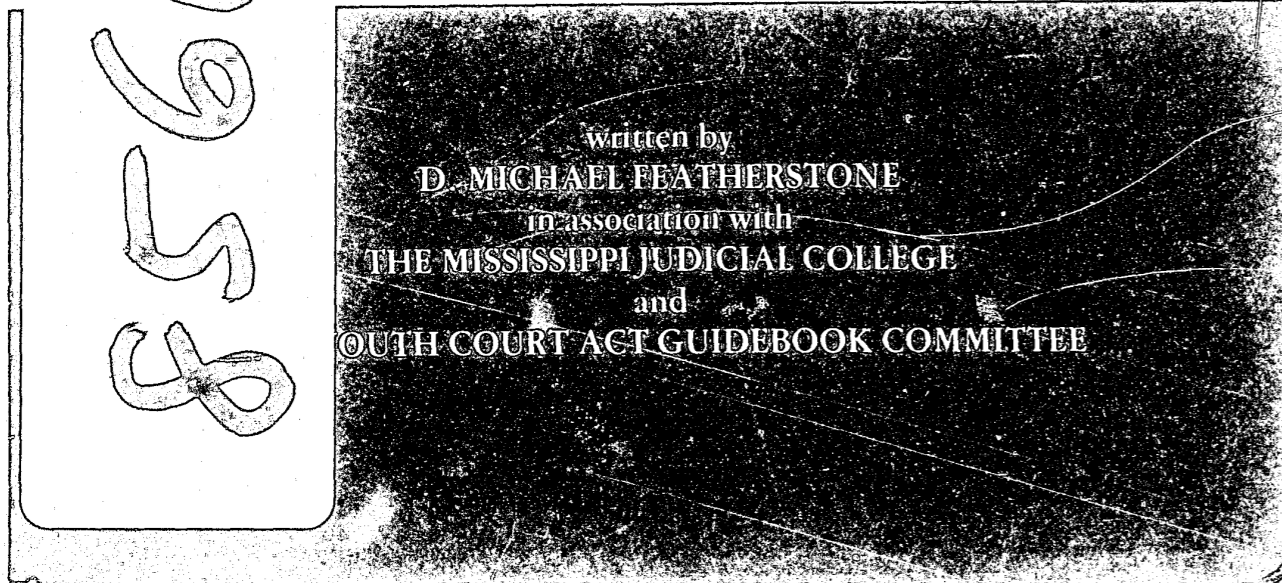
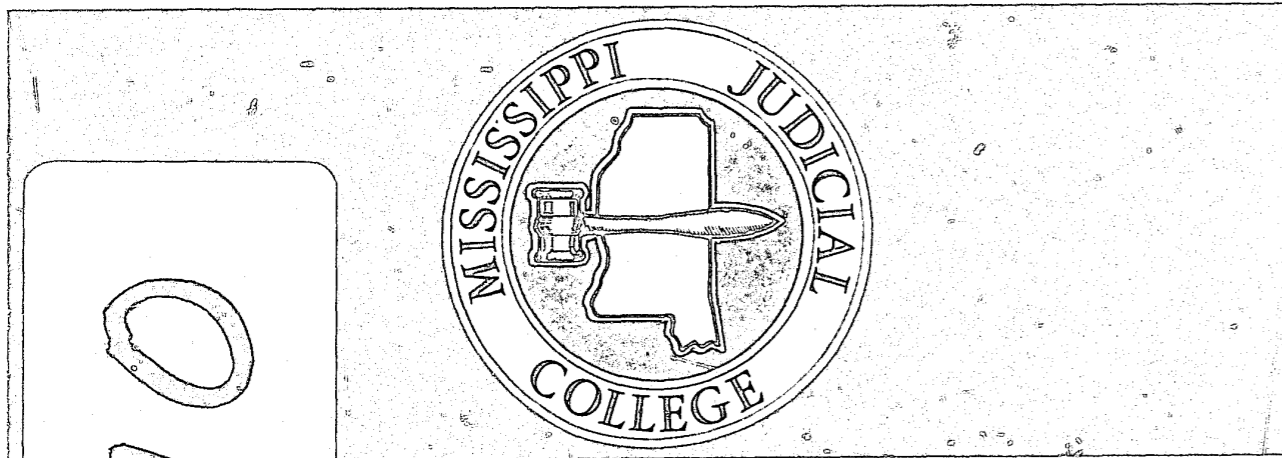


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# YOUTH COURT ACT GUIDEBOOK

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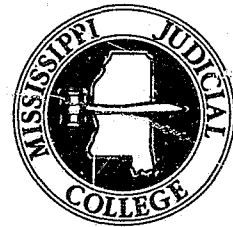
D. MICHAEL FEATHERSTONE

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July 1980  
University of Mississippi

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#### PREFACE

The need for a guidebook for persons working with juvenile justice matters became apparent after the Youth Court Act of 1979 and its subsequent amendments were passed by the Mississippi Legislature. As the continuing education and research service of the Mississippi judiciary, the Mississippi Judicial College was asked to prepare such a guide and was awarded a grant by the Criminal Justice Planning Commission, Office of the Governor, State of Mississippi.

The *Youth Court Act Guidebook* is the culmination of many month's work by Professor D. Michael Featherstone, with the assistance of the Youth Court Act Guidebook Committee and the staff of the Mississippi Judicial College, to produce a ready reference guide for juvenile justice personnel. The Mississippi Judicial College and the University of Mississippi Law Center would like to express sincere appreciation to the author and the members of the committee for the contribution of their time, energy and knowledge to insure the accuracy of this guidebook.

Robert D. Church

Director  
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## INTRODUCTION

There are many misconceptions about the youth court system in Mississippi. Criticism, often of a destructive nature, is frequently aimed at the court and those agencies which are inherent parts of the overall operation of the juvenile justice system.

The purpose of this publication is to describe how the system operates. The goal here is not to defend the court, but rather to show how it functions in connection with related agencies. An understanding of the nature of the youth court is essential if the court is to succeed in accomplishing the goals for which it was created.

In order to describe the modern Mississippi Youth Court it is necessary to place it in historical perspective. Our court, as are all youth courts, is the result of developments begun in the late 1300's in England when the *parens patriae* theory was utilized to give the king authority to protect those individuals who were incapable of caring for themselves. Among those so designated for such protection were idiots, lunatics, charities and children. From this beginning the "parental" relationship between the state and children in need of protection developed into an entire legal system personified by the modern youth courts.

The essence of the system is characterized by a separation of children and adults in relation to the state's role in the operation of the criminal justice system. However, the classification does not end there; in addition to children who violate the criminal laws, all other children who are in need of supervision or protection are also included.

The goals of the state, operating through juvenile courts, are to protect rather than punish, to rehabilitate and to insure that efforts are made to enable the child to become a normal young citizen. Thus, the juvenile court was designed to be civil rather than criminal in nature. The child, rather than the law, was to be the focal point of all court proceedings.

Today these goals and theories are incorporated into statutes which create juvenile courts in the various states. Mississippi youth courts now operate under laws passed by the legislature in 1979-1980, collectively called the Mississippi Youth Court Act. Viewed from a broad standpoint, Mississippi probably has one of the most modern and comprehensive youth court acts in the nation. However, the written law alone is insignificant if it cannot be properly placed into operation. In order to succeed it is necessary for all people associated with the youth court, including the general public, to have at least a basic understanding of what the court is, and more importantly, what it is *not*. For that reason the Mississippi Judicial College is providing this publication with the hope that a better understanding will lead to a more successful operation of the Mississippi youth court system.

## I. YOUTH COURT JUDGE

The central figure in the juvenile justice system is the judge. Above all other people involved, it is the judge who has the greatest responsibility in making the youth court serve its purpose. Unfortunately, youth court judges cannot perform miracles, and they are criticized unfairly by people who do not understand the limitations under which most judges must operate. While the power of the judge is great, it is not without bounds. In addition, judges are people who have personal beliefs and philosophies which sometimes affect their actions. However, one should keep in mind that youth court judges usually have one outstanding characteristic which may not be common to all other judges: they are interested in young people.

### WHO IS THE YOUTH COURT JUDGE?

From a technical standpoint it is easy to say who the judge is. If the county has a family court, the family court judge is also the youth court judge. If there is no family court, but there is a county court, then the county court judge is also the youth court judge. If there is neither a family court nor a county court, then the chancellor is the youth court judge. The result then, in Mississippi, is that every county has a youth court.

The people who serve as family court judges, county court judges, and chancellors are all legally trained. In most cases they have graduated from law school and have been exposed to a wide range of experience in the legal system. Because these judges have many duties they often need help in their role as youth court judge. The Mississippi law allows the judge to appoint two types of assistants to aid in operating the youth court. First, the judge may appoint a referee. This is usually, but not necessarily, a local attorney who has an interest in the youth court. The referee then performs the same duties as the judge. He will conduct hearings

and make rulings in cases concerning children. Sometimes the people involved in a youth court matter will not like the decision of the referee. They may feel, for one reason or another, that the judge himself should hear the case. If this happens they are permitted to ask the judge to rehear the case and to decide if the referee was correct. However, they must ask for such a rehearing within three days of the referee's ruling.

Often a judge cannot be reached for various reasons. For example, a police officer may need authority to take a child into custody. The officer cannot locate the judge because he is out of town, or tied up in court, or simply cannot be found. To handle such situations the judge may appoint designees. The designee may be any responsible person except a law enforcement officer and does not have to be trained in the law. The designee may grant authority for the officer to take the child into custody. Later the designee may order that the child be released. In addition, the designee is responsible for visiting places where children who come before the court are being kept. This helps the judge keep informed about the conditions of places where children are in custody. Through the use of designees, law enforcement officers and others are always able to get in touch with someone who can give them authority from the court to act.

Now that we know who the youth court judge is, let us examine what he can and cannot do.

## POWERS OF THE YOUTH COURT JUDGE

### A. Jurisdiction

The underlying basis for the judge's power is jurisdiction. In other words, the judge may exercise his authority only in relation to certain designated people. In Mississippi, the youth court judge has power to act in relation to children who are under the age of eighteen and not serving in the armed forces. A child may be classified as one or more of the following:

1. *Delinquent Child*—This is a child who has reached his tenth birthday and has committed an act which would be a

crime if committed by an adult. (See Miss. Youth Court Act, Appendix A).

2. *Child in Need of Supervision (CHINS)*—This is a child between the ages of seven and eighteen who needs treatment or rehabilitation for various reasons such as disobedience to parents, truancy or running away from home. (See Miss. Youth Court Act, Appendix A).

3. *Abused Child*—This is a child who has been mistreated or injured either physically, mentally, emotionally or sexually by the people who are responsible for his well-being. (See Miss. Youth Court Act, Appendix A).

4. *Child in Need of Special Care*—This is a child with a mental or physical illness who needs special care that is not needed by normal children who come before the youth court.

5. *Neglected Child*—This is a child whose parents (or guardian) have failed or refused to care for him in a reasonable manner. (See Miss. Youth Court Act, Appendix A).

In regard to the above children, the court has exclusive original jurisdiction. This means that matters affecting these children can only be dealt with in the youth court. There are, however, four exceptions to this rule:

1. Traffic offenses by children may be handled in the courts which handle adult traffic offenders. However, even here, the youth court judge may play a role. If the child is convicted of a traffic offense, the youth court judge has the power to set aside the judgment of the court where the child was tried.

2. Hunting and fishing violations by children may be handled the same as adults. Again, the youth court judge can set aside the judgment.

3. If a child has previously appeared before the youth court and his case was transferred to the circuit court where he was convicted of a crime, the youth court no longer has jurisdiction over that child. (How this can happen is explained later.)

4. If a child between the ages of thirteen and eighteen commits a crime for which the penalty is life imprisonment

or death, the youth court has no original jurisdiction. Here the circuit court has jurisdiction and the youth court is not involved. The reason for this is that such serious crimes are not considered to be merely delinquent conduct. However, the circuit court may transfer the case to the youth court after considering all the information available. (How and why this could happen will be explained later.)

#### B. Powers of Appointment

The youth court judge has the power to appoint various people to serve the needs of the court and to insure the proper operation of the court.

1. *Staff*—The judge will appoint (hire) sufficient personnel to carry out the clerical, professional and other work of the court. The staff is paid from public funds which are allocated from a budget which the judge submits to the county board of supervisors or city council as the case may be.

2. *Guardian Ad Litem*—a *guardian ad litem* is an adult appointed by the judge to represent the interest of a child in a particular court proceeding. It is not necessary to appoint such a person in every case, but there are times when the judge must appoint a *guardian ad litem*. For example, the child may have no living parents, or the parents cannot be found, or the parents are minors or of unsound mind, or the parents simply are not interested and do not care what happens to the child. In addition, a *guardian ad litem* is always appointed in cases of child abuse or neglect which result in a judicial proceeding.

3. *Attorneys*—The Mississippi youth court act provides that all children who come before the court have the right to be represented by an attorney. In cases where the child (or his parents) cannot afford to pay an attorney, the judge will appoint an attorney to represent the child. The attorney will be paid from public funds.

4. *Referees and Designees*—The youth court judge has the power to appoint referees and designees as explained above.

5. *Special Judge*—In cases where the regular judge is ill or cannot be present, he may appoint a special judge to serve for him.

6. *Intake*—The judge will appoint one or more people to serve as the intake unit for the court. The intake officer, or unit, serves as a buffer between the public and formal court proceedings. The intake officer will consider all available information and make a recommendation as to how a particular case will be handled. (This is explained later.)

#### C. Contempt

The youth court judge has the power to issue writs and processes, including injunctions, which are necessary for the proper operation of the juvenile court. Simply stated, this means that the judge can order people to do certain things so that the goals of the court can be accomplished. If a person refuses to obey a lawful order of the judge he can be held in contempt. That is, the judge may punish such a person by a fine of up to \$500.00 or by sending the person to jail for 90 days, or both.

