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## **CHILD WELFARE**

### **SEC. 43-15-1. Title of chapter.**

This chapter may be cited as the "Administration of Child Welfare Law."

### **SEC. 43-15-3. Powers and duties of state department of public welfare.**

The Department of Human Services is hereby authorized, empowered and directed to cooperate fully with the United States Children's Bureau and Secretary of Labor in establishing, extending and strengthening "child welfare services" for the protection and care of homeless, dependent and neglected children and children in danger of becoming delinquent. Said Department of Human Services is further authorized, empowered and directed to cooperate with the United States Children's Bureau and Secretary of Labor in developing plans for said "child welfare services" and extending any other cooperation necessary under Section 521 of Public Law No. 271-74th Congress of the United States.

In furtherance of the "child welfare services" referred to in the first paragraph hereof the State Treasurer is hereby authorized and directed to receive on behalf of the state, and to execute all instruments incidental thereto, federal or other funds to be used for "child welfare services," and to place such funds in a special account to the credit of the "child welfare services," which said funds shall be expended by the Department of Human Services for the purposes and under the provisions of this chapter and Section 521 of Public Law No. 271-74th Congress of the United States. It shall be paid out by the State Treasurer as funds appropriated to carry out the provisions of said laws.

The Department of Human Services shall issue all checks on said "child welfare services" fund to persons entitled to payment from said fund. All such sums shall be drawn upon the "child welfare services" fund upon requisition of the Director of the Department of Human Services.

The money in the "child welfare services" fund shall be expended in accordance with the rules and regulations of the United States Children's Bureau and Secretary of Labor and in accordance with the plan developed by the Department of Human Services and the United States Children's Bureau under Section 521 of Public Law No. 271-74th Congress of the United States, and shall not be used for any other purpose.

If a claim for foster care and/or adoption assistance under Title IV-E of the Federal Social Security Act is not acted upon within a reasonable time after the filing of the claim, or is denied in whole or in part, the claimant may appeal to the Director of the Division of Family and Children's Services in the manner and form prescribed by the Department of Human Services. The Director of the Division of Family and Children's Services shall, upon receipt of such an appeal, give the claimant reasonable notice and opportunity for a fair hearing. The Director of the Division of Family and

Children's Services may also, upon his or her own motion, review any decision regarding a claim, and may consider any claim upon which a decision has not been made within a reasonable time. All decisions of the Director of Family and Children's Services shall be final and binding.

**SEC. 43-15-5. Administration of child welfare services.**

(1) The State Department of Public Welfare shall have authority and it shall be its duty to administer or supervise all public child welfare services, including those services, responsibilities, duties and powers with which the county departments of public welfare are charged and empowered in this chapter; administer and supervise the licensing and inspection of all private child placing agencies; provide for the care of dependent and neglected children in foster family homes or in institutions, supervise the care of such children and those of illegitimate birth; supervise the importation of children; and supervise the operation of all state institutions for children. The State Department of Public Welfare shall be authorized to purchase hospital and medical insurance coverage for those children placed in foster care by the state or county departments of public welfare who are not otherwise eligible for medical assistance under the Mississippi Medicaid Law. The State Department of Public Welfare shall be further authorized to purchase burial or life insurance not exceeding One Thousand Five Hundred Dollars (\$1,500.00) for those children placed in foster care by the state or county departments of public welfare. All insurance coverage authorized herein may be purchased with any funds other than state funds available to the State Department of Public Welfare, including those funds available to the child which are administered by the department.

(2) Any person, partnership, group, corporation, organization or association desiring to operate a child residential home, as defined in Section 43-16-3, may make application for a license for such a facility to the State Department of Public Welfare on the application forms furnished for this purpose by the department. If an applicant meets the published rules and regulations of the department regarding minimum standards for a child residential home, then the applicant shall be granted a license by the department.

**SEC. 43-15-6. Persons convicted of certain crimes not to be licensed as foster parent or foster home.**

(1) Any person, institution, facility, clinic, organization or other entity that provides services to children in a residential setting where care, lodging, maintenance, and counseling or therapy for alcohol or controlled substance abuse or for any other emotional disorder or mental illness is provided for children, whether for compensation or not, that holds himself, herself, or itself out to the public as providing such services, and that is entrusted with the care of the children to whom he, she, or it provides services, because of the nature of the services and the setting in which the services are provided shall be subject to the provisions of this section.

(2) Each entity to which this section applies shall complete, through the appropriate governmental authority, a national criminal history record information check and a child abuse registry check for each owner, operator, employee, prospective employee, volunteer or prospective volunteer of the

entity and/or any other that has or may have unsupervised access to a child served by the entity. In order to determine the applicant's suitability for employment, the entity shall ensure that the applicant be fingerprinted by local law enforcement, and the results forwarded to the Department of Public Safety. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(3) An owner, operator, employee, prospective employee, volunteer or prospective volunteer of the entity and/or any other that has or may have unsupervised access to a child who has a criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children as set forth in this chapter may not provide child care or operate, or be licensed as, a residential child care program, foster parent, or foster home.

(4) All fees incurred in compliance with this section shall be borne by the individual or entity to which subsection (1) applies.

(5) The Department of Human Services shall have the authority to set fees, to exclude a particular crime or crimes or a substantiated finding of child abuse and/or neglect as disqualifying individuals or entities from providing foster care or residential child care, and adopt such other rules and regulations as may be required to carry out the provisions of this section.

(6) Any entity that violates the provisions of this section by failure to complete sex offense criminal history record information and felony conviction record information checks, as required under subsection (3) of this section, shall be subject to a penalty of up to Ten Thousand Dollars (\$10,000.00) for each such violation and may be enjoined from further operation until it complies with this section in actions maintained by the Attorney General.

(7) The Department of Human Services and/or its officers, employees, attorneys, agents and representatives shall not be held civilly liable for any findings, recommendations or actions taken pursuant to this section.

