance;
- (c) The manner in which the parent, guardian or custodian participated in, tolerated or condoned the abuse, neglect or abandonment of the child;
- (d) The ability of a child's parent, guardian or custodian to provide proper supervision and care of a child; and
- (e) 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.

(6) After consideration of all the evidence and the relevant factors, the youth 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, a child in need of supervision, a neglected child or an abused child.

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

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

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

(b) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of

the child and that the placement of the child in foster care is in the best interests of the child; or

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

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

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

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

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

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

(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.

(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.

(10) Any screening and assessment examinations ordered by the court may aid in dispositions related to delinquency, but no statements or admissions made during the course thereof may be admitted into evidence against the child on the issue of whether the child committed a delinquent act.

SECTION 16. Sections 1 through 8 and Section 11 of this act shall be codified in Chapter 21, Title 43, Mississippi Code of 1972.

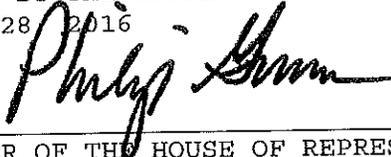
SECTION 17. This act shall take effect and be in force from and after July 1, 2016.

PASSED BY THE SENATE
April 6, 2016



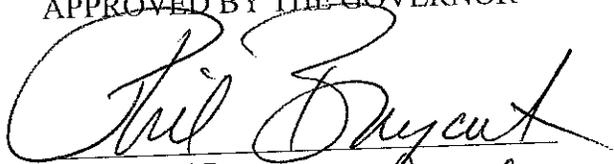
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 28, 2016



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

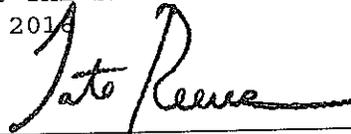


GOVERNOR

April 18, 2016
11:45 AM

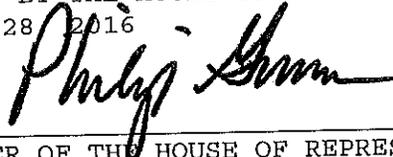
SECTION 17. This act shall take effect and be in force from
and after July 1, 2016.

PASSED BY THE SENATE
April 6, 2016



PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 28, 2016



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

April 18, 2016
11:03 am