#### D. Procedural Powers

The term "procedure" is not used here in its strict legal sense. The youth court judge has his greatest power and responsibility in the judicial functioning of the court: the day-to-day procedure of handling cases and making decisions about children. Broadly speaking, this is the juvenile court process and the judge has great authority from beginning to end.

##### 1. *Power to Authorize Petitions*

A petition is a document which contains the charges that bring a child into the youth court. It is the beginning of formal proceedings in the court which will result in hearings and a decision as to disposition—what to do with the child. Informal proceedings may be conducted without a petition and are discussed in another section.

Only the youth court judge may authorize the filing of a petition. This is done after the intake officer has reviewed the information available and has recommended to the judge that a petition be authorized to begin formal proceedings concerning the child. This procedure is necessary to prevent every case from going through the formal hearings which are time-consuming, expensive and completely unnecessary in many cases. In other



words, the problems of many children can be handled better by the court without going through formal trials. To insure that this is done, the judge will authorize a petition only when it appears that the informal process is not suitable for a particular case.

#### *2. Power to Issue Arrest Warrants*

Only the youth court judge (or designee) has the power to authorize the arrest of a child who is within the exclusive original jurisdiction of the court.

The arrest of a child is a serious matter which could affect the child's entire future. For this reason the judge will not issue an arrest warrant unless there is reasonable belief, based upon reliable information, that arrest is necessary to protect the child or other people, or to insure that the child will be in court when he is supposed to be, or the child has no one to care for him. If there is any reasonable alternative other than arresting the child, the judge will use that alternative.

It is possible for a child to be arrested without a warrant from the judge, but only in limited situations which are described later.

If the child is arrested he can only be held for 48 hours, not counting weekends and holidays. If custody for a longer time is needed, a hearing will be conducted and the court may order the child to be held longer. Of course the judge or designee may order the child to be released at any time.

#### *3. Power to Transfer Cases*

There are times when certain cases, which are within the jurisdiction of the youth court, could best be handled by another court. When this occurs the youth court judge has the power to transfer the case. However, before the judge may do so, he must conduct a hearing to determine that the transfer is really necessary. This hearing is divided into two stages called a bifurcated hearing. The child has the right to be represented by an attorney in both stages of the hearing.

The first stage of the hearing is to determine if there is reason to believe the child committed the acts he is charged with in the petition. If the information presented at this hearing is reliable and the evidence indicates that the child probably did commit the offense, the judge then moves to the second stage of the transfer hearing. The only question to be answered in the second stage is

whether the child has any reasonable prospect of rehabilitation within the juvenile justice system. Many things are considered in attempting to answer this question. After every consideration is made, if the judge is convinced by clear evidence that the juvenile justice system cannot help the child, then the case will be transferred and the child will be tried as if he were an adult.

The transfer process can only be used where the petition charges a child between the ages of 13 and 18 with delinquency.

If the case is transferred to the circuit court and the child is convicted, he is forever out of the juvenile justice system. However, if he is not convicted, or if the circuit court transfers the case back to the juvenile court, the child will then remain in the juvenile justice system.

In cases involving serious crime, a transfer from juvenile court to circuit court is the ultimate admission of failure by the juvenile justice system. However, there are cases in which the interests of everyone concerned, including the public, are best served by such a transfer.

#### *4. Power in Court Proceedings*

The youth court judge is in control of all court proceedings. Unlike other courts, the youth court operates under unique rules which require the judge to assume a very special role.

The youth court is always open. It does not have terms and vacations as other courts do. The judge decides the time and place for cases to be heard. There is no jury. The hearings are civil rather than criminal in nature and all hearings are confidential. During the hearings the judge will decide what evidence is proper to hear. He may also order people to appear in court to testify. Also, if necessary, the judge may order a child to have a medical examination or mental health examination. Simply stated, the judge has the power to control court proceedings to insure that the goals of the court are met and the best interests of the children are served.

#### *5. Power of Disposition*

The ultimate power of the youth court judge is that of disposition. Only the judge decides what is to be done with children who appear in the youth court. If this power is abused or misused, the entire juvenile justice system fails.

In order to explain the disposition powers of a Mississippi youth court, judge it is necessary to describe the process which leads to the point of disposition. Deciding what to do with a child is not an isolated event, but is dependent upon everything that has happened previously.

Assume that a petition has been filed which alleges that a child is delinquent, in need of supervision, or is neglected or abused. The petition starts the formal court process which consists of two hearings. The first is called an adjudication hearing. The purpose of the adjudication hearing is to determine if the charges in the petition are well-founded. At the beginning of the hearing the judge will explain the purpose to the parties involved and notify them of the right to an attorney, the right to remain silent, the right to subpoena and cross-examine witnesses and the right to appeal. The judge will also explain the possible results of the hearing.

The charges in the petition may be admitted or denied. If they are admitted the judge will make certain that the admissions are proper in every way. This may not be as easy as it sounds because plea bargaining is not allowed in the youth court. A child's out-of-court confession alone is not enough to support a finding of delinquency. However, if the admissions are proper, the adjudicatory hearing ends and the process moves into the disposition stage.

If the charges in the petition are denied, the judge will proceed with, in effect, a trial to determine if there is proof to support the petition.

If the petition charges the child with delinquency or in need of supervision, the proof must be beyond a reasonable doubt. If the charge is abuse or neglect, the proof must be by a preponderance of the evidence presented. All testimony is given under oath and formal rules of evidence are followed.

If the evidence proves the petition to be true, the child will be adjudicated to be delinquent, in need of supervision, neglected or abused, depending on what was charged. For example, assume that the petition charged the child with delinquency, alleging that he stole lawn mowers from several neighbors, sold them and kept the money. At the adjudicatory

hearing the county prosecutor must prove beyond a reasonable doubt that the charges are true. Both sides will have the opportunity to call witnesses and present other evidence. After hearing all the evidence, the judge must decide if the charges have been properly proved. That is, the judge must be convinced beyond a reasonable doubt that the child did steal and sell the lawn mowers in order to find him to be a delinquent child. Suppose the judge is convinced. Now what? What is to be done with the child? This is the greatest question faced by any juvenile court judge. The purpose of the bifurcated hearing is to help the judge answer this question. The second hearing is called the disposition hearing.

At the disposition hearing formal rules of evidence are not used. The judge will consider information gathered by various agencies (described later) and others about the child's background, previous appearances in youth court, the nature of his delinquent act and any other relevant information.

After considering all available information the judge will select the disposition which is best suited for the child. Dispositions that the judge may select in delinquency cases are as follows:

1. release the child;
2. place the child in the custody of his parents or others and place conditions or limitations, including restitution, on the child;
3. place the child on probation which may have conditions and limitations including restitution;
4. order the child to participate in some constructive program of service or education;
5. order the child to pay for damage he has caused to another or to pay a fine of up to \$300.00;
6. take away the child's driver's license for one year;
7. give custody of the child to designated public agencies (described later); or
8. place the child in a state training school where he could remain until his 20th birthday.

The dispositions recommended for children in need of supervision are the same as those recommended for delinquency

except for commitment to a state training school.

The available dispositions for abuse/neglect cases are summarized as follows:

1. release the child;
2. place the child in custody of parents, a relative or other person subject to conditions;
3. order treatment;
4. order selected agencies to assist the child and his parents in securing social or medical help; or
5. give custody of the child to selected agencies *not* including a state training school.

Additional dispositions are available for children who have disabilities or medical problems.

Once each year the judge must review the disposition of each case and may change it as circumstances dictate.

It is important to note that Mississippi law *requires* the judge to give preference to the *least restrictive* disposition in each case.

#### 6. *Power to Release or Destroy Records*

All proceedings in the youth court are confidential and not open to the public. There is a need to protect children from the stigma of appearing in court because it could have adverse effects on their future. For this reason all records of the youth court are, in effect, secret and can be released only by authority of the judge.

In cases where the juvenile justice system has been successful, where the child is rehabilitated and has become a responsible citizen, the judge may order that all records concerning that child be destroyed.

The powers of the judge, described above, are necessary if the youth court is to achieve its purpose. However, the judge cannot do it alone. Other agencies play a vital role in operating the system. The following is a description of each agency and the function it serves in the juvenile justice system.

## II. DEPARTMENT OF PUBLIC WELFARE

The Department of Public Welfare (DPW) is a state agency which plays a key role in supporting the youth court, especially in child abuse/neglect cases. The DPW is responsible for gathering information, keeping records and providing places for certain children to live. In addition, DPW caseworkers are trained in the social sciences and use their training to aid children and their families who are involved in abuse/neglect. The DPW also provides for the temporary care and custody of abused/neglected children. DPW serves the youth court in many ways. Without it, the court simply could not function in an effective manner.

### CHILD ABUSE—A BRIEF BACKGROUND

It may seem incomprehensible to the average person that anyone, especially parents, would purposely and maliciously neglect or physically abuse a child. The idea is repugnant on its face. However, society has not only tolerated such conduct but has historically condoned it. Maltreatment of children has been justified for centuries by the belief that severe physical punishment was necessary either to maintain discipline, or to educate, or to please the gods or to expel evil spirits. Methods used have varied from severe whipping, to mutilation, to infanticide, with various reasons and excuses created to avoid guilt. The age of urbanization and industrialization brought with it new methods of child abuse. Infants were subjected to terrible inhumanity by the factory system for which they created a virtually endless supply of slave labor. Children from five years of age upward were worked sixteen hours a day, sometimes with irons riveted around their ankles to keep them from running away. The same period saw children being used as chimney sweeps. Working night and day these children were subjected to all kinds of brutality. They quickly deteriorated both mentally

and physically while the public appeared to take little interest in their plight. While such labor practices have ended in the modern world, other forms of maltreatment, including infanticide, still exist. The abuses listed above are those which generally have been condoned by society. There are other types which have not been condoned and which continue today. These include brutal assault, starvation and various other acts directed toward children for no socially acceptable reason. It is this category of abuse and neglect that poses problems for the juvenile court and a challenge to the *parens patriae* concept.

The legal response to child abuse has varied from jurisdiction to jurisdiction; however, there does appear to be some basic outline encompassing child abuse laws. There are essentially four sets of legal provisions which are of primary significance in this area. They are:

1. provisions of the criminal law which can be invoked to punish persons who have inflicted harm upon children;
2. juvenile court acts which universally provide that when there is evidence of abuse, parents or other caretakers may be found to have neglected the child. After an adjudication of neglect, the juvenile court may institute protective supervision of the child or order his removal from the home. This is true in Mississippi;
3. legislation in many states which authorizes or establishes "protective services" for abused and neglected children as part of a comprehensive program of public child welfare services; and
4. child abuse reporting laws, now existing in every state, encouraging the reporting of suspected child abuse so that the other provisions for the protection of children can be called into play.

The criminal law operates only to punish the wrongdoer—the adult—who inflicts harm on a child. It cannot operate to aid the child, to improve his condition or to change his environment. Because of this, criminal law provisions have little value from the child's point of view.

The juvenile court is faced with confusing legislation relating to standards of proof in abuse/neglect cases. Proof of physical

abuse done intentionally is extremely difficult to establish. Juvenile courts have adopted virtually every conceivable standard in attempting to cope with this problem, from a mere preponderance of evidence to *res ipsa loquitur*. The court is faced with the problem of balancing the interest of the parents with the child's welfare. In cases where the injuries leave doubt as to their cause, the conflict may be impossible to resolve, and the child will return home. This result is open to attack under the *parens patriae* theory. If the welfare of the child is the main consideration, as it must be under the theory, then all doubts should not be resolved in favor of the parents. Obviously there can never be any assurance of future protection for the child. The problem is compounded, however, because the use of legal procedures requiring confusing standards of proof, aimed at establishing guilt, are focused on the adults and not on the child.

Child welfare services, such as DPW, have emerged in recent years and have helped to eliminate many child abuse problems. The emphasis here is on remolding the family structure. These services are usually available without a court order. But before any services can be rendered and before any help can be extended to the child, there must be a report of the circumstances. Someone must know that a child is being abused/neglected and report it. This is the key stumbling block in any attempt to deal with child abuse. The simple fact is that no one wants to get involved. Doctors, neighbors, friends of the family and people in general are hesitant to report a suspected child abuse case. Statutes requiring the reporting of such cases exist in every state. Even so, not all cases are reported.

The definition of child abuse varies from state to state. Section 43-21-105 of the Mississippi Youth Court Act defines abuse as:

(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 said child sexual abuse, sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment. "Sexual abuse" includes 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.

Mississippi has a very broad definition which can be divided into several categories: physical, mental, emotional and sexual abuse. The idea behind this definition is to protect children.

In addition to abused children, DPW is also concerned with neglected children. Section 43-21-105 of the Mississippi Youth Court Act defines neglected children as:

- (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 or necessary care or support, or education as required by law, or medical, surgical, or other care necessary for his well-being; provided, however, 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 neglected under any provision of this chapter, unless the judge shall find that it is in the best interest of the child for the court to take jurisdiction; 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 said mental condition be mentally retarded or mentally ill; or
  - (iv) who, for any reason, lacks the care necessary for his health, morals or well-being.

Again, the idea is to protect children and insure that they are provided with the basic things children need when growing up.

With this background in mind, let us now look at what the DPW does in cases of child abuse and neglect.

## DEPARTMENT OF PUBLIC WELFARE: CHILD ABUSE/ NEGLECT

The DPW is authorized to receive reports of suspected child abuse/neglect from any:

attorney;  
physician;  
dentist;  
intern;  
resident;  
nurse;  
psychologist;  
teacher;  
social workers;  
school principal;  
child care giver;  
minister;  
law enforcement officer; or

other persons having reasonable cause to suspect that a child brought to him or coming before him for examination, care, or treatment, or a child that he has knowledge of through observation that may be abused/neglected.