**SEC. 43-15-7. County department authorized to provide protective services; appropriation of funds.**

The county department of public welfare is hereby authorized to provide protective services for children as will conserve home life; assume responsibility for the care and support of dependent children needing public care away from their homes; place children found by the department to be dependent or without proper care in suitable institutions or private homes, and cooperate with public and private institutions and agencies in placing such children in suitable institutions or private homes; accept custody or guardianship, through one of its designated employees, of any child, when appointed as custodian or guardian in the manner provided by law.

The board of supervisors in each county is hereby empowered, in its discretion, to set aside and appropriate out of the tax levied and collected to support the poor of the county or out of the county

general fund necessary monies to be administered by the county department of public welfare to carry out the provisions of this section.

**SEC. 43-15-9. Chapter inapplicable to orphans' homes, etc.**

None of the provisions of this chapter shall apply to any orphan's home, child caring agency or children's home society under the jurisdiction of and maintained by any fraternal organization, religious or fraternal denomination or nonprofit association or corporation organized and exclusively controlled by any religious denomination.

**SEC. 43-15-11. Expenditure of county and municipal moneys for support and maintenance of homeless and destitute children.**

(1) The board of supervisors of any county and/or the mayor and board of commissioners of any city and/or the mayor and board of aldermen of any municipality in this state are hereby authorized and empowered, in their discretion, to expend out of any moneys in their respective treasuries, to be drawn by warrant thereon, a sum or sums of money not exceeding a total of twenty-five dollars (\$25.00) annually per million dollars (\$1,000,000.00) of the assessed valuation of the real and personal property thereof for the purpose of providing for the care, support and maintenance of homeless or destitute children of any county or municipality of this state who are supported, cared for, maintained and placed for adoption by any children's home society which operates over and serves the entire state of Mississippi, and which is approved and licensed by the Mississippi Department of Public Welfare.

(2) The authority granted in this section is supplemental of and in addition to all existing authority for the expenditure of funds by such boards of supervisors and municipal governing authorities.

**SEC. 43-15-13. System of individualized plans and annual reviews; training programs for foster care parents.**

(1) For purposes of this section, "children" means persons found within the state who are under the age of twenty-one (21) years, and who were placed in the custody of the Department of Human Services by the youth court of the appropriate county.

(2) The Department of Human Services shall establish a foster care placement program for children whose custody lies with the department, with the following objectives:

(a) Protecting and promoting the health, safety and welfare of children;

(b) Preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems and preventing the breakup of the family where the prevention of child removal is desirable and possible when the child can be cared for at home without endangering the child's health and safety;

(c) Remedying or assisting in the solution of problems which may result in the neglect, abuse, exploitation or delinquency of children;

(d) Restoring to their families children who have been removed, by the provision of services to the child and the families when the child can be cared for at home without endangering the child's health and safety;

(e) Placing children in suitable adoptive homes approved by a licensed adoption agency or family protection specialist, in cases where restoration to the biological family is not safe, possible or appropriate;

(f) Assuring safe and adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption. At the time of placement, the department shall implement concurrent planning, as described in subsection (7) of this section, so that permanency may occur at the earliest opportunity. Consideration of possible failure or delay of reunification should be given, to the end that the placement made is the best available placement to provide permanency for the child; and

((g) Providing a family protection specialist or worker or team of such specialists or workers for a family and child throughout the implementation of their permanent living arrangement plan. Wherever feasible, the same family protection specialist or worker or team shall remain on the case until the child is no longer under the jurisdiction of the youth court.

(3) The Department of Human Services shall administer a system of individualized plans and reviews once every six (6) months for each child under its custody within the State of Mississippi, each child who has been adjudged a neglected, abandoned or abused child and whose custody was changed by court order as a result of that adjudication, and each public or private facility licensed by the department. The Department of Human Services administrative review shall be completed on each child within the first three (3) months and a foster care review once every six (6) months after the child's initial forty-eight-hour shelter hearing. That system shall be for the purpose of enhancing potential family life for the child by the development of individual plans to return the child to its natural parent or parents, or to refer the child to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or foster/adoptive home. The goal of the Department of Human Services shall be to return the child to its natural parent(s) or refer the child to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or foster/adoptive home within the time periods specified in this subsection or in subsection (4) of this section. In furthering this goal, the department shall establish policy and procedures designed to appropriately place children in permanent homes, the policy to include a system of reviews for all children in foster care, as follows: foster care counselors in the department shall make all possible contact with the child's natural parent(s) and any interested relative for the first two (2) months following the child's entry into the foster care system. For any child who has been in foster care for fifteen (15) of the last twenty-two (22) months regardless of whether the foster

care was continuous for all of those twenty-two (22) months, the department shall file a petition to terminate the parental rights of the child's parents. The time period starts to run from the date the court makes a finding of abuse and/or neglect or sixty (60) days from when the child was removed from his or her home, whichever is earlier. The department can choose not to file a termination of parental rights petition if the following apply:

(a) The child is being cared for by a relative; and/or

(b) The department has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child. Before granting or denying a request by the department for an extension of time for filing a termination of parental rights action, the court shall receive a written report on the progress which a parent of the child has made in treatment, to be made to the court in writing by a mental health/substance abuse therapist or counselor.

(4) In the case of any child who is placed in foster care on or after July 1, 1998, except in cases of aggravated circumstances prescribed in Section 43-21-603(7)(c) or (d), the child's natural parent(s) will have a reasonable time to be determined by the court, which shall not exceed a six-month period of time, in which to meet the service agreement with the department for the benefit of the child unless the department has documented extraordinary and compelling reasons for extending the time period in the best interest of the child. If this agreement has not been satisfactorily met, simultaneously the child will be referred to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or a foster/adoptive home. For children under the age of three (3) years, termination of parental rights shall be initiated within six (6) months, unless the department has documented compelling and extraordinary circumstances, and placement in a permanent relative's home, adoptive home or foster/adoptive home within two (2) months. For children who have been abandoned pursuant to the provisions of Section 97-5-1, termination of parental rights shall be initiated within thirty (30) days and placement in an adoptive home shall be initiated without necessity for placement in a foster home. The department need not initiate termination of parental rights proceedings where the child has been placed in durable legal custody or long-term or formalized foster care by a court of competent jurisdiction.