The Mississippi Youth Court Act requires that reports of suspected child abuse/neglect be made immediately by telephone or otherwise to the DPW and be followed with a written report. The DPW then makes a referral to the intake unit of the youth court and, where appropriate, a referral is made to the youth court prosecutor for further action.

In addition, DPW operates a toll free telephone service for reporting abuse cases. The number is 1-800-222-8000.

Suppose a doctor, or some other person, has reason to believe that a child is being abused or neglected. If a report is made it will probably be by telephone to either the youth court or DPW. In either event DPW will investigate.

A social worker from the DPW contacts the family in order to make an evaluation of the situation. As part of the evaluation process, the worker interviews the parents or person responsible for the care of the child regarding the allegations in the initial

report. The worker also observes the child to see if the child shows signs of abuse/neglect. If the child is old enough, the worker also interviews the child to get explanation of the abuse/neglect. In some cases it is necessary to interview other people in an attempt to determine if the child is being abused/neglected. People who may be interviewed include neighbors, relatives, school personnel, doctors and others.

The findings of the investigation are reported to the intake unit of the youth court and generally fall into the following categories:

- (1) abuse/neglect is not present—no further action;
- (2) abuse/neglect is present—no court intervention; or
- (3) abuse/neglect is present—court intervention.

If abuse/neglect is present, court intervention may not be necessary if the abuse/neglect is not severe and the parents agree to cooperate with the social worker. In this type of situation the social worker offers the family supportive services through casework counseling. The worker may also make use of other available resources in the community to aid in strengthening the family. These resources might include mental health centers, day care centers, medical services, church organizations and other groups available in the community.

If the abuse/neglect is severe and the child is in a life threatening situation or if the parents refuse to cooperate in providing a safe and healthy environment for the child, it may be necessary to seek court intervention. If the worker feels that the child needs to be removed from the home, an order is received from the youth court judge which places the child in the temporary custody of the department for a period of not longer than 48 hours. A child in the custody of DPW is generally placed in a foster home or an emergency shelter.

Within 48 hours of receiving custody of a child, a shelter hearing is held to determine if the child will remain in the custody of DPW, be returned home, or be placed in the custody of a relative or non-state institution. If DPW retains custody, the child remains in foster care.

After the shelter hearing a petition is filed within 5 days and an adjudicatory hearing is held within 30 days to determine if

there is sufficient cause to suspect the child of being abused/neglected.

A disposition hearing is held within 14 days of the adjudicatory hearing to determine the most appropriate placement for the child. In some cases the child is returned to the parents with DPW supervision. In this situation, the court order places limitations or conditions on the parents. The social worker maintains contact with the family to see that the parents are following the court order.

As a result of a dispositional hearing in some cases, the DPW is given legal custody of the child for appropriate placement. Since a child can only remain in an emergency shelter for 30 days, placement is usually in a foster home. Once DPW has a child in foster care, a periodic review is made of the case to determine if it is possible for the child to return home, be placed with relatives or to remain in foster care. For children who remain in foster care, attempts are made to rehabilitate the parents and reunite the family. If this is not possible, plans are made for long-term foster care for the child, or the process for termination of parental rights is started. Termination of parental rights is not done in the youth court. These cases are handled in the chancery court. Since termination of parental rights is such a severe thing, it is only done after the chancellor finds that the parents are unfit or have abandoned the child. In some cases the only way to insure future protection for abused/neglected children is to take them away from their parents permanently.

All information, including reports, concerning child abuse/neglect cases is kept confidential.

The single goal in all abuse/neglect cases is to protect the child and to provide him with the best possible environment. The legal system alone, including the youth court, is simply not able to cope with the problem of abuse/neglect. For this reason DPW is the key agency which allows the goal of the court to be fulfilled. DPW provides so many needed services that all of them cannot be described here. Suffice it to say that without DPW the youth court system in Mississippi could not function at all in abuse/neglect cases.

DPW is often called upon to perform services which it does

not or cannot perform.

The following is a brief list of things which DPW does *not* do:

1. DPW is not able to intervene in custody cases when an ex-spouse is not satisfied with the custody arrangements in the divorce decree, unless there is reason to suspect a child is being mistreated.
2. DPW does not remove a child from his home unless he is in a life threatening situation or unless attempts to improve the child's environment have failed. People who report suspected child abuse/neglect should not expect DPW to automatically remove a child. The goals are to prevent future abuse/neglect and to maintain the family unit.
3. To fulfill the responsibility of investigating a report of suspected child abuse/neglect, it is necessary to contact and interview the parents. A report of suspected child abuse/neglect should not be made with a request for DPW not to involve the parents. DPW will take steps necessary to protect the child if the contact with the parents places the child in a threatening situation.
4. Transportation is not provided unless it is part of the service plan.
5. DPW can only provide protective services to persons over the age of 18 with the consent of the abused/neglected person. At this time, there is no legal mandate for protective services for persons over the age of 18 regardless of the person's physical or mental capabilities.

The following is a summary of what DPW *will* do:

1. DPW cooperates and assists other public officials and departments for the protection of children.
2. Agency records and their contents involving children will be kept confidential.
3. A central registry of abuse/neglect cases is maintained.
4. Appropriate placement for children in the custody of DPW is provided.

5. DPW will receive reports of suspected child abuse/neglect from professionals and the general public.

6. DPW will conduct investigations of reports of suspected child abuse/neglect.

7. A toll free telephone service is operated for receiving reports of suspected child abuse/neglect (1-800-222-8000).

8. DPW will draft and file petitions when so designated by the youth court.

9. Written reports (social summaries) to the court will be made when appropriate.

10. DPW refers appropriate cases to the youth court for further disposition.

11. DPW will supervise children in their own homes when court ordered to insure that the intent of the court is being carried out.

12. DPW will supervise children in placement who are in the custody of DPW.

13. When subpoenaed, DPW personnel will serve as court witnesses.

### III. DEPARTMENT OF YOUTH SERVICES

The Department of Youth Services (DYS) is a state agency which is charged with aiding the youth court through counseling and operation of rehabilitation programs. Employees of DHS usually perform the functions of counselors, probation officers, and intake officers. DHS is the key agency upon which the youth court relies and without it the court simply could not function.

#### INTAKE

The intake officer is usually a member of the court staff (DYS) and has the first contact with a child who is referred to the court for any reason. The child may be referred by a law enforcement officer, a parent, a public agency or any person who knows that the child is within the jurisdiction of the court. A common misunderstanding among laymen is that when a child is "reported to the youth court" the judge is solely responsible for doing something with the child. This is not the case at all. In fact, the judge may never even see the child. This is true because of the intake process which results in some children going to court for formal proceedings and others being handled in a different and more informal manner.

Suppose a child is reported to the court for an alleged delinquent act. The case is immediately referred to the intake unit. The intake officer will gather information about the child including:

1. the seriousness of the offense;
2. whether the child has been in youth court before;
3. the child's personal and family background;
4. the physical and mental condition of the child;
5. how the offense was committed;
6. the attitude of the parents; and
7. other relevant information.



Let's take a closer look at the three options. First, it may be surprising to some people that no action would be taken at all. However, there are many cases in which this is the proper choice. For example, suppose the child is accused of throwing a rock through a school window. After investigation the intake officer discovers that the child is from a responsible family, does well in school, has never been in trouble before, is well thought of by his teachers and in general is really a good child who threw a rock when he shouldn't have. The intake officer will talk with the child and his parents, discuss the event and inform them of the possible consequences of such behavior in the future. The child or his parents agree to pay for the window.

In such a case the proper choice for the intake officer is to take no further action. To bring this child before the court would not only be pointless, it could be detrimental to the child's future. It would also be a waste of time and money on court proceedings.

The second choice, informal adjustment, is needed in cases where "something" should be done but where formal court proceedings are not indicated. Suppose, for example, in the above case the intake officer's investigation revealed the following information about the same child: he is alleged to have broken twenty school windows, he is from a troubled family, stays out late at night, is not attending school regularly, is not doing well in school and has been referred to the court once before for damaging property.

Unlike the first case, this one is relatively serious. However, after talking to the child and his parents, the intake officer learns that they are attempting to improve their lives, that the parents really want the child to be responsible, and that the child realizes he must become a better citizen. They are all willing to make every effort to help the child; therefore, an informal adjustment is in order.

The informal adjustment is voluntary. The parents will be informed that the child will be given an opportunity to participate in an informal period of supervision, subject to certain conditions, instead of going to court. If the parents and child agree, they will then meet with the judge (designee) or the counselor who will

explain the terms of the informal adjustment. The parents may have a lawyer present if they desire. The terms of the informal adjustment may include such things as curfew, regular school attendance, reporting to a counselor, restitution or other terms designed to help the child. The parents are told that they may withdraw from the agreement at any time. If all agree, they sign a document containing the terms of the informal adjustment. This agreement will last no longer than six months unless otherwise authorized by the judge.

The agreement may be terminated upon recommendation of the counselor when the child has fulfilled all the terms or no longer needs counseling. The counselor may also end the agreement when the child refuses to participate, or to cooperate or simply is unable or unwilling to benefit from the agreement.

The purpose of the informal adjustment is to assist a child in changing his behavior without going through formal court proceedings. In the event that the process fails to produce the desired results, the agreement may be ended and a petition may be filed.

The third choice of the intake officer is to recommend that a petition be filed. This will result in formal proceedings in the court and could result in incarceration of the child.

To follow our case above, assume the child not only broke school windows, but there is also evidence to indicate that he tried to burn it down. The intake officer discovers that the child has been referred to youth court on two previous occasions for vandalism, has already been through an informal adjustment, does not attend school, and his parents really don't care about him. In short, the facts indicate that a petition should be filed. Then the intake officer would recommend to the judge that a petition be filed. If approved, formal proceedings would begin. At this point the responsibility of the intake officer ends.

## COUNSELORS

In addition to serving in informal adjustment cases, counselors perform many other duties. They gather invaluable

information for the judge and serve as counselors for children during periods of probation or parole.

At a dispositional hearing the counselor will present information about the child's background to the judge. This information is usually in the form of a social history which includes the following:

1. information about the child's prior appearances before the court;
2. history of the child's conduct;
3. family and home situation;
4. the physical and mental condition of the child;
5. special needs of the child; and
6. information about the child's educational background.

The judge will consider the information and comments of the counselor in deciding what to do with the child.

In delinquency cases, or cases involving children in need of supervision, the judge's disposition may be probation with certain conditions and limitations. For example, the child may be ordered to make restitution, perform some community service or perform some service for the victim of his conduct. In such cases the counselor will be responsible for monitoring the child to see that the conditions are met. The counselor will also meet regularly with the child and give him advice and encouragement. The counselor may also meet with the child's family and coordinate with other agencies in an effort to help the child. The counselor keeps the court informed of how the child is doing at all times.

When a child is committed to a state institution, the counselor will make sure that all the paper work is in order and will forward all necessary information to the institution where the child will be placed. While the child is in the institution, the counselor will keep in touch with him and his family and assist in preparing them for the child's release and return home. When the child is released, the counselor will assist in reorienting the child to the community and help the child in any way possible.

During a dispositional hearing, the judge may decide that the child needs special care. If this happens the counselor will assist the court and the family in finding and placing the child in an appropriate institution or facility, or in obtaining needed

services to meet the special needs of the child. Again, the counselor will keep the court informed as to how the child is doing.

In certain circumstances a counselor or intake officer may be asked by the judge to assist in deciding if custody or detention is necessary. Again, the role of the counselor is to furnish information to the court. Here the information would concern any possible alternative to custody or detention. For example, the counselor may be able to find a suitable relative for the child to stay with instead of being held in custody.

## RECORDS

The counselor keeps individual records on each child. These records are confidential and not open to the public. The counselor can release these records only when ordered to do so by the judge and then only to the following:

1. another youth court;
2. another court in custody or adoption cases;
3. the judge or staff of another court;
4. certain representatives of public or private agencies;
5. people doing research; and
6. employment security representatives.

The Mississippi Youth Court Act also specifically provides that the child's parents or his attorney may see any records which will be considered by the court in a hearing. The attorney may copy any records which have been filed in the youth court.

The purpose of keeping the records confidential is to protect the child. At some point in the future the judge may order that all the records be destroyed.

The role of the counselor is vital in making the juvenile justice system function properly. Unfortunately, in some areas of Mississippi the counselors are burdened with too many children to spend adequate time with each one. The typical case load is about 70 children for each counselor but some have as many as 200 children. In such areas volunteers greatly aid in supervising children by working with counselors. Every effort should be made

by people connected with the youth court, including the general public, to assist the counselors in every way possible. Their task calls for skill, training and extraordinary devotion to what is often a seemingly impossible job. They deal almost exclusively with children who are delinquent or in need of supervision. Consequently, they become the key figures in an attempt to straighten out the lives of children assigned to them. Given the limitations under which they must operate, they are amazingly successful.

#### IV. LAW ENFORCEMENT

The role of law enforcement in the juvenile justice system is focused on arrest. It is important to understand that law enforcement officers do not prosecute children. Police are often criticized as "doing nothing" about problems with children in a particular community. The criticism is unfair because in most cases there is very little a police officer can do. Police actions are severely limited by the youth court act.

##### ARREST

Only the youth court judge or his designee can order the arrest of a child who is within the jurisdiction of the youth court. The judge will not authorize an arrest warrant unless there is good reason to believe the following:

1. the child is within the jurisdiction of the youth court; and
2. custody is necessary to protect the child or other people; or
3. to insure the child's attendance in court; or
4. the parents or guardians are not available to care for the child, and there is no alternative to arrest.

When all the conditions are met, the judge or designee may order that a child be arrested. Even if the child is arrested, he can only be kept for 48 hours, not counting weekends and holidays, unless a detention hearing is conducted and the youth court judge orders that the child be held longer.

It is possible for a child to be arrested without a court order. The youth court act provides that a law enforcement officer may arrest a child without a court order in the following cases:

1. grounds exist for the arrest of an adult in identical circumstances (the officer sees the child commit a crime); or
2. custody is necessary because the parents or guardians are not available to care for the child; and

3. there is no alternative to arrest.