(5) The Foster Care Review once every six (6) months shall be conducted by the youth court or its designee(s), and/or by personnel within the Department of Human Services or by a designee or designees of the department and may include others appointed by the department, and the review shall include at a minimum an evaluation of the child based on the following:

(a) The extent of the care and support provided by the parents or parent, while the child is in temporary custody;

(b) The extent of communication with the child by parents, parent or guardian;

- (c) The degree of compliance by the agency and the parents with the social service plan established;
- (d) The methods of achieving the goal and the plan establishing a permanent home for the child;
- (e) Social services offered and/or utilized to facilitate plans for establishing a permanent home for the child; and
- (f) Relevant testimony and recommendations from the foster parent of the child, the grandparents of the child, the guardian ad litem of the child, representatives of any private care agency that has cared for the child, the family protection worker or family protection specialist assigned to the case, and any other relevant testimony pertaining to the case.

Each child's review plan once every six (6) months shall be filed with the court which awarded custody and shall be made available to natural parents or foster parents upon approval of the court. The court shall make a finding as to the degree of compliance by the agency and the parent(s) with the child's social service plan. The court also shall find that the child's health and safety are the paramount concern. In the interest of the child, the court shall, where appropriate, initiate proceedings on its own motion. The \*Department of Human Services shall report to the Legislature as to the number of those children, the findings of the foster care review board and relevant statistical information in foster care in a semiannual report to the Legislature to be submitted to the Joint Oversight Committee of the Department of Human Services. The report shall not refer to the specific name of any child in foster care.

(6) The Department of Human Services, with the cooperation and assistance of the State Department of Health, shall develop and implement a training program for foster care parents to indoctrinate them as to their proper responsibilities upon a child's entry into their foster care. The program shall provide a minimum of twelve (12) clock hours of training. The foster care training program shall be satisfactorily completed by such foster care parents before or within ninety (90) days after child placement with the parent. Record of the foster care parent's training program participation shall be filed with the court as part of a foster care child's review plan once every six (6) months.

(7) When the Department of Human Services is considering placement of a child in a foster home and when the department deems it to be in the best interest of the child, the department shall give first priority to placing the child in the home of one (1) of the child's relatives within the third degree, as computed by the civil law rule. In placing the child in a relative's home, the department may waive any rule, regulation or policy applicable to placement in foster care that would otherwise require the child to have a separate bed or bedroom or have a bedroom of a certain size, if placing the child in a relative's home would be in the best interest of the child and those requirements cannot be met in the relative's home.

(8) The Legislature recognizes that the best interests of the child require that the child be placed in the most permanent living arrangement as soon as is practicably possible. To achieve this goal, the Department of Human Services is directed to conduct concurrent planning so that a



permanent living arrangement may occur at the earliest opportunity. Permanent living arrangements may include prevention of placement of a child outside the home of the family when the child can be cared for at home without endangering the child's health or safety; reunification with the family, when safe and appropriate, if temporary placement is necessary; or movement of the child toward the most permanent living arrangement and permanent legal status. When a child is placed in foster care or relative care, the department shall first ensure and document that reasonable efforts were made to prevent or eliminate the need to remove the child from the child's home. The department's first priority shall be to make reasonable efforts to reunify the family when temporary placement of the child occurs or shall request a finding from the court that reasonable efforts are not appropriate or have been unsuccessful. A decision to place a child in foster care or relative care shall be made with consideration of the child's health, safety and best interests. At the time of placement, consideration should also be given so that if reunification fails or is delayed, the placement made is the best available placement to provide a permanent living arrangement for the child. The department shall adopt rules addressing concurrent planning for reunification and a permanent living arrangement. The department shall consider the following factors when determining appropriateness of concurrent planning:

- (a) The likelihood of prompt reunification;
- (b) The past history of the family;
- (c) The barriers to reunification being addressed by the family;
- (d) The level of cooperation of the family;
- (e) The foster parents' willingness to work with the family to reunite;
- (f) The willingness and ability of the foster family or relative placement to provide an adoptive home or long-term placement;
- (g) The age of the child; and
- (h) Placement of siblings.

(9) If the department has placed a child in foster care or relative care under a court order, the department may not change the child's placement unless the department specifically documents to the court that the current placement is unsafe or unsuitable or that another placement is in the child's best interests unless the new placement is in an adoptive home or other permanent placement. Except in emergency circumstances as determined by the department or where the court orders placement of the child under Section 43-21-303, the foster parents, grandparents or other relatives of the child shall be given an opportunity to contest the specific reasons documented by the department at least seventy-two (72) hours before any such departure, and the court may conduct a review of that placement unless the new placement is in an adoptive home or other permanent placement. When a child is returned to foster care or relative care, the former foster parents or relative placement shall be given the prior right of return placement in order to eliminate additional trauma to the child.

(10) The Department of Human Services shall provide the foster parents, grandparents or other relatives with at least a seventy-two-hour notice of departure for any child placed in their foster care or relative care, except in emergency circumstances as determined by the department or where the court orders placement of the child under Section 43-21-303. The parent/legal guardian, grandparents of the child, guardian ad litem and the court exercising jurisdiction shall be notified in writing when the child leaves foster care or relative care placement, regardless of whether the child's departure was planned or unplanned. The only exceptions to giving a written notice to the parent(s) are when a parent has voluntarily released the child for adoption or the parent's legal rights to the child have been terminated through the appropriate court with jurisdiction.

(11) The Department of Human Services shall extend the following rights to persons who provide foster care and relative care:

(a) A clear understanding of their role while providing care and the roles of the birth parent(s) and the placement agency in respect to the child in care;

(b) Respect, consideration, trust and value as a family who is making an important contribution to the agency's objectives;

(c) Involvement in all the agency's crucial decisions regarding the child as team members who have pertinent information based on their day-to-day knowledge of the child in care;

(d) Support from the family protection worker or the family protection specialist in efforts to do a better day-to-day job in caring for the child and in working to achieve the agency's objectives for the child and the birth family through provision of:

(i) Pertinent information about the child and the birth family;

(ii) Help in using appropriate resources to meet the child's needs;

(iii) Direct interviews between the family protection worker or specialist and the child, previously discussed and understood by the foster parents;

(e) The opportunity to develop confidence in making day-to-day decisions in regard to the child;

(f) The opportunity to learn and grow in their vocation through planned education in caring for the child;

(g) The opportunity to be heard regarding agency practices that they may question;

(h) Reimbursement for costs of the child's care in the form of a board payment based on the age of the child as prescribed in Section 43-15-17; and

(i) Reimbursement for property damages caused by children in the custody of the Department of Human Services in an amount not to exceed Five Hundred Dollars (\$500.00), as evidenced by written documentation. The Department of Human Services shall not incur liability for any

damages as a result of providing this reimbursement.