A welfare worker or law enforcement officer may arrest a child if the child is in danger of immediate harm and there is no alternative to taking the child into custody.

When a child is arrested without a court order, the person making the arrest must try to notify the child's parents and must notify the youth court judge. A child arrested without a court order can only be held for 24 hours unless the youth court judge authorizes a longer period of time.

Any time a child is arrested the least restrictive custody must be used.

#### RIGHTS OF THE CHILD DURING ARREST

Anytime a child is arrested he must be told:

1. the reason for his arrest;
2. how long it will be until his custody is reviewed;
3. his right to an attorney;
4. the rules of the place where he is being kept; and
5. the time and place of a detention hearing (when known).

After being arrested the child may immediately telephone his parents, his attorney and youth court personnel. Later he may call these same people at reasonable intervals. Ordinarily the child may be visited by his attorney and parents at any time.

The child cannot be interrogated or interviewed while in detention or shelter facilities unless so ordered by the youth court judge or designee. The child cannot be questioned about possible crimes unless his attorney or *guardian ad litem* is present or consents to the questioning.

While in custody the child cannot be locked in the same room or cell with adults or have any substantial contact with adults who are also in custody.

The child may be questioned before arrest and detention; however, information given at this point may or may not be admissible in a hearing.

The youth court judge, or designee, may order the child's release or change custody to a public or private agency.

The rules governing arrest of children are very strict. The rights of the child are protected at all times. The idea behind such strict rules is to protect the child and watch out for his best interest. The same rules do not apply to the arrest of adults.

#### LAW ENFORCEMENT RECORDS

All law enforcement records relating to children are confidential as far as the public is concerned. The police or other law enforcement agencies may release information about the commission of a delinquent act and arrest to the public but cannot mention the child's name or address. Otherwise, no records may be released unless ordered by the youth court judge. Of course, the child, his attorney, parent or guardian may see any records which will be considered by the youth court in a hearing concerning that child.

#### FINGERPRINTS

A child taken into custody for a felony or an offense involving a dangerous weapon may be fingerprinted and photographed. When this is done, the youth court must be notified and informed as to where the fingerprints or photographs are being kept. Afterwards they may only be used for law enforcement purposes.

#### HUNTING AND FISHING VIOLATIONS

For violation of hunting and fishing laws children are treated the same as adults, unless the youth court judge has the case transferred.

## DRIVER'S LICENSE

Basically, for traffic offenses children are treated just like adults. The only exception is for driving offenses under the implied consent laws. If a child should refuse to take the intoximeter test, he will be treated as an adult and may lose his driver's license. Results of intoximeter tests are sent to the youth court which has jurisdiction in driving under influence and driving while intoxicated (DUI/DWI) cases. The youth court judge may suspend a child's driver's license for various reasons which are deemed to be in the best interest of the child.

## V. ADVOCACY OFFICE, INC.

The Advocacy Office is a private, nonprofit corporation established by Congress and funded by federal money. The purpose of this organization is to protect the rights of developmentally disabled children who come before the youth court. These children are between the ages of seven and eighteen and are mentally retarded, emotionally or physically handicapped and need special consideration and treatment. The purpose of the Advocacy Office is to insure that such treatment is properly given.

Specifically, the Advocacy Office does the following:

1. assists the youth court in determining and securing proper care and treatment for developmentally disabled youth offenders;
2. provides information to agencies which operate detention and shelter facilities about the special needs of handicapped children who will be kept there;
3. acts as *guardian ad litem* for developmentally disabled children who come before the youth court if their parents appear to have no interest in the child;
4. provides advice to parents, judges and others about the mental, emotional, educational, intellectual and other special factors concerning a child in cases involving a potential transfer of jurisdiction;
5. provides discretionary legal counsel for severely disabled children who come before the youth court;
6. investigates a child's background, including results of psychological examinations, to determine if the child is developmentally disabled; and
7. protects the rights of developmentally disabled youthful offenders, including legal action where necessary.

In short, the Advocacy Office is a legal agency which insures that a special class of children, youthful offenders who are mentally, emotionally, or physically handicapped, will get appropriate treatment.

The Advocacy Office may become involved in a case in several ways—by a telephone call, letter or visit to the Advocacy Office from a parent, agency, teacher or anyone interested in a developmentally disabled child that is before the youth court. After contact is made, the Advocacy Office will interview the child and the parents (or other client) and examine any school records, mental tests and other evaluations to determine if the child is developmentally disabled. The Advocacy Office may, on occasion, help arrange for the child to have psychological or psychiatric testing. After determining that the child is disabled, the Advocacy Office will then contact the agency involved, such as a detention center or other treatment center where the child is being kept, to inform them that a complaint has been made. If it appears that the child's rights are being violated, the Advocacy Office will then negotiate with the agency in an effort to restore or secure proper treatment for the child. If this fails, the Advocacy Office will then pursue all available legal remedies necessary to protect the rights of the handicapped child.

While the Advocacy Office exists to give legal assistance to developmentally disabled youthful offenders, it does not provide such services for anyone else. Neither does it provide financial help, job placement or direct personal services such as transportation.

It is important to keep in mind that many different types of children come before the youth court. Some are not "normal" due to mental or emotional problems or other handicaps. These children need special care and treatment. They have a right to such special care. The role of the Advocacy Office is to insure that the child's rights are not violated by any of the agencies in the juvenile justice system.

## VI. VOLUNTEERS

There is no formal organization or agency for people who volunteer to help with children who come into the Mississippi youth court system. These people are simply what the name implies: volunteers.

In a very few counties there is a volunteer coordinator. The coordinator may be an employee of the Department of Youth Services or the county. In either case the coordinator will recruit, train and supervise the volunteers.

Basically, a volunteer is a person who is interested in working with children who are, or may be, before the court. The volunteer will be interviewed by someone on the court staff and references will be checked to insure that the person volunteering is of good character and is a responsible citizen. The volunteer will then be given training and information about the court and the type of children he will be working with. When the coordinator is satisfied that the volunteer is suitable, a child will be assigned to that person.

The volunteer then assists the child in any way possible. Typically, the volunteer becomes a "friend of the child." The volunteer will spend as much time as possible with the child. Activities will include recreation, sports, help with school work and assistance with any special problem the child may have.

The volunteer will report how the relationship is progressing to court personnel.

Volunteers serve a great need of the youth court. They assist probation officers and furnish extra help in working with troubled children. Although they are not paid for their time and effort, they play a key role in the juvenile justice system.

## VII. MISCELLANEOUS PROVISIONS

1. **APPEAL**  
Appeals from the youth court go directly to the Mississippi Supreme Court for review. Such appeals are expensive and time-consuming. An appeal does not suspend the order of the youth court unless the youth court judge so orders.
2. **PENALTIES**  
The penalty for contributing to neglect or delinquency of a child is one year in jail or a fine of \$1000.00 or both.  
The penalty for child abuse is twenty years in the penitentiary.  
The penalty for unauthorized release of records concerning children is \$1000.00 or one year in jail, or both.
3. **COSTS OF TREATMENT**  
The costs of transporting and treating a child are paid out of county funds. However, the youth court judge can require parents or guardians to contribute to such costs if they are financially able to do so.
4. **CONFESSIONS**  
An out-of-court confession by a child, if admissible, is not enough for a finding of delinquency. There must be other evidence.
5. **PLEA BARGAINING**  
Plea bargaining is not allowed in a Mississippi youth court.
6. **COURT COSTS**  
All court costs are paid by the county.
7. **CONSTITUTIONAL RIGHTS**  
The United States Supreme Court has determined that children brought before the youth court have certain rights which cannot be denied. They are:
  - a. right to have an attorney;
  - b. right to notice of hearings;
  - c. right to remain silent;
  - d. right to cross-examine witnesses;

- e. right to a transcript of the proceedings;
- f. right to an appeal; and
- g. right to subpoena witnesses.

## VIII. CONCLUSION

From this brief description, one should be able to see that the youth court system in Mississippi is not a simple thing. It is very complex and involves the cooperation and help of many people.

In the normal situation a child will develop and grow under the loving care of parents and friends. But there are cases where the child will get into trouble, do things which he should not do, or not do things which he should do. Also, there are children who do not have loving, caring parents. These children may be neglected or abused. In these cases there must be a response from society which is aimed at providing the help and guidance such children need in growing up. This response takes the form of the youth court. It was designed to give assistance to children in every way possible. Obviously, the youth court is not perfect; but it does serve a most valuable purpose and should be viewed as extremely beneficial to society in general and to children in particular.



## MISSISSIPPI YOUTH COURT ACT

Effective July 1, 1980

### §43-21-101. Short title.

This chapter shall be cited as the "Youth Court Law."

### §43-21-103. Construction and purpose.

This chapter shall be liberally construed to the end that each child coming within the jurisdiction of the youth court shall receive such care, guidance and control, preferably in his own home, as will be conducive to the child's welfare and the best interest of the state, and that when a child is removed from the control of his parents, the youth court shall secure proper care for him.

### §43-21-105. Definitions.

The following words and phrases, for purposes of this chapter, shall have the meaning 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 is not considered a "child" or "youth" for the purposes of this act.
- (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 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.

(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, wilfully and habitually violates the rules thereof or wilfully and habitually absents himself therefrom; or

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

(iv) has committed a delinquent act.

(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; provided, however, 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 neglected under any provision of this chapter, unless the judge shall find that it is in the best interest of the child for the court to take jurisdiction; 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 said mental condition be mentally retarded or mentally ill; 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 said child sexual abuse, sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment. "Sexual abuse" includes 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. However, 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 abused under any provision of this chapter, unless the judge shall find that it is in the best interest of the child for the court to take jurisdiction.

(n) "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.

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

(p) "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.

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

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

(s) "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.

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

#### **§43-21-107. Establishment clause.**

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

(2) 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 which does not have a family 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.

(3) A youth court division is hereby created as a division of the chancery court of each county in which no county court or family 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.

(4) In any county where there is no county court or family court, there may be created a youth court division as a division of the municipal court in a city with a population in excess of twelve thousand (12,000) persons 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 for such purposes excluding state and county funds.

#### **§43-21-109. Youth court facilities.**

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 real estate 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.

#### **§43-21-111. Referee.**

(1) In any county the judge may appoint as provided in section 43-21-123 regular or special referees who may be attorneys at law and members of the bar in good standing to act in cases concerning children within the jurisdiction of the youth court, and a regular referee shall hold office until removed by the judge.

(2) The judge may direct that hearings in any case or class of cases be conducted in the first instance by the referee. The judge may also delegate his own administrative responsibilities to the referee.

(3) All hearings authorized to be heard by a referee shall proceed in the same manner as hearings before the youth court judge. A referee shall possess all powers and perform all the duties of the youth court judge in the hearings authorized to be heard by the referee.

(4) 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.

(5) The salary for the referee shall be fixed on order of the judge as provided in section 43-21-123 and shall be paid by the county out of any available funds budgeted for the youth court by the board of supervisors.

(6) Upon request of the board of supervisors of two (2) or more counties, the judge of the chancery court may appoint a suitable person as referee to two (2) or more counties within his district, and the payment of salary may be divided in such ratio as may be agreed upon by the boards of supervisors.

**§43-21-113. Special judge.**

When a judge shall certify in writing that he is unable to serve because of illness or absence from the district, the judge may appoint as provided in section 43-21-123 a special judge to serve in his stead. A special judge shall possess all the powers and perform all the duties of the regular judge. The compensation for the special judge shall be fixed on order of the judge as provided in section 43-21-123 on the basis of a statement as to the time and expense incurred by the special judge and shall be paid by the county out of any available funds. In the case of recusal, a judge shall be selected as provided by law.

**§43-21-115. Intake unit.**

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 intake unit shall perform all duties specified by this chapter. If the person serving as the 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.

**§43-21-117. Youth court prosecutor.**

(1) A youth court prosecutor shall represent the state in all proceedings in the youth court.

(2) The county prosecuting attorney shall serve as the youth court prosecutor; however, if funds are available pursuant to Section 43-21-123, the court may designate, as provided in subsection (3) of this section, a prosecutor or prosecutors in lieu of or in addition to the county prosecuting attorney. Where there is a municipal youth court division, the city prosecutor shall serve as youth court prosecutor, provided that the district attorney may participate in transfer proceedings.

(3) The judge may designate as provided in Section 43-21-123, some suitable attorney or attorneys to serve as youth court prosecutor or prosecutors in lieu of or in conjunction with the youth court prosecutor provided in subsection (2) of this section. The designated youth court prosecutor or prosecutors shall be paid a fee or salary fixed on order of the judge as provided in Section 43-21-123 and shall be paid by the county out of any available funds budgeted for the youth court by the board of supervisors, unless the designated youth court prosecutor or prosecutors serve in a municipal youth court division, in which case he shall be paid a fee or salary fixed on order of the judge from the funds available to the municipality.

**§43-21-119. Youth court personnel.**

The judge or his designee shall appoint as provided in section 43-21-123

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

**§43-21-121. Guardian ad litem.**

(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) 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.

(3) The court may appoint either a suitable attorney or a suitable layman as guardian ad litem.

(4) 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.

(5) Upon order of the youth court, the guardian ad litem may be paid a fee by the county out of the general fund.

**§43-21-123. Expenditures by the youth court.**

No person shall be hired by the youth court or the youth court judge or compensation paid to any person under sections 43-21-111(1), 43-21-111(5), 43-21-113, 43-21-115, 43-21-117(3) and 43-21-119 unless and until the youth court or the youth court judge first obtains approval of the necessary expenditure from the board of supervisors or the governing authorities of the municipality if the youth court is a municipal youth court; provided, however, the board of supervisors or the governing authority of the municipality, in its discretion, may authorize the youth court to prepare and submit an annual budget for the youth court to the board of supervisors or the governing authority of the municipality which shall identify the number and monthly or annual compensation of such personnel. If 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; provided, however, there shall not be any legal obligation on the part of the county or the board of supervisors or the governing authority of the municipality to pay any expenses, salaries or compensation in excess of the amount or amounts provided in the budget of the youth court.

In their discretion, 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 attending educational meetings offering professional training to said persons; provided, that approval must be obtained from the board of supervisors or the governing authority of the municipality prior to incurring such expenses.

#### **§43-21-125. Council of youth court judges.**

(1) There shall be a Mississippi Council of Youth Court Judges which shall be the official organization of the judges having youth court jurisdiction in this state. The membership of the council shall consist of all the judges and referees of youth courts in the State of Mississippi.

(2) The Mississippi Council of Youth Court Judges is authorized to adopt and, from time to time, amend such rules, regulations or bylaws as it considers necessary to the conduct of its affairs.

(3) The council may elect officers and provide for such meetings of the council as it deems necessary. The council shall meet at least annually for the consideration of:

(a) any and all matters pertaining to the discharge of the official duties and obligations of its members; and

(b) problems that have arisen in connection with the operation of the youth courts in any county or in all counties in order to improve the administration of juvenile justice in the state.

(4) The council shall publish and submit to the governor, the chief justice of the supreme court, and the Mississippi Judicial Council\* an annual report of the operations which shall include financial and statistical data and may include suggestions and recommendations for legislation.

(5) The council is authorized to receive and expend any funds which may become available from the federal government to carry out any of the purposes of this chapter, and to this end the council may meet any federal requirements not contrary to state law which may be conditions precedent to receiving such federal funds.

(6) The council may cooperate with the federal government in a program for training personnel employed or preparing for employment by the youth

\*The Mississippi Judicial Council is no longer in existence.

court and may receive and expend funds from federal or state sources or from private donations for such purposes. The council may contract with public or nonprofit institutions of higher learning for the training of such personnel, may conduct short-term training courses of its own, may hire experts on a temporary basis for such purpose and may cooperate with the department of youth services or other state departments or agencies in personnel training programs.

#### **§43-21-127. Cooperation.**

It is hereby made the duty of every public official or department to render all assistance and cooperation within his or its jurisdictional power which may further the objects of this chapter. The youth court is authorized to seek the cooperation of all societies, organizations or agencies having for their object the protection or aid of children.

### **JURISDICTION**

#### **§43-21-151. Jurisdiction.**

(1) The youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child or an abused child.

(2) Jurisdiction of the child in the cause shall attach at the time of the offense and shall continue thereafter for that offense until the child's twentieth birthday, unless sooner terminated by order of the youth court. The youth court shall not have jurisdiction over offenses committed by a child on or after his eighteenth birthday.

(3) No child who has not reached his thirteenth birthday shall be held criminally responsible or criminally prosecuted for a misdemeanor or a felony. No child under the jurisdiction of the youth court shall be held criminally responsible or criminally prosecuted by any court for any act designated as a delinquent act, unless jurisdiction is transferred to another court under section 43-21-157.

(4) The youth court shall also have jurisdiction of offenses committed by a child which have been transferred to the youth court by an order of a circuit court of this state having original jurisdiction of the offense, as provided by section 43-21-159.

#### **§43-21-153. Powers of youth court; contempt.**

(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.

**§43-21-155. Venue.**

(1) 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. The youth court may, in the best interest of the child, transfer the case at any stage of the proceeding to the county where the child resides or to a county where a youth court has previously acquired jurisdiction.

(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.

**§43-21-157. Transfer of jurisdiction to other courts.**

(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.

(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. 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. 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.

(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.

(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.

(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 wilful 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; and

(l) any other factors deemed relevant by the youth court.

(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.

(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.

(8) When jurisdiction of an offense is transferred to the circuit court, the jurisdiction of the youth court over the youth is forever terminated for a delinquent act. However, such jurisdiction is not forever 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 is not convicted. 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.

**§43-21-159. Transfer of cases from other courts.**

(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 expungement or the destruction of such records in accordance with Section 43-21-265. In cases where the child is charged with a hunting or fishing violation or a traffic violation, except for the driving offenses under the Mississippi Implied Consent Law, whether it be a state law or federal law, or municipal ordinance or county resolution, the appropriate criminal court may proceed to dispose of the same in the same manner as for other offenders and it shall not be necessary to transfer the case to the youth court of the county. The youth court in addition to other action may suspend the driver's license of any child charged with an offense under the Mississippi Implied Consent Law. 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 or a traffic violation committed by a child in a matter under the jurisdiction of the youth court and proceed therewith in accordance with the provisions of this act.

(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) 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, and the youth court shall, upon acquiring jurisdiction, proceed as provided in this act for the adjudication and disposition of delinquent child proceedings; and if any child shall be convicted by any circuit court, the trial judge, if he deems it for the best interest of such child and the public welfare, may, in his discretion, and in lieu of other statutory punishment, commit such child to any state institution now or hereafter established for delinquents, or may commit such child to the county jail for any term not in excess of one (1) year, or he may suspend sentence and release on probation, under such terms and conditions as he may prescribe, and said court shall have the power to change the custody of such child or to terminate its jurisdiction over said child in the same manner as is provided in this chapter for the youth court.

(4) 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.

**PROVISIONS APPLICABLE TO ALL PROCEEDINGS**

**§43-21-201. Representation by counsel.**

(1) Each party shall have the right to be represented by counsel at all stages of the proceedings. If the party is a child, the child shall be represented by counsel at all critical stages. If indigent, the child shall have the right to have counsel appointed for him by the youth court.

(2) When a party first appears before the youth court, the judge shall ascertain whether he is represented by counsel and, if not, inform him of his rights including his right to counsel.

(3) An attorney shall enter his appearance on behalf of a party in the proceeding by filing a written notice of appearance with the youth court, by filing a pleading, notice or motion signed by counsel or by appearing in open court and advising the youth court that he is representing a party. After counsel has entered his appearance, he shall be served with copies of all subsequent pleadings, motions and notices required to be served on the party he represents. An attorney who has entered his 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 then exercising jurisdiction of the cause after notice of his intended withdrawal is served by him on the party he represents.

**§43-21-203. Conduct of proceedings.**

- (1) The youth court shall be in session at all times.
- (2) All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults.
- (3) Hearings in all cases involving children shall be conducted without a jury and may be recessed from time to time.
- (4) All hearings shall be conducted under such rules of evidence and rules of court as may comply with applicable constitutional standards.
- (5) No proceeding by the youth court in cases involving children shall be a criminal proceeding but shall be entirely of a civil nature.
- (6) The general public shall be excluded from the hearing, and only those persons shall be admitted who are found by the youth court to have a direct interest in the cause or work of the youth court. 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.
- (7) In all hearings, except detention and shelter hearings under Section 43-21-309, a complete record of all evidence shall be taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.
- (8) The youth court may exclude the attendance of a child from a hearing in neglect and abuse cases with consent of the child's counsel. The youth 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 and children in need of supervision cases with consent of the child's counsel.
- (9) 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:
  - (a) to subpoena, confront and examine the person who prepared or furnished data for the report; and
  - (b) to introduce evidence controverting the contents of the report.
- (10) Except as provided by Section 43-21-561(5) or as otherwise provided by this act, 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.

**§43-21-205. Court costs and fees.**

In proceedings under this chapter, no court costs shall be charged against any party to a petition, and no salaried officer of the state, county or any municipality, nor any youth court counselor, nor any witness nor any expert witness shall be entitled to receive any fee for any service rendered to the youth court or for attendance in the youth court in any proceedings under this chapter; but the fees of the circuit and chancery clerks in youth court cases

originating by petition shall be paid as is provided by law for like services in other cases and shall be paid by the county on allowance of the board of supervisors on an itemized cost bill approved by the judge. These costs shall be paid out of the general fund. No clerk shall be allowed compensation for attendance in youth court.

**RECORDS**

**§43-21-251. Court records.**

- (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 the files shall be kept in numerical order.
  - (c) a minute book in which the clerk shall record all the orders of the youth court.
  - (d) proceedings of the youth court and evidence.
- (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.

**§43-21-253. Social records.**

- (1) The social records of a youth court 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.
- (2) 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.
- (3) 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, medical examination shall be conducted on an out-patient 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 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.

(4) 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 out-patient 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.

(5) A "transfer study" is a social summary which addresses the factors 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.

(6) All social records and the contents thereof shall be kept confidential and shall not be disclosed except as provided in section 43-21-261.

#### **§43-21-255. Law enforcement records.**

(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 who has 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, may be photographed and/or fingerprinted. Any law enforcement agency taking such photographs and/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, including photographs and fingerprints, may be released to a law enforcement agency supported by public funds without a court order under Section 43-21-261. Except as provided in subsection (4) of this section, any law enforcement agency releasing such records shall immediately report the release and location of the records to the youth court. The law enforcement agencies receiving such records are prohibited from using the photographs and fingerprints for any purpose other than for criminal law enforcement and juvenile law enforcement. In no instance shall the fact that such records 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.

#### **§43-21-257. Agency records.**

(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 public welfare, the department of youth 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 department of youth services shall maintain a state central registry containing the number and disposition of all cases together with such other useful information regarding such cases as may be requested and is obtainable from the records of the youth court. The department 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 department 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 shall disclose or encourage 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 department of youth services, the necessary information, and these completed forms shall be forwarded to the department of youth services.

(3) The department of public welfare shall maintain a state central registry on neglect and abuse cases containing only the name, address and age of each child, the nature of the harm reported and the name and address of the person responsible for the care of the child. The department of public welfare shall adopt such rules as may be necessary to carry out this subsection. The central registry shall be confidential and shall not be open to public inspection. Any person who shall disclose or encourage 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 department of public welfare, the necessary information, and these completed forms shall be forwarded to the department of public welfare.

#### **§43-21-259. Confidentiality of other records involving children.**

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.



**§43-21-261. Disclosure of records.**

(1) Except as otherwise provided in this section, records involving children shall not be disclosed, other than to necessary staff of the youth court, 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 or the functioning of the youth court 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;

(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 approval; and

(f) The Mississippi Employment Security Commission, 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 U.S.C.A. Section 923 et seq.). However, no records, reports, investigations or information derived therefrom pertaining to child abuse or neglect shall be disclosed.

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.

(2) Any records involving children which are disclosed under an order of the youth court and the contents thereof shall be kept confidential by the person or agency to whom the record is disclosed except as 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 which is to be considered by the youth court at a hearing.

(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.

(5) 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 any law enforcement record involving children.

(6) The judges of the circuit and county courts, any persons authorized by such judges, and pre-sentence investigators for the circuit courts, as provided in Section 47-7-9, shall have the right to inspect any youth court records of a defendant which were made after his sixteenth birthday.

(7) 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.

**§43-21-263. Sealing of records.**

(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.

**§43-21-265. Destruction of records.**

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.

**§43-21-267. Penalty for violation.**

(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.

## CUSTODY AND DETENTION

### §43-21-301. Custody orders.

(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 public welfare, 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 issue an order to a law enforcement officer, the department of public welfare, 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 if it appears that there is probable cause that:

(a) the child is within the jurisdiction of the court; and

(b) custody is necessary;

(i) when a child is endangered or any person would be endangered by the child; or

(ii) to insure the child's attendance in court at such time as required;

or

(iii) when a parent, guardian or custodian is not available to provide for the care and supervision of the child; and

(c) there is no reasonable alternative to custody.

(4) The judge or his designee may order, orally or in writing, the immediate release of any child in the custody of any person or agency. Custody orders as provided by this chapter and authorizations of temporary custody may be written or oral, but, if oral, reduced to writing as soon as practicable. The written order shall:

(a) specify the name and address of the child, or, if unknown, designate him by any name or description by which he can be identified with reasonable certainty;

(b) specify the age of the child, or, if unknown, that he is believed to be of an age subject to the jurisdiction of the youth court;

(c) state that the child shall be brought immediately before the youth court or be taken to a place designated by the order to be held pending review of the order;

(d) state the date issued and the youth court by which the order is issued; and

(e) be signed by the judge or his designee with the title of his office.

(5) The taking of a child into custody shall not be considered an arrest except for evidentiary purposes.

### §43-21-303. Taking into custody without a custody order.

(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(3)(b); 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 Public Welfare may take a child into custody if:

(i) there is probable cause to believe that the child is in immediate danger of personal harm; and

(ii) such law enforcement officer or agent has probable cause to believe that immediate custody is necessary as defined in Section 43-21-301(3)(b); and

(iii) such law enforcement officer or agent can find no reasonable alternative to custody.

(c) Any other person may take a child in 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).

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

(3) Unless the child is immediately released, the person taking the child into custody shall immediately notify the judge or his designee. A person taking a child into custody shall also make continuing reasonable efforts to notify the child's parent, guardian or custodian and invite the parent, guardian or custodian to be present during any questioning.

(4) A child taken into custody shall not be held in custody for a period longer than reasonably necessary, but not to exceed twenty-four (24) hours, and shall be released to his parent, guardian or custodian unless the judge or his designee authorizes temporary custody.

### §43-21-305. Noncustodial interrogation.

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.

**§43-21-307. Temporary custody.**

The judge or his designee may authorize the temporary custody of a child taken into custody for a period of not longer than forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays if the judge or his designee finds there are grounds to issue a custody order as defined in section 43-21-301.

**§43-21-309. Detention and shelter hearings.**

(1) A child who has been ordered or taken into custody may be held in custody for longer than temporary custody if:

(a) a written complaint or petition has been filed; and

(b) a court order has been entered for continued custody following a review of that custody at a detention hearing in delinquency and child in need of supervision cases and at a shelter hearing in abuse and neglect cases.