(12) The Department of Human Services shall require the following responsibilities from participating persons who provide foster care and relative care:

- (a) Understanding the department's function in regard to the foster care and relative care program and related social service programs;
- (b) Sharing with the department any information which may contribute to the care of children;
- (c) Functioning within the established goals and objectives to improve the general welfare of the child;
- (d) Recognizing the problems in home placement that will require professional advice and assistance and that such help should be utilized to its full potential;
- (e) Recognizing that the family who cares for the child will be one of the primary resources for preparing a child for any future plans that are made, including return to birth parent(s), termination of parental rights or reinstitutionalization;
- (f) Expressing their view of agency practices which relate to the child with the appropriate staff member;
- (g) Understanding that all information shared with the persons who provide foster care or relative care about the child and his/her birth parent(s) must be held in the strictest of confidence;
- (h) Cooperating with any plan to reunite the child with his birth family and work with the birth family to achieve this goal; and
- (i) Attending dispositional review hearings and termination of parental rights hearings conducted by a court of competent jurisdiction, or providing their recommendations to the court in writing.

**SEC. 43-15-15. Registry of children in custody of state department of public welfare and public or private agencies.**

The state department of public welfare shall maintain a registry of children whose custody lies with them and private or public agencies licensed by the department. Said registry shall contain classifications of children as:

- (a) Temporary custody for evaluation, not to exceed three (3) months;
- (b) Temporary custody not to exceed one (1) year with the plan to return custody to the natural parents;
- (c) Temporary custody, not to exceed two (2) years, with a plan to free for adoption;

(d) Children freed for adoption;

(e) Children ages fourteen (14) and above who have voluntarily chosen not to be adopted and cannot be returned to their own homes; and

(f) Children who are institutionalized and for whom placement in an adoptive home is not feasible.

### **SEC. 43-15-17. Payments for supportive services.**

(1) The Department of Human Services is authorized to make such payments as may be appropriate for supportive services to facilitate either the return of children to their natural parents or their adoption, depending upon and contingent upon the availability of the Department of Human Services securing or having sufficient funds to render this supportive service. Upon court order, the parent(s) shall be responsible for reimbursing the department for any foster care or kinship care payments made on behalf of his or her child, based upon financial ability to pay, until such time as there is a termination of parental rights regarding the child, or the child is adopted.

(2) For those children placed in foster care by the state or county departments of human services, the department shall make monthly payments for the support of these children's room and board, clothing, allowance and personal needs. From and after July 1, 1998, and subject to the availability of funds specifically appropriated therefor, the Department of Human Services' foster care and therapeutic care monthly payment schedule in effect before that date shall be increased by One Hundred Dollars (\$100.00) per month, with that minimum payment not to preclude the department from increasing payments in later years as funds become available. From and after July 1, 1998, in order for foster parents to receive the monthly payments authorized under this subsection (2), the Department of Human Services shall require foster care placements to be licensed as foster care homes and shall require prospective foster parents to satisfactorily complete an appropriate training program that emphasizes the goal of the foster care program to provide stable foster placement until a permanency outcome is achieved.

(3) For a child placed in the care of the child's relative within the third degree by the state or county departments of human services, the department shall make monthly payments to defray the relative's expense of furnishing room and board. The department's relative care payment shall be in an amount up to one hundred percent (100%) of the amount of the foster care board payment. The department may continue to make those payments to the relative after the department relinquishes legal custody of the child to the relative. Any such payments for relative care shall be subject to specific appropriation therefor by the Legislature.

### **SEC. 43-15-19. Adoption resource exchange registry.**

(1) The state department of public welfare shall maintain a Mississippi Adoption Resource

Exchange registry, which shall contain a total listing of all children freed for adoption as well as a listing of all persons who wish to adopt children and who are approved by a licensed adoption agency in the state of Mississippi. Said registry shall be distributed to all county welfare directors and licensed adoption agencies within the state and shall be updated at least quarterly. The state department of public welfare shall establish regulations for listing descriptive characteristics while protecting the privacy of the children's names. Listed names shall be removed when adoption placement plans are made for a child or when a person withdraws an application for adoption.

(2) Adoptive parents shall be given the option of having their names placed in the registry. They shall be required to give written authority to the county welfare department to place their names in the registry and said authorization shall be forwarded to the state department of public welfare, division of social services, for approval.

### **SEC. 43-15-21. Penalty for releasing confidential information.**

Anyone violating or releasing information of a confidential nature without the approval of the court with jurisdiction or the state department of public welfare upon being found guilty shall be guilty of a misdemeanor and subject to a fine of no more than one thousand dollars (\$1,000.00) or imprisonment of six (6) months, or both.

### **SEC. 43-15-23. "Placing Out"; defined.**

(1) As used in this section the term "placing out" means to arrange for the free care of a child in a family, other than that of the child's parent, stepparent, grandparent, brother, sister, uncle or aunt or legal guardian, for the purpose of adoption or for the purpose of providing care.

(2) No person, agency, association, corporation, institution, society or other organization, except a child placement agency licensed by the Department of Public Welfare under Section 43-15-5, shall request, receive or accept any compensation or thing of value, directly or indirectly, for placing out of a child.

(3) No person shall pay or give any compensation or thing of value, directly or indirectly, for placing out of a child to any person, agency, association, corporation, institution, society or other organization except a child placement agency licensed by the Department of Public Welfare.

(4) The provisions of this section shall not be construed to (a) prevent the payment of salaries or other compensation by a child placement agency licensed by the Department of Public Welfare to the officers or employees thereof; (b) prevent the payment of legal fees, which have been approved by the chancery court, to an attorney for services performed in regard to adoption proceedings; (c) prevent the payment of reasonable and actual medical fees or hospital charges for services rendered in connection with the birth or medical treatment of such child to the

physician or hospital which rendered the services; or (d) prevent the receipt of such payments by such attorney, physician or hospital.

(5) Any person, agency, association, corporation, institution, society or other organization violating the provisions of this section shall be guilty of illegal placement of children and shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) or by imprisonment not more than five (5) years, or both such fine and imprisonment.

**SEC. 43-15-25. Elected officials as foster parents; payments on behalf of foster child.**

An elected official shall not be precluded from serving as a foster parent under this act, and any payments on behalf of or for the benefit of a foster child shall not be considered a contract of interest or compensation or financial income to the elected official in violation of Section 109 of the Mississippi Constitution or any related statutes.

**SEC. 43-15-51. Formation of multidisciplinary child protection teams to evaluate and investigate reports of child abuse and neglect; membership; order of Youth Court prerequisite to formation of teams; participation by experts and child advocacy centers; disclosure of information obtained from task force meetings prohibited.**

(1) The district attorneys or the Department of Human Services may initiate formal cooperative agreements with the appropriate agencies to create multidisciplinary child protection teams in order to implement a coordinated multidisciplinary team approach to intervention in reports involving alleged severe or potential felony child physical or sexual abuse, exploitation, or maltreatment. The multidisciplinary team also may be known as a child abuse task force. The purpose of the team or task force shall be to assist in the evaluation and investigation of reports and to provide consultation and coordination for agencies involved in child protection cases. The agencies to be included as members of the multidisciplinary team are: the district attorney's office, city and county law enforcement agencies, county attorneys, youth court prosecutors, and other agencies as appropriate.

(2) To implement the multidisciplinary child abuse team, the team or task force must be authorized by court order from the appropriate Youth Court. The court order will designate which agencies will participate in the cooperative multidisciplinary team.

(3) (a) Teams created under this section may invite other persons to serve on the team who have knowledge of and experience in child abuse and neglect matters. These persons may include licensed mental and physical health practitioners and physicians, dentists, representatives of the district attorney's office and the Attorney General's office, experts in the assessment and

treatment of substance abuse or sexual abuse, the victim assistance coordinator of the district attorney's office and staff members of a child advocacy center.

(b) (i) A child advocacy center means an agency that advocates on behalf of children alleged to have been abused and assists in the coordination of the investigation of child abuse by providing a location for forensic interviews and promoting the coordination of services for children alleged to have been abused. A child advocacy center provides services that include, but are not limited to, forensic medical examinations, mental health and related support services, court advocacy, consultation, training for social workers, law enforcement training, and child abuse multidisciplinary teams; and staffing of multidisciplinary teams.

(ii) Child advocacy centers may provide a video-taped forensic interview of the child in a child friendly environment or separate building. The purpose of the video-taped forensic interview is to prevent further trauma to a child in the investigation and prosecution of child physical and sexual abuse cases. Child advocacy centers can also assist child victims by providing therapeutic counseling subsequent to the interview by a qualified therapist. Child advocacy centers can also assist law enforcement and prosecutors by acquainting child victim witnesses and their parents or guardians to the courtroom through child court school programs.

(4) A team or task force created under this section shall review records on cases referred to the team by the Department of Human Services or law enforcement or the district attorney's office. The team shall meet at least monthly.

(5) No person shall disclose information obtained from a meeting of the multidisciplinary team unless necessary to comply with Department of Human Services' regulations or conduct and proceeding in Youth Court or criminal court proceedings or as authorized by a court of competent jurisdiction.

## **BABY DROP-OFF LAW**

### **SEC. 43-15-201. Emergency medical services provider to take possession of certain abandoned children.**

(1) An emergency medical services provider, without a court order, shall take possession of a child who is seventy-two (72) hours old or younger if the child is voluntarily delivered to the provider by the child's parent and the parent did not express an intent to return for the child.

(2) An emergency medical services provider who takes possession of a child under this section shall perform any act necessary to protect the physical health or safety of the child.

**SEC. 43-15-203. Notification to Department of Human Services that provider has taken possession of abandoned child; department to assume care, control, and custody of child upon receipt of notification.**

(1) No later than the close of the first business day after the date on which an emergency medical services provider takes possession of a child pursuant to Section 1 of this act, the provider shall notify the Department of Human Services that the provider has taken possession of the child.

(2) The department shall assume the care, control and custody of the child immediately on receipt of notice pursuant to subsection (1). The department shall be responsible for all medical and other costs associated with the child and shall reimburse the hospital for any costs incurred prior to the child being placed in the care of the department.

**SEC. 43-15-205. Affirmative defense to crime of child abandonment.**

It shall be an absolute affirmative defense to prosecution under Sections 97-5-1, 97-5-3 and 97-5-39 if the parent voluntarily delivers the child unharmed to an emergency medical services provider pursuant to Section 43-15-201.

**SEC. 43-15-207. Definition of “emergency medical services provider”.**

For the purposes of this act, an emergency medical services provider shall mean a licensed hospital, as defined in Section 41-9-3, which operates an emergency department or an adoption agency duly licensed by the Department of Human Services. An emergency medical services provider does not include the offices, clinics, surgeries or treatment facilities of private physicians or dentists. No individual licensed healthcare provider, including physicians, dentists, nurses, physician assistants or other health professionals shall be deemed to be an emergency medical services provider under this act unless such individual voluntarily assumes responsibility for the custody of the child.

**SEC. 43-15-209. Immunity from liability.**

A person or entity taking possession of a child under the provisions of this act shall be immune from liability for any civil action arising out of any act or omission resulting from taking possession of the child unless the act or omission was the result of the person's or entity's gross negligence or willful misconduct.