(2) Reasonable oral or written notice of the time, place and purpose of the hearing shall be given to the child; to his parent, guardian or custodian; to his guardian ad litem, if any; and to his 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) At the detention or shelter hearing, all parties present shall have the right 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 or shelter hearing, the youth court shall order that the child be released to the custody of the child's parent, guardian or custodian unless the youth court finds:

(a) there is probable cause that the youth court has jurisdiction; and

(b) custody is necessary as defined in Section 43-21-301(3)(b); and

(c) there is no reasonable alternative to custody.

(5) The child with advice of counsel may waive in writing the time of the detention hearing or the detention hearing itself. 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. If the child has not reached his tenth birthday, the child's consent shall not be required.

**§43-21-311. Rights in custody.**

(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; and
- (e) the time and place of the detention hearing when the time and place is set.

These rights shall be posted where the child may read them.

(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.

(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.

(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.

**§43-21-313. Release from custody upon change of circumstances.**

(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.

**§43-21-315. Designation of facilities.**

(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 Public Welfare, the Department of Youth Services and all law enforcement agencies within the territorial jurisdiction of the youth court.

(2) Except as otherwise provided in this act, 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. 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.

(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, or may order the Department of Public Welfare or the Department of Mental Health or any 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.

#### INTAKE

##### §43-21-351. Reception of information.

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 consecutive serial number and shall be preserved until destroyed on order of the court.

##### §43-21-353. Duty to inform the court.

(1) Any attorney, physician, dentist, intern, resident, nurse, psychologist, teacher, social worker, school principal, child care giver, minister, law enforcement officer, or any other person having reasonable cause to suspect that a child brought to him or coming before him for examination, care or treatment, or of whom he has knowledge through observation is a neglected child or an abused child, 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 Public Welfare, and immediately a referral shall be made by the Department of Public Welfare to the intake unit and where appropriate to the youth court prosecutor. When the knowledge or suspicion of such neglect or abuse of an attorney, physician, dentist, intern, resident, nurse, psychologist, teacher, social worker, school principal, child care giver, minister or any law enforcement officer is pursuant to the performance of services as a member of the staff of a hospital, school, child care center or similar institution or law enforcement duties, he shall notify the person in charge of the institution or his designated delegate, who shall report or cause a report to be made regarding said child. Such 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 and any other information that might be helpful in establishing the cause of the injury and the identity of the perpetrator.

(2) The Department of Public Welfare shall maintain a statewide incoming wide area telephone service or similar service for the purpose of receiving reports of suspected cases of child abuse; provided that any attorney, physician, dentist, intern, resident, nurse, psychologist, teacher, social worker, school principal, child care giver, minister or law enforcement officer who is required to report under subsection (1) of this section shall report in the manner required in subsection (1).

(3) Reports of abuse and neglect 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.

##### §43-21-355. Immunity for reporting information.

Any attorney, physician, dentist, intern, resident, nurse, psychologist, teacher, social worker, school principal, child care giver, minister, law enforcement officer 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.

##### §43-21-357. Intake procedure.

(1) After receiving a report, the intake unit shall promptly make a preliminary inquiry to determine whether the interest of the child, other children in the home or the public requires the youth court to take further action. As part of the preliminary inquiry, the intake unit may request or the youth court may order the department of public welfare, 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 home, and present the findings thereof to the intake unit. If the intake unit

receives a neglect or abuse report, the intake unit shall immediately forward the complaint to the department of public welfare to promptly make an investigation or report concerning the child and any other children in the home and promptly present the findings thereof to the intake unit. If it appears from the preliminary inquiry that the child or other children in the home are within the jurisdiction of the court, the intake unit shall recommend to the youth court:

- (a) that the youth court take no action;
  - (b) that an informal adjustment be made; or
  - (c) that a petition be filed.
- (2) The youth court may then, in its discretion, without a hearing:
- (a) authorize that no action be taken;
  - (b) authorize that an informal adjustment be made; or
  - (c) authorize that a petition be filed.
- (3) If the preliminary inquiry discloses that a child needs emergency medical treatment, the judge may order the necessary treatment.

#### INFORMAL PROCEEDINGS

##### §43-21-401. Informal adjustment.

(1) Informal adjustment pursuant to the informal adjustment agreement provided in section 43-21-405 shall include:

- (a) the giving of counsel and advice to the child and his parent, guardian or custodian;
- (b) referrals to public and private agencies which may provide benefits, guidance or services to the child and his parent, guardian or custodian;
- (c) temporary placement of the child or supervision by the youth court counselor with the consent of the child and his parent, guardian or custodian, subject to youth court review.

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

(3) If the child and his parent, guardian or custodian agree to participate in an informal adjustment process, the defense of a failure to provide a speedy trial is waived and a petition may be filed if the informal adjustment process is unsuccessfully terminated under section 43-21-407.

##### §43-21-403. Notice to parties.

When it is determined to make an informal adjustment, the child and his parent, guardian or custodian shall be requested by letter, telephone or otherwise to attend a conference at a designated date, time and place. At the time the request to attend the conference is made, the child and his parent, guardian or custodian shall be informed that attendance at the conference is voluntary and that they may be represented by counsel or other person of their choice at the conference.

##### §43-21-405. Informal adjustment process.

(1) The informal adjustment process shall be initiated with an informal adjustment conference conducted by an informal adjustment counselor appointed by the judge or his designee.

(2) If the child and his parent, guardian or custodian appear at the informal adjustment conference without counsel, the informal adjustment counselor shall, at the commencement of the conference, inform them of their right to counsel, the child's right to appointment of counsel and the right of the child to remain silent. If either the child or his parent, guardian or custodian indicates a desire to be represented by counsel, the informal adjustment counselor shall adjourn the conference to afford an opportunity to secure counsel.

(3) At the beginning of the informal adjustment conference, the informal adjustment counselor shall inform the child and his parent, guardian or custodian:

- (a) that information has been received concerning the child which appears to establish jurisdiction of the youth court;
- (b) the purpose of the informal adjustment conference;
- (c) that during the informal adjustment process no petition will be filed;

(d) that the informal adjustment process is voluntary with the child and his parent, guardian or custodian and that they may withdraw from the informal adjustment at any time; and

(e) the circumstances under which the informal adjustment process can be terminated under section 43-21-407.

(4) The informal adjustment counselor shall then discuss with the child and his parent, guardian or custodian:

(a) recommendations for actions or conduct in the interest of the child to correct the conditions of behavior or environment which may exist;

(b) continuing conferences and contacts with the child and his parent, guardian or custodian by the informal adjustment counselor or other authorized persons; and

(c) the child's general behavior, his home and school environment and other factors bearing upon the proposed informal adjustment.

(5) After the parties have agreed upon the appropriate terms and conditions of informal adjustment, the informal adjustment counselor and the child and his parent, guardian or custodian shall sign a written informal adjustment agreement setting forth the terms and conditions of the informal adjustment. The informal adjustment agreement may be modified at any time upon the consent of all parties to the informal adjustment conference.

(6) The informal adjustment process shall not continue beyond a period of six (6) months from its commencement unless extended by the youth court for an additional period not to exceed six (6) months by court authorization prior to the expiration of the original six (6) month period.

**§43-21-407. Termination of informal adjustment.**

(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.

(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.

**PETITION**

**§43-21-451. Commencement of formal proceedings.**

All proceedings seeking an adjudication that a child is a delinquent child, a child in need of supervision, a neglected child or an abused child shall be initiated by the filing of a petition. Upon authorization of the youth court, the petition shall be drafted and filed by the youth court prosecutor unless the youth court has designated some other person to draft and file the petition. The petition shall be filed within five (5) days from the date of a detention hearing continuing custody. Unless another period of time is authorized by the youth court or its designee, in noncustody cases the petition shall be filed within ten (10) days of the court order authorizing the filing of a petition. The court may, in its discretion, dismiss the petition for failure to comply with the time schedule contained herein.

**§43-21-453. Style of petition.**

The petition shall be entitled "IN THE INTEREST OF \_\_\_\_\_."

**§43-21-455. Content of petition.**

(1) The petition shall set forth plainly and concisely with particularity:

(a) identification of the child, including his full name, birth date, age, sex and residence;

(b) 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;

(c) 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, a child in need of supervision, a neglected child or an abused child;

(d) in petitions alleging delinquency, a citation of the statute or ordinance which the child is alleged to have violated. 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 his prejudice.

(e) a prayer for the type of adjudicatory relief sought; and

(f) if any of the facts herein required are not known by the petitioner.

(2) Two (2) or more offenses may, in the discretion of the youth court, be alleged in the same petition in a separate count for each offense.

(3) Two (2) or more children may be the subject of the same petition if:

(a) they are siblings; and

(b) they are alleged to be neglected or abused from a common source of mistreatment or neglect.

(4) Where the child is alleged to be a delinquent child, 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.

(5) The petition may contain a motion to transfer.

**§43-21-457. Amendment to the petition.**

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.

**§43-21-459. Responsive pleadings.**

No party shall be required to file a responsive pleading.

**SUMMONS**

**§43-21-501. Persons on whom served.**

(1) When a petition has been filed and the date of hearing has been set by

the youth court, the judge or his designee shall order the clerk of the youth court to issue a summons to the following to appear personally at such hearing:

- (a) the child named in the petition;
- (b) the person or persons who have custody or control of the child;
- (c) the parent or guardian of the child if such parent or guardian does not have custody of the child; and
- (d) any other person whom the court deems necessary.

**§43-21-503. Form of summons.**

The form of the summon shall be substantially as follows:

State of Mississippi  
County of \_\_\_\_\_ In the \_\_\_\_\_ Court of \_\_\_\_\_ County  
Youth Court Division  
No. \_\_\_\_\_  
In the Interest of \_\_\_\_\_.

**SUMMONS**

To: \_\_\_\_\_

You are required to serve the following:

TO: \_\_\_\_\_

You are commanded to appear personally before the \_\_\_\_\_  
Court of \_\_\_\_\_ County at the Courthouse in \_\_\_\_\_, Missis-  
sippi, at \_\_\_ o'clock on \_\_\_\_\_, the \_\_\_ day of \_\_\_\_\_, 19\_\_\_, for a  
\_\_\_\_\_ hearing for the purpose set forth in the petition.  
\_\_\_\_\_ is required to produce \_\_\_\_\_ at the above-named  
hearing. You have a right to be represented by an attorney. You are requested  
to immediately notify the youth court of the name of your attorney. If  
indigent, the above-named child has a right to have an attorney appointed for  
him \_\_\_ free of charge, and should immediately apply to the youth court for  
such appointed counsel. You have a right to subpoena witnesses in your behalf.

GIVEN under hand and seal of court, at \_\_\_\_\_, Mississippi,  
this the \_\_\_ day of \_\_\_\_\_, 19\_\_\_.

\_\_\_\_\_, Clerk  
\_\_\_\_\_, D.C.

**§43-21-505. Method of service.**

(1) Unless otherwise provided in this chapter, 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.

(2) 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 his parent, guardian or custodian and guardian ad litem, if any.

(3) If any parent or guardian 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 youth court may take jurisdiction as if summons had been personally served as herein provided.

(4) The service of summons as required by this chapter shall be made by any person appointed by the youth court judge. Such person, for this purpose, shall be an officer of the youth court.

(5) Unless otherwise provided in this chapter, 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.

**§43-21-507. Time of service.**

(1) Summons shall be served not less than three (3) days before the date set for the adjudicatory hearing of proceedings concerning the child.

(2) A party other than the child may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing and 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.

(3) 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:

- (a) the child fully understands his rights and fully understands the potential consequences of the hearing;
- (b) the child voluntarily, intelligently, and knowingly waives his rights to three (3) days' time before the hearing;
- (c) the child is effectively represented by counsel; and
- (d) the child has had in fact sufficient time to prepare.

**§43-21-509. Warrant for failure to obey summons.**

If any person summoned as herein provided shall without reasonable cause (the judge to determine what is reasonable cause) fails to appear, he 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 he shall 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.

#### ADJUDICATION

##### §43-21-551. Scheduling of adjudicatory hearings.

(1) 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, a child in need of supervision, a neglected child or an abused child. If the adjudicatory hearing is not held within the ninety (90) days, the petition shall be dismissed with prejudice.

(2) 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 youth court unless the hearing be postponed:

(a) upon motion of the child;

(b) where process cannot be completed; or

(c) 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.

(3) If the child is held in shelter, the hearing 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:

(a) upon motion of the child;

(b) where process cannot be completed; or

(c) 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.

##### §43-21-553. Uncontested adjudications.

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:

(a) the parties making the admission fully understand their rights and fully understand the potential consequences of their admission to the allegations;

(b) the parties making the admission voluntarily, intelligently and knowingly admit to all facts necessary to constitute a basis for court action under this chapter;

(c) 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

(d) the child making the admission is effectively represented by counsel.

##### §43-21-555. Plea bargaining prohibited.

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.

##### §43-21-557. Order of proceedings.

(1) At the beginning of each adjudicatory hearing, the youth court shall:

(a) 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;

(b) ascertain whether all necessary parties are present and identify all persons participating in the hearing;

(c) ascertain whether the notice requirements have been complied with and, if not, whether the affected parties intelligently waived compliance in accordance with section 43-21-507;

(d) explain to the parties the purpose of the hearing and the possible dispositional alternatives thereof; and

(e) 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 cross-examine witnesses testifying against him; and

(v) the right to appeal.

(2) The youth court should then ascertain whether the parties before the youth court are represented by counsel. If a party before the youth court is not represented by counsel, the youth court shall ascertain whether the party understands his right to counsel. If the party wishes to retain counsel, the youth court shall continue the hearing for a reasonable time to allow the party to obtain and consult with counsel of his choosing. If an indigent child does not have counsel, the youth court shall appoint counsel to represent the child and shall continue the hearing for a reasonable time to allow the child to consult with his appointed counsel.

(3) The youth court may then inquire whether the parties admit or deny the allegations in the petition as provided in section 43-21-553.

(4) The youth court may at any time terminate the proceedings and dismiss the petition if the youth court finds such action to be conducive to the welfare of the child and in the best interest of the state.