## **YOUTH COURT**

### **SEC. 43-21-45. Funds for payment of salaries and expenses of youth counselors and clerk-reporters.**

In any Class 1 county having a total population in excess of eighty thousand (80,000) according to the 1950 census and having a total assessed valuation in excess of Forty-eight Million Dollars (\$48,000,000.00), and in which there is both a youth court and a federal military base or encampment; and in any Class 1 county having a total population in excess of fifty-two thousand seven hundred twenty (52,720) in the 1960 federal decennial census and in which there is located both a state-supported university and a Mississippi National Guard Camp, the board of supervisors of any such county may, in its discretion, set aside, appropriate and expend moneys from the general fund to be used in the payment of salaries and/or travel expenses of a youth counselor, or counselors, and the salary of a clerk-reporter of the youth court of such county, and such funds shall be expended for no other purpose.

### **SEC. 43-21-101. Short title.**

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

### **SEC. 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 become a responsible, accountable and productive citizen, and that each such child shall receive such care, guidance and control, preferably in such child's own home as is conducive toward that end and is in the state's and the child's best interest. It is the public policy of this state that the parents of each child shall be primarily responsible for the care, support, education and welfare of such children; however, when it is necessary that a child be removed from the control of such child's parents, the youth court shall secure proper care for such child.

### **SEC. 43-21-105. Definitions.**

The following words and phrases, for purposes of this chapter, shall have the meanings ascribed herein unless the context clearly otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Has committed a delinquent act or acts.

(l) "Neglected child" means a child:

(i) Whose parent, guardian or custodian or any person responsible for his care or support,

neglects or refuses, when able so to do, to provide for him proper and necessary care or support, or education as required by law, or medical, surgical, or other care necessary for his well-being; provided, however, a parent who withholds medical treatment from any child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for that reason alone, be considered to be neglectful under any provision of this chapter; or

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

(iii) Who, for any reason, lacks the special care made necessary for him by reason of his mental condition, whether 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, non accidental physical injury or other maltreatment. Provided, however, that physical discipline, including spanking, performed on a child by a parent, guardian or custodian in a reasonable manner shall not be deemed abuse under this section.

(n) "Sexual abuse" means obscene or pornographic photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened.

(o) "A child in need of special care" means a child with any mental or physical illness that cannot be treated with the dispositional alternatives ordinarily available to the youth court.

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

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

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

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

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

(u) "Records involving children" means any of the following from which the child can be identified:

(i) All youth court records as defined in Section 43-21-251;

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

(iii) All law enforcement records as defined in Section 43-21-255;

(iv) All agency records as defined in Section 43-21-257; and

(v) All other documents maintained by any representative of the state, county, municipality or other public agency insofar as they relate to the apprehension, custody, adjudication or disposition of a child who is the subject of a youth court cause.

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

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

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

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

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

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

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

(2) A youth court division is hereby created as a division of the chancery court of each county in which no county court is maintained and any chancellor within a chancery court district shall be the judge of the youth court of that county within such chancery court district unless another judge is named by the senior chancellor of the county or chancery court district as provided by this chapter.

(3) In any county where there is no county court or family court on July 1, 1979, there may be created a youth court division as a division of the municipal court in any city if the governing authorities of such city adopt a resolution to that effect. The cost of the youth court division of the municipal court shall be paid from any funds available to the municipality excluding county funds. No additional municipal youth court shall be formed after January 1, 2007.

### **SEC. 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 necessary land by condemnation, by purchase or donation, may issue bonds as now provided by law for the purpose of purchasing, constructing, remodeling or maintaining such facilities; may expend necessary funds from the general fund to construct and maintain such facilities, and may employ architects to design or remodel such facilities. Such facilities may include a place for housing youth court facilities and personnel.

### **SEC. 43-21-111. Referee.**

(1) In any county not having a county court or family court the judge may appoint as provided in Section 43-21-123 regular or special referees who shall 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. The requirement that regular or special referees appointed pursuant to this subsection be attorneys shall apply only to regular or special referees who were not first appointed regular or special referees prior to July 1, 1991.

(2) Any referee appointed pursuant to subsection (1) of this section shall be required to receive judicial training approved by the Mississippi Judicial College and shall be required to receive regular annual continuing education in the field of juvenile justice. The amount of judicial training and annual continuing education which shall be satisfactory to fulfill the requirements of this section shall conform with the amount prescribed by the Rules and Regulation for Mandatory Continuing Judicial Education promulgated by the Supreme Court. The Administrative Office of Courts shall maintain a roll of referees appointed under this section, shall enforce the provisions of this subsection and shall maintain records on all such referees regarding such training. Should a referee miss two (2) consecutive training sessions sponsored or approved by the Mississippi Judicial College as required by this subsection or fail to attend one (1) such training session within six (6) months of their initial appointment as a referee, the referee shall be disqualified to

serve and be immediately removed as a referee and another member of the bar shall be appointed as provided in this section.

(3) 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.

(4) 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.

(5) An order entered by the referee shall be mailed immediately to all parties and their counsel. A rehearing by the judge shall be allowed if any party files a written motion for a rehearing or on the court's own motion within three (3) days after notice of referee's order. The youth court may enlarge the time for filing a motion for a rehearing for good cause shown. Any rehearing shall be upon the record of the hearing before the referee, but additional evidence may be admitted in the discretion of the judge. A motion for a rehearing shall not act as a supersedes of the referee's order, unless the judge shall so order.

(6) 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.

(7) Upon request of the boards 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.

### **SEC. 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 county or 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.

### **SEC. 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 youth court intake unit shall perform all duties specified by this chapter. If the person serving as the youth court

intake unit is not already a salaried public employee, the salary for such person shall be fixed on order of the judge as provided in Section 43-21-123 and shall be paid by the county or municipality, as the case may be, out of any available funds budgeted for the youth court by the board of supervisors.

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

(1) The youth court prosecutor shall represent the petitioner 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 serves 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.