##### §43-21-559. Evidence admissible.

(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) At the conclusion of the evidence, the youth court shall give the parties an opportunity to present oral argument.

#### **§43-21-561. Adjudication of status, standard of proof, and findings.**

(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 or an abused child, the youth court shall enter an order adjudicating the child to be a neglected child or an abused child.

(4) No decree or order of adjudication concerning any child shall recite any of the facts or circumstances upon which the adjudication is based, nor shall it recite that a child has been found guilty; but it shall recite only 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. 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 or a neglected child or an abused child.

(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 such 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 a 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.

### **DISPOSITION**

#### **§43-21-601. Scheduling of disposition hearing.**

(1) If the child has been adjudicated a delinquent child, a child in need of supervision, 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, however, 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.

(2) 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.

#### **§43-21-603. Disposition hearing procedure.**

(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 which 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, prior to 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; and
- (d) the child's need for care and assistance.

(4) If the child has been adjudicated a child in need of supervision, prior to 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, prior to entering a disposition order, the youth court should 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; and
- (d) the ability of a child's parent, guardian or custodian to provide proper supervision and care of a child.

(6) After consideration of all the evidence and the relevant factors, the youth court shall enter a disposition order which shall not recite any of the facts or circumstances upon which such 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. 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.

**§43-21-605. Disposition alternatives in delinquency cases.**

(1) In delinquency 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 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 Three Hundred Dollars (\$300.00), 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) years; or
- (g) give legal custody of the child to any of the following:
  - (i) the Department of Public Welfare 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 Department of Youth Services for placement in a state-supported training school, except that no child under the age of ten (10) years

shall be committed to a state training school. The training school may retain custody of the child until the child's twentieth birthday but for no longer. The superintendent of a state training school may parole a child at any time he may deem it in the best interest and welfare of such child. Twenty (20) days prior to such 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. 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.

(2) 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.

(3) 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.

**§43-21-607. Dispositional alternatives in children in need of supervision cases.**

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 Public Welfare 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.

**§43-21-609. Dispositional alternatives in neglect and abuse cases.**

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;
- (c) 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;
- (d) order youth court personnel, the Department of Public Welfare 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;
- (e) give legal custody of the child to any of the following but in no event to any state training school:
  - (i) the Department of Public Welfare 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.

**§43-21-611. Dispositional alternatives for children in need of special care.**

If the youth court finds at the disposition hearing that a delinquent child, a child in need of supervision, a neglected child or an abused 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 commitment, as a priority case, to any state institution providing care for that disability or infirmity. The state institution shall accept the child within ten (10) days after notice of the disposition order committing the child to the institution. However, 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.

**§43-21-613. Modification of disposition orders, probation or parole.**

(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 which complies with the sections governing petitions in this chapter and which 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.

(3) Unless the youth 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 youth court at least annually to determine if continued placement, probation or supervision is in the best interest of the child or the public. In conducting the review, the court may require a written report, information or statements from the child's youth court counselor, parent, guardian or custodian which includes but is not limited to an evaluation of the child's progress and recommendations for further supervision or treatment. After the review, 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.

**§43-21-615. Costs of conveying and treatment.**

(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.

(2) Whenever a child is 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. If the parent or guardian shall wilfully fail or refuse to pay such sum, he may be proceeded against for contempt of court as provided in this chapter.

**§43-21-617. Protective orders.**

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.

**APPEALS**

**§43-21-651. Appeals to supreme court.**

(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 ten (10) days after the rendition of the final order or decree to be appealed from, and costs in the youth court and the filing fee in the supreme court shall be paid as is otherwise required by law for appeals to the supreme court. If the appellant shall make affidavit that he is unable to pay such costs and filing fee, he shall have an appeal without prepayment of court costs and filing fee. Only the initials of the child shall appear on the record on appeal.

(2) The pendency of an appeal shall not suspend the order or decree of the youth court regarding a child, nor shall it discharge the child from the custody of that court or of the person, institution or agency to whose care such child shall have been committed, unless the youth court or supreme court shall so order. If appellant desires to appeal with supersedeas, the matter first shall be presented to the youth court. If refused, the youth court shall forthwith issue a written order stating the reasons for the denial, which order shall be subject to review by the supreme court. If the supreme court does not dismiss the proceedings and discharge the child, it shall affirm or modify or reverse the order of the youth court and remand the child to the jurisdiction of the youth court for placement and supervision in accordance with its order, and thereafter the child shall be and remain under the jurisdiction of the youth court in the same manner as if the youth court had made the order without an appeal having been taken.

(3) Appeals from the youth court shall be preference cases in the supreme court.

**OFFENSES AFFECTING CHILDREN**

**§97-5-39. Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child.**

(1) Any parent, guardian or other person who wilfully 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 and/or battering 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 such 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.

(2) Any person who shall intentionally burn or torture, except in self-defense or in order to prevent bodily harm to a third party, whip, strike or otherwise abuse or mutilate any child in such a manner so that any bone is fractured or any part of the body of such child is mutilated, disfigured or destroyed, shall be guilty of felonious abuse and/or battery of a child, and upon conviction may be punished by imprisonment in the penitentiary for not more than twenty (20) years.

(3) Nothing contained in this section shall prevent proceedings against such 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 Public Welfare, 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.

(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 said report regarding the child's injuries or condition or cause thereof shall not be excluded on the ground that such 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.

## NEW FUNDING SECTIONS TO YOUTH COURT ACT

### §29. County tax levies.

(1) The board of supervisors of any county may, in its discretion, levy a special tax upon all the taxable property of the county, not exceeding two (2) mills per annum to be used for funding of the operation of the youth court division other than a municipal youth court division. Such funds shall be expended for no other purpose than:

(a) Payment of the salaries of the referees, court administrators, youth court prosecutors when court appointed, youth court public defender, court reporters other than regular chancery court or county court reporters, clinical psychologists and other professional personnel, secretaries and other clerical or other court-appointed personnel, detention home employees, shelter home employees, halfway house employees, and youth counsellors;

(b) Travel and training expenses;

(c) The operation of a youth court and related facilities, detention facilities, shelter home facilities, group homes, and halfway houses;

(d) Volunteer programs or other court authorized programs;

(e) Providing the youth court referee with a current set of the Mississippi Code of 1972 if a set has not been provided.

(2) The millage herein authorized shall not be levied until the board of supervisors shall have published notice of its intention to levy the same; said notice to be published once each week for three (3) weeks in some newspaper having a general circulation in such county, but not less than twenty-one (21) days, nor more than sixty (60) days, intervening between the time of the first notice and the meeting at which said board proposes to levy such tax. If within the time of giving notice twenty percent (20%), or thirty-five hundred (3500), whichever is less, of the qualified electors of the county shall protest or file a petition against the levy of such tax, then such tax shall not be levied unless authorized by a majority of the qualified electors of such county voting at an election to be called and held for that purpose. The provisions of this subsection shall apply only to the initial levy of the tax authorized by this section and not to any subsequent annual levy.

(3) The county shall not be reimbursed for the amount of any such levy provided by subsection (1) of this section under the terms of the Homestead Exemption Law, and such ad valorem levy shall not be included in or become a part of the county levy for general funds.

(4) This section shall be cumulative and supplemental.

### §31. Effective date.

This act shall take effect and be in force from and after July 1, 1980.

## GLOSSARY OF SELECTED LEGAL TERMS FOR JUVENILE JUSTICE PERSONNEL

**ABANDONMENT:** A parent's or custodian's act of leaving a child without adequate care, supervision, support or parental contact for an excessive period of time; an express or implied intention to sever the parent-child relationship and avoid the obligations arising from the relationship. Also, the desertion of one spouse by the other with intent to terminate the marriage relationship. In a number of jurisdictions, the term "abandonment case" is used to refer to a suit to terminate parental rights.

**ADJUDICATION:** The process of rendering a judicial decision as to whether the facts alleged in a petition or other pleading are true. An adjudicatory hearing is that court proceeding in which it is determined whether the allegations of the petition are supported by legally admissible evidence; also called a "jurisdictional" or an "evidentiary" hearing.

**ADMISSIBLE EVIDENCE:** Evidence which can legally and properly be used in court.

**ADMISSION:** 1) A statement tending to establish the guilt of the person making the statement. 2) The transfer of a minor's physical custody to a detention or shelter facility.

**AFFIDAVIT:** A written statement of facts signed under penalty of perjury, often before a court clerk or notary public who administers the oath to the signing party, who is called the affiant or declarant. Affidavits are routinely required for the procurement of warrants and are used in some jurisdictions to initiate juvenile court proceedings. They may be admitted into evidence.

**ALLEGATION:** A charge or claim of fact set forth in a petition or other pleading, which is proven true or false at an adjudicatory hearing.

**ANNUAL REVIEW:** Yearly judicial review, usually in dependency cases, to determine whether the child requires continued court supervision or placement. Increasingly required by state laws; but also often set as policy by local court rule. Sometimes reviews are required at other than yearly intervals.

**APPEAL:** Complaint to a higher court urging that it overturn the decision of a lower court. Appellate (higher) courts normally review questions of law on

appeal, not determinations of fact. The review is conducted upon the record of the lower tribunal's proceedings. Sometimes the term appeal is used in a technical sense to refer to upper-court review which is undertaken as a matter of right, as opposed to review granted on a discretionary basis (see CERTIORARI). More commonly, however, the term refers to any upper court review.

**APPELLANT:** The party who initiates an appeal.

**APPELLEE:** The party against whom an appeal is taken; also called the respondent.

**BATTERED CHILD SYNDROME (B.C.S.):** Physical condition of a child indicating that external or internal injuries result from acts committed by a parent or custodian. Also termed Parent Infant Trauma Syndrome (P.I.T.S.).

**BURDEN OF PROOF:** The duty to establish a claim or allegation by admissible and credible evidence at the time of hearing. This is usually the duty of the state; it is up to the state to prove its case with respect to a minor or parent, and it is not the minor's or parents' duty to explain or disprove unproven allegations.

**CERTIFICATION:** Generally used to refer to the process of transferring a minor's case from the juvenile court to the adult court for trial. However, the term has widely varying meanings, and local state laws must be consulted for the particular meaning in that state.

**CERTIORARI:** A writ issued by an appellate court accepting a lower court decision for review. Usually used to refer to review that is not required, but granted as a matter of judicial discretion.

**CHILD ABUSE:** Traditionally, any physical mistreatment of a child, as opposed to child neglect or negligent care. However, the term is increasingly used to cover any "physical or mental injury, sexual abuse, negligent treatment or maltreatment of a child . . . by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby," and is so defined in the federal Child Abuse Prevention and Treatment Act (Pub. Law 93-24, 1974).

**CHILD NEGLECT:** Failure by a parent or custodian to render appropriate care to a child; an act of omission by the person legally responsible for a child's care which threatens the child's well-being. Failure to provide a child with suitable food, shelter, clothing, hygiene, medical care or parental supervision.

**COMMON LAW:** Law developed as the result of judicial decisions rather than by legislative enactments (see STATUTE).

**COMPLAINT:** The initiating pleading in a criminal or civil case, filed by the moving party and setting out the cause of action.

**COMPETENCY:** In the law of evidence, a witness's ability to observe, recall and recount under oath what happened.

**CUSTODY:** The right to or responsibility for a child's care and control, carrying with it the duty of providing food, shelter, medical care, education and discipline.

**DELINQUENCY:** The commission of an illegal act by a juvenile. Increasingly used to refer only to those acts which would be crimes if committed by an adult, but state laws vary in their definitions.

**DEPENDENCY:** Properly speaking, a situation where a child is dependent upon another for financial support, but widely used to describe child neglect or child abuse cases. Though the term is something of a misnomer when thus applied, it is so used in the law of a number of states.

**DETENTION:** The temporary confinement of a minor by a public officer pursuant to law.

**DETENTION HEARING:** A judicial hearing, usually held after the filing of a petition, to determine the interim custody of a minor pending an adjudication of the petition.

**DISPOSITION:** The order of a juvenile court determining what is to be done with a minor already adjudged to be within the court's jurisdiction (at an adjudicatory hearing). Analogous to the sentence in a criminal case.

**DIVERSION:** Procedures for handling relatively minor juvenile problems informally, without referral to the juvenile court.

**DUE PROCESS:** The constitutionally guaranteed right of persons to be treated by the law with fundamental fairness. In juvenile delinquency proceedings, these include the right to adequate notice in advance of the hearing, the right to counsel, the right to confront and cross-examine witnesses, the right to refuse to give self-incriminating testimony, and the right to have allegations of conduct that would be criminal if committed by an adult proven beyond a reasonable doubt.

**EQUITY:** Historically, a system of remedial jurisprudence which grew up separate and distinct from the common law and was not bound by its writs and precedents, so that it could accomplish just relief where the common law could not. The legal system's exercise of jurisdiction over families and children is founded on principles of equity.

**EVIDENCE:** Generally, any sort of proof put forth during a trial for the purpose of influencing the judgement.

**Circumstantial Evidence:** Evidence of circumstances from which another fact may be inferred. For example, proof that a minor owned a pair of channel-lock pliers may connect the minor to a burglary in which such pliers were used to gain entry.

**Direct Evidence:** First-hand evidence, usually of a witness who saw an act committed. For example, testimony of a witness that she observed a minor working at a doorknob with what appeared to be a pair of pliers would be direct evidence.

**Hearsay Evidence:** Second-hand evidence, generally consisting of a witness's testimony that he heard someone say something. Though there are numerous exceptions to the rule—often expressly provided by statute, as in the case of a number of state juvenile court acts allowing hearsay evidence in social studies presented to the court—hearsay evidence is generally inadmissible because the person making the statement is not available for cross-examination, and because it is inherently unreliable.

**Opinion Evidence:** Witnesses are normally required to confine their testimony to statements of fact and are not allowed to give their opinions in court. However, if a witness is qualified as an expert in a particular field, he or she will be allowed to state his or her opinion as an expert based on certain facts.