(4) All youth court prosecutors and county prosecuting attorneys who serve as youth court prosecutors shall be required to receive juvenile justice training approved by the Mississippi Attorney General's office and regular annual continuing education in the field of juvenile justice. The Mississippi Attorney General's office shall determine the amount of juvenile justice training and annual continuing education which shall be satisfactory to fulfill the requirements of this subsection. The Administrative Office of Courts shall maintain a roll of youth court prosecutors, shall enforce the provisions of this subsection and shall maintain records on all such youth court prosecutors regarding such training. Should a youth court prosecutor miss two (2) consecutive training sessions sponsored by the Mississippi Attorney General's office as required by this subsection or fail to attend one (1) such training session within six (6) months of their designation as youth court prosecutor, the youth court prosecutor shall be disqualified to serve and be immediately removed from the office of youth court prosecutor and another youth court prosecutor shall be designated.

**SEC. 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.

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

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

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



under this section and shall enforce the provisions of this subsection.

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

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

(7) The court, in its sound discretion, may appoint a volunteer trained layperson to assist children subject to the provisions of this section in addition to the appointment of a guardian ad litem.

### **SEC. 43-21-123. Expenditures by the youth court.**

Except for expenses provided by state funds and/or other monies, the board of supervisors, or the municipal governing board where there is a municipal youth court, shall adequately provide funds for the operation of the youth court division of the chancery court in conjunction with the regular chancery court budget, or the county or family courts where said courts are constituted. In preparation for said funding, on an annual basis at the time requested, the youth court judge or administrator shall prepare and submit to the board of supervisors, or the municipal governing board of the youth court wherever the youth court is a municipal court, an annual budget which will identify the number, staff position, title and amount of annual or monthly compensation of each position as well as provide for other expenditures necessary to the functioning and operation of the youth court. When the budget of the youth court or youth court judge is approved by the board of supervisors of the governing authority of the municipality, then the youth court or youth court judge may employ such persons as provided in the budget from time to time.

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

### **SEC. 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 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.

### **SEC. 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.

### **SEC. 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, an abused child or a dependent child except in the following circumstances:

(a) Any act attempted or committed by a child, which if committed by an adult would be punishable under state or federal law by life imprisonment or death, will be in the original jurisdiction of the circuit court;

(b) Any act attempted or committed by a child with the use of a deadly weapon, the carrying of which concealed is prohibited by Section 97-37-1, or a shotgun or a rifle, which would be a felony if committed by an adult, will be in the original jurisdiction of the circuit court; and

(c) When a charge of abuse of a child first arises in the course of a custody action between the parents of the child already pending in the chancery court and no notice of such abuse was provided prior to such chancery proceedings, the chancery court may proceed with the investigation, hearing and determination of such abuse charge as a part of its hearing and determination of the custody issue as between the parents, notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse charge shall be confidential in the same manner as provided in youth court proceedings.

When a child is expelled from the public schools, the youth court shall be notified of the act of expulsion and the act or acts constituting the basis for expulsion.

(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, or over offenses committed by a child on or after his seventeenth birthday where such offenses would be a felony if committed by an adult.

(3) No child who has not reached his thirteenth birthday shall be held criminally responsible or criminally prosecuted for a misdemeanor or felony; however, the parent, guardian or custodian of such child may be civilly liable for any criminal acts of such child. 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.

(5) The youth court shall regulate and approve the use of teen court as provided in Section 43-21-753.

### **SEC. 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.

**SEC. 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. After adjudication, the youth court may, in the best interest of the child, transfer the case at any stage of the proceeding for disposition to the county where the child resides or to a county where a youth court has previously acquired jurisdiction.

(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.

**SEC. 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;
  - (l) Whether the alleged offense was committed on school property, public or private, or at any school-sponsored event, and constituted a substantial danger to other students;
  - (m) Any other factors deemed relevant by the youth court; and
  - (n) Nothing in this subsection shall prohibit the transfer of jurisdiction of an alleged offense and a child if that child, at the time of the transfer hearing, previously has not been placed in a juvenile institution.
- (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, or when a youth has committed an act which is in original circuit court jurisdiction pursuant to Section 43-21-151, the jurisdiction of the youth court over the youth for any future offenses is terminated, except that jurisdiction over future offenses is not terminated if the circuit court transfers or remands the transferred case to the youth court or if a child who has been transferred to the circuit court or is in the original jurisdiction of the circuit court is not convicted. However, when jurisdiction of an offense is transferred to the circuit court pursuant to this section or when an offense committed by a youth is in original circuit court jurisdiction pursuant to Section 43-21-151, the circuit court shall thereafter assume and retain jurisdiction of any felony offenses committed by such youth without any additional transfer proceedings. Any misdemeanor offenses committed by youth who are in circuit court jurisdiction pursuant to this section or Section 43-21-151 shall be prosecuted in the court which would have jurisdiction over that offense if committed by an adult without any additional transfer proceedings. 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.
- (9) When any youth has been the subject of a transfer to circuit court for an offense committed in any county of the state or has committed any act which is in the original jurisdiction of the circuit court pursuant to Section 43-21-151, that transfer or original jurisdiction shall be recognized by all other courts of the state and no subsequent offense committed by such youth in any county of the state shall be in the jurisdiction of the youth court unless transferred to the youth court pursuant to Section 43-21-159(3). Transfers from youth courts of other states shall be recognized by the courts of this state and no youth who has a pending charge or a conviction in the adult

court system of any other state shall be in the jurisdiction of the youth courts of this state, but such youths shall be in the jurisdiction of the circuit court for any felony committed in this state or in the jurisdiction of the court of competent jurisdiction for any misdemeanor committed in this state.

**SEC. 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 expunction or the destruction of such records in accordance with Section 43-21-265. Upon petition therefor, the youth court shall expunge the record of any case within its jurisdiction in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case. In cases where the child is charged with a hunting or fishing violation or a traffic violation whether it be any state or federal law, a violation of the Mississippi Implied Consent Law, or municipal ordinance or county resolution or where the child is charged with a violation of Section 67-3-70, the appropriate criminal court shall proceed to dispose of the same in the same manner as for other adult offenders and it shall not be necessary to transfer the case to the youth court of the

county. Unless the cause has been transferred, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult, except for violations under the Implied Consent Law, and was convicted, the youth court shall have power on its own motion to remove jurisdiction from any criminal court of any offense including a hunting or fishing violation, a traffic violation, or a violation of Section 67-3-70, committed by a child in a matter under the jurisdiction of the youth court and proceed therewith in accordance with the provisions of this chapter.