**Physical Evidence:** Any tangible piece of proof (document, x-ray, weapon, etc.). Also called "real" evidence.

**EXPUNGEMENT:** The destruction or sealing of records of minors or adults, after the passage of a specified period of time or when the person reaches a specified age and has not committed another offense. Sometimes provided for by statute and sometimes ordered by the court under its inherent powers. See also SEALING.

**EXTRAORDINARY WRIT:** A writ, often issued by an appellate court, making available remedies not regularly within the powers of lower courts. They include writs of habeas corpus, mandamus, prohibition and quo warranto. Sometimes called "prerogative writs."

**FAILURE TO THRIVE SYNDROME:** A serious medical condition in which a child's height, weight and motor development are significantly below average for his or her age. Usually, though not invariably, found in children

less than one year old. The syndrome may have an organic cause, or it may be caused by severe emotional or physical neglect.

**FELONY:** A serious crime, generally punishable by imprisonment in a state or federal penitentiary.

**FIFTH AMENDMENT:** The Fifth Amendment to the U.S. Constitution, guaranteeing that a person cannot be compelled to present self-incriminating testimony in a criminal or juvenile proceeding.

**FITNESS HEARING:** A hearing held in juvenile court to determine the fitness of a minor for retention in juvenile court, and the minor's amenability to juvenile court resources. Must be held before any evidence is heard on the petition; a prerequisite to transfer of a minor's case to adult court. Also called "certification hearing," "remand hearing," "transfer hearing," or "waiver hearing" depending upon local practice.

**FOSTER CARE:** A form of substitute care, usually in a home licensed by a public agency, for children whose welfare requires that they be removed from their own homes.

**FOURTEENTH AMENDMENT:** The Fourteenth Amendment to the U.S. Constitution, securing to every person due process rights to life, liberty and property when they are being dealt with under state law.

**FOURTH AMENDMENT:** The Fourth Amendment to the U.S. Constitution, protecting every person against unlawful search and seizure.

**GUARDIAN AD LITEM:** An adult person appointed by the court to represent a child's interests in a particular judicial proceeding. (The phrase means "guardian at law"). Required by the federal Child Abuse Prevention and Treatment Act in every child abuse or neglect case which results in a judicial proceeding, if any state is to qualify for federal funds under the Act. In some jurisdictions called the "Next Friend."

**HABEAS CORPUS:** Lit., "You have the body"; an extraordinary writ ordering a public officer holding a person in confinement to bring the person before the court for release. Used to secure the release from custody of minors or adults being illegally held.

**HEARING:** A trial or other proceeding before a judicial officer—judge, referee, commissioner, master, magistrate or chancellor depending upon the local jurisdiction or an administrative agency.

**CONTINUED**

**1 OF 2**



**HEARING DE NOVO:** A full new hearing or trial, as opposed to review on a transcript or record.

**HEARSAY:** See under EVIDENCE.

**IMMUNITY, LEGAL:** Legal protection from liability, such as the protection given to reporting parties under child abuse reporting statutes.

**IN CAMERA:** Lit., "In chambers"; a hearing or judicial proceeding conducted in chambers or privately.

**INCEST:** The crime of sexual intercourse between a male and a female who are so closely related that they would not legally be allowed to marry.

**IN LOCO PARENTIS:** Lit., "In the place of the parent"; refers to actions of a custodian, guardian or other person acting in the parent's place and stead.

**JURISDICTION:** 1) The power of a particular court to hear cases involving certain categories of persons or allegations. 2) A geographical area subject to a particular law or court.

**MALICE:** The intentional commission of a wrongful act without legal justification with the intent of inflicting injury or harm, or under circumstances such that the person acting should reasonably have known that injury or harm would result.

**MANDAMUS:** Lit., "We order"; an extraordinary writ issued by a higher court and directed to a public executive or administrative officer or agency, or the judge of a lower court, commanding the performance of a specified act.

**MATERIAL:** Evidence that relates to a substantive part or element of a case.

**MIRANDA RULE:** From the U.S. Supreme Court case of *Miranda v. Arizona*, 384 U.S. 436 (1966), the rule that confessions are inadmissible at trial if the police do not advise the subject of certain rights before questioning him or her. The rights of which the subject must be advised include:

- a) The right to remain silent and to refuse to answer any questions;
- b) The right to know that anything he or she says can and will be used against him or her in a court of law;
- c) The right to consult with an attorney and to have an attorney present during questioning;
- d) The right to have counsel appointed at public expense, prior to any questioning if the subject cannot afford counsel.

Though the U.S. Supreme Court has not ruled directly on the question, good practice and the laws of many states require that the warnings be given in juvenile cases. Moreover, some states have required that a minor be advised of the right to have a parent, relative or other advisor present during questioning, in addition to counsel.

**MISDEMEANOR:** A crime less serious than a felony, usually punishable by a fine or incarceration in a city or county jail, but not a state penitentiary.

**MOVING PARTY:** The party who initiates a lawsuit or other judicial proceeding. In juvenile court, this is usually the probation officer or prosecuting attorney who files the petition.

**NEGLIGENCE:** Failure to exercise the care that an ordinarily prudent person would exercise in the same circumstances.

**NEXT FRIEND:** See GUARDIAN AD LITEM.

**ORDINANCE:** A law enacted by the governing body of a city or county.

**PARENS PATRIAE:** Lit., "The father of his country"; from English law, the legal doctrine under which the Crown assumed the protection of certain minors, orphans and other persons in need of protection. Though not wholly accurate, the phrase is sometimes used to express the benevolent and rehabilitative philosophy of the juvenile court.

**PARENT INFANT TRAUMA SYNDROME (P.I.T.S.):** See BATTERED CHILD SYNDROME.

**PETITION:** A civil pleading filed to initiate a matter in juvenile court, setting forth the alleged grounds for the court to take jurisdiction of the case and asking the court to do so and intervene.

**PINS:** Person in need of supervision; a juvenile status offender who is involved in noncriminal misbehavior. Depending upon the state, also "CHINS" (child in need of supervision), "JINS" (juvenile in need of supervision), "MINS" (minor in need of supervision), "beyond control child," "incurable," "wayward youth," "miscreant," etc. See STATUS OFFENSE.

**PLEADING:** Any one of the formal written statements of accusation or defense in an action at law.

**PRIMA FACIE:** Lit., "On the first appearance"; evidence which omits face makes out the necessary elements of the allegation, and which will suffice to establish that allegation as true until it is contradicted and overcome by other evidence.

**PRIVILEGED COMMUNICATIONS:** Confidential communications to certain persons that are protected by law against forced disclosure. Privileged communications cannot be disclosed in court over the objection of the holder of the privilege. (The holder of the privilege is usually the patient, client, or other person receiving care, rather than the provider of that care.) Communications between lawyer and client, physician and patient, psychotherapist and patient, priest, minister or rabbi and penitent, are typically privileged. Some social workers are also covered by privilege in some states, but the law varies widely from state to state as to the classes of persons to whom the communications are privileged; who may invoke the privilege; and similar matters. Generally, the privilege only protects the communication from disclosure *in court* or in connection with a court case.

**PROBATION:** In adult or juvenile court, a disposition which allows the defendant or the minor to remain at liberty under the supervision of a probation officer, frequently with a suspended commitment or sentence of imprisonment and usually requiring compliance with certain stated conditions.

**PROTECTIVE CUSTODY:** In child abuse and neglect cases, the emergency removal of a child from his home when the child would be in imminent danger if allowed to remain with the parent(s) or custodian(s).

**QUANTUM OF PROOF:** See STANDARD OF PROOF.

**QUO WARRANTO:** Lit., "By what authority . . .?" an extraordinary writ usually issued by a higher court to prevent continued assertion of unlawful authority by a public officer.

**REHEARING:** In some states, an order by a referee or commissioner may be reviewed by the presiding judge of the juvenile court if the minor or parents so request. If there is no transcript of the original hearing, the review will commonly have to take the form of a new hearing (hearing *de novo*), which is called a rehearing. If the first hearing was recorded and a transcript exists, the review may be made on the transcript and the court may order a rehearing at its discretion. The term is also used when a matter is reconsidered by the judicial officer who first heard it, for the purpose of modifying an order or disposition.

**RELEVANT:** Evidence that is logically connected to, and helps to prove, a material point or issue in a case.

**REMAND:** Lit., "to send back"; frequently used to describe the order transferring a minor to adult court for trial, or an adult court's order sending a minor to the juvenile court. See also CERTIFICATION, FITNESS HEARINGS, TRANSFER AND WAIVER.

**REPORTING STATUTES:** State laws requiring certain designated persons (physicians, nurses, teachers and the like) to report to proper authorities suspected cases of child abuse and injuries inflicted by unlawful means. Such statutes commonly confer immunity from any liability on the person required to make the report.

**RES IPSA LOQUITUR:** Lit., "The thing speaks for itself"; a legal doctrine that allows evidence to be admitted even though no one actually saw what happened, only the results. For example, in a child abuse case the medical reports indicating multiple broken bones and reflecting the physician's opinion that they could not have been sustained by accident would be admissible even though no witness saw anyone strike the child. Under this doctrine, the court can convict a person having exclusive custody of an abused child and/or assert juvenile court jurisdiction over the child even though there was no direct testimony as to how, when, where or by whom the injuries were inflicted.

**RESPONDENT:** 1) The person who is the subject of a petition. 2) The prevailing party in a court case against whom an appeal is taken.

**SEALING:** In a juvenile court practice, the closure of juvenile records to all inspection except by the minor upon petition to the court. See EXPUNGEMENT.

**SOCIAL STUDY:** The report prepared by a probation officer or social caseworker for the judge's consideration at a dispositional hearing. Such reports review the minor's behavior and family history and frequently contain material that would be inadmissible in most judicial proceedings because of hearsay, lack of verification, etc. In many states, specific statutes permit their admission into evidence. Social studies may not be received by the court until after the petition has been adjudicated and jurisdiction established. Also called "social history," "social report," or "probation report."

**STANDARD OF PROOF:** There are varying requirements of proof in different kinds of judicial proceedings. In criminal and delinquency cases,

the offense must be proven *beyond a reasonable doubt*. In neglect and dependency proceedings, and in civil cases generally, the standard of proof is by a *preponderance of the evidence*, a significantly lower standard which requires that the judge believe that it is more likely than not, on the evidence presented, that neglect occurred. In some states, the standard of proof in PINS cases and in abuse and neglect proceedings is by *clear and convincing evidence*, a standard more stringent than *preponderance of the evidence* and less demanding than *beyond a reasonable doubt*. See also QUANTUM OF PROOF.

**STARE DECISIS:** Lit., "To stand by the decision"; legal doctrine which requires adherence to legal precedents (decisions of appellate courts) until they are overruled by the same or higher courts.

**STATUS OFFENSE:** The term essentially refers to noncriminal misbehavior, which would not be criminal if committed by an adult (e.g., truancy, runaway, etc.). The behavior is an offense only because of the minor's status as a minor.

**STATUTE:** A law enacted by a state legislature or the U.S. Congress.

**STIPULATION:** An agreement between the attorneys in a case, entered into in court, allowing a certain fact to be established in evidence without the necessity for further proof. Depending upon the requirements of the particular jurisdiction and the nature of the proceedings, stipulations may either be written or oral.

**SUBPOENA:** A legal document, usually issued by a court clerk, requiring that the person named in the subpoena appear on a stated day and time at a specified court to give testimony in a case. A subpoena must be served personally on the person named; this is usually done by a law enforcement officer, probation officer, child protective services worker or process server. Failure to obey a subpoena is punishable as a contempt of court.

**SUBPOENA DUCES TECUM:** Lit., "Bring with you"; a subpoena served upon the person who has custody of records, commanding that such custodian bring the specified records to court on the stated day and time.

**SUMMONS:** 1) A legal document, issued by the court clerk or other court officer, notifying the named person that a lawsuit or legal cause has been filed against or involves him or her, and notifying such person of any dates set for hearings and deadlines for responding to the complaint or petition. The purpose of a summons is simply to notify the persons concerned; it does not require court attendance by any person.

2) In some states a citation issued by a law enforcement officer for a traffic violation or other minor offense is known as a summons. Citations do require the persons to whom they are issued to appear in court.

**TERMINATION OF PARENTAL RIGHTS:** A judicial proceeding freeing a child from all custody and control by a parent or parents, so that the child can be adopted by others.

**TESTIMONY:** A statement or declaration made to establish a fact or facts and given under oath.

**TRANSFER:** The sending of a case from the juvenile court to adult court, for trial. See also CERTIFICATION, FITNESS HEARING, REMAND and WAIVER.

**VOIR DIRE:** 1) Procedure by which attorneys question prospective jurors to determine any biases or prejudices.

2) In some states, procedure by which lawyers question expert witnesses to determine their qualifications before the experts are permitted to give opinion testimony.

**WAIVER:** 1) The understanding, and voluntary relinquishment of a known right, such as the right to counsel or the right to remain silent during police questioning.

2) The juvenile court's relinquishment of its jurisdiction over a minor, and transfer of the case to adult court for trial. See also CERTIFICATION, FITNESS HEARING, REMAND and TRANSFER.

**WARD:** A minor who is under the jurisdiction of the juvenile court for a delinquent act, status offense, or an allegation or finding of abuse, neglect or dependency. Also, a person who has a legally appointed guardian is the ward of that guardian.

**WARRANT:** Legal document issued by a judge authorizing the search of a place and seizure of specified items found there (search warrant), or the arrest or detention of a specified person (arrest warrant). No hearing is required and the person need not be notified, but the court must be given probable or reasonable cause to believe that the warrant is necessary for apprehension before it issues a warrant. Affidavits are frequently used in establishing this probable or reasonable cause.

**WRIT:** An order issued by a court commanding that a certain act or acts be done or not done. There is a wide variety of special writs, and much state-to-state variation in testimony, law and practice.

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