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

records involving children maintained by the criminal court in accordance with Section 43-21-265. However, the youth court shall have the power to set aside a judgment of any other court rendered in any matter over which the youth court has exclusive original jurisdiction, to expunge or destroy the records thereof in accordance with Section 43-21-265, and to order a refund of fines and costs.

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

(4) In any case wherein the defendant is a child as defined in this chapter and of which the circuit court has original jurisdiction, the circuit judge, upon a finding that it would be in the best interest of such child and in the interest of justice, may at any stage of the proceedings prior to the attachment of jeopardy transfer such proceedings to the youth court for further proceedings unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted or has previously been convicted of a crime which was in original circuit court jurisdiction, and the youth court shall, upon acquiring jurisdiction, proceed as provided in this chapter for the adjudication and disposition of delinquent child proceeding proceedings. If the case is not transferred to the youth court and the youth is convicted of a crime by any circuit court, the trial judge shall sentence the youth as though such youth was an adult. The circuit court shall not have the authority to commit such child to the custody of the Department of Youth Services for placement in a state-supported training school.

(5) In no event shall a court sentence an offender over the age of eighteen (18) to the custody of the Division of Youth Services for placement in a state-supported training school.

(6) When a child's driver's license is suspended by the youth court for any reason, the clerk of the youth court shall report the suspension, without a court order under Section 43-21-261, to the Commissioner of Public Safety in the same manner as such suspensions are reported in cases involving adults.

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

### **SEC. 43-21-201. Representation by counsel.**

(1) Each party shall have the right to be represented by counsel at all stages of the proceedings including, but not limited to, detention, adjudicatory and disposition hearings and parole or



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

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

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

(5) 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.

(6) Each designee appointed by a youth court judge shall be subject to the Code of Judicial Conduct and shall govern himself or herself accordingly.

### **SEC. 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 chapter, the disposition of a child's cause or any evidence given in the youth court in any proceedings concerning the child shall not be admissible against the child in any case or proceeding in any court other than a youth court.

### **SEC. 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 other than an 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.

### **SEC. 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 all the files shall be kept in numerical order.

(c) All social records of a youth court, which shall include all intake records, social summaries, medical examinations, mental health examinations, transfer studies and all other information obtained and prepared in the discharge of official duty for the youth court.

(i) A "social summary" is an investigation of the personal and family history and the environment of a child who is the subject of a youth court cause. The social summary should describe all reasonable appropriate alternative dispositions. The social summary should contain a specific plan for the care and assistance to the child with a detailed explanation showing the necessity for the proposed plan of disposition.

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

(iii) A "mental health examination" is an examination by a psychiatrist or psychologist of a child who is the subject of a youth court cause or of his parent. The youth court may order a mental health examination at any time after the intake unit has received a written complaint. Whenever possible, a mental health examination shall be conducted on an outpatient basis. A mental health examination of a parent of the child who is the subject of a cause shall not be ordered unless the

physical or mental ability of the parent to care for the child is a relevant issue in the particular cause and the parent to be examined consents to the examination.

(iv) A "transfer study" is a social summary which addresses the factors set forth in Section 43-21-157(5). A transfer study shall not be admissible evidence nor shall it be considered by the court at any adjudicatory hearing. It shall be admissible evidence at a transfer or disposition hearing.

(d) A minute book in which the clerk shall record all the orders of the youth court.

(e) Proceedings of the youth court and evidence.

(f) All information obtained by the youth court from the Administrative Office of Courts pursuant to a request under Section 43-21-261(15).

(2) The records of the youth court and the contents thereof shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

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

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

(3) Any law enforcement record involving children who have been taken into custody for an act, which if committed by an adult would be considered a felony and/or offenses involving possession or use of a dangerous weapon including photographs and fingerprints, may be released to a law enforcement agency supported by public funds, youth court officials and appropriate school officials without a court order under Section 43-21-261. Law enforcement

records shall be released to youth court officials and to appropriate school officials upon written request. Except as provided in subsection (4) of this section, any law enforcement agency releasing such records of children in the jurisdiction of the youth court shall immediately report the release and location of the records to the youth court. The law enforcement agencies, youth court officials and school officials receiving such records are prohibited from using the photographs and fingerprints for any purpose other than for criminal law enforcement and juvenile law enforcement. Each law enforcement officer or employee, each youth court official or employee and each school official or employee receiving the records shall submit to the sender a signed statement acknowledging his or her duty to maintain the confidentiality of the records. In no instance shall the fact that such records of children in the jurisdiction of the youth court exist be conveyed to any private individual, firm, association or corporation or to any public or quasi-public agency the duties of which do not include criminal law enforcement or juvenile law enforcement.

(4) When a child's driver's license is suspended for refusal to take a test provided under the Mississippi Implied Consent Law, the law enforcement agency shall report such refusal, without a court order under Section 43-21-261, to the Commissioner of Public Safety in the same manner as such suspensions are reported in cases involving adults.

(5) All records involving a child convicted as an adult or who has been twice adjudicated delinquent for a sex offense as defined by Section 45-33-23, Mississippi Code of 1972, shall be public and shall not be kept confidential.

### **SEC. 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 Human Services, or any other state agency, shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

(2) The Office of Youth Services shall maintain a state central registry containing the number and disposition of all cases together with such other useful information regarding those cases as may be requested and is obtainable from the records of the youth court. The Office of Youth Services shall annually publish a statistical record of the number and disposition of all cases, but the names or identity of any children shall not be disclosed in the reports or records. The Office of Youth Services shall adopt such rules as may be necessary to carry out this subsection. The central registry files and the contents thereof shall be confidential and shall not be open to public inspection. Any person who discloses or encourages the disclosure of any record involving children from the central registry shall be subject to the penalty in Section 43-21-267. The youth court shall furnish, upon forms provided by the Office of Youth Services, the necessary information, and these completed forms shall be forwarded to the Office of Youth Services.

(3) The Department of Human Services shall maintain a state central registry on neglect and

abuse cases containing (a) the name, address and age of each child, (b) the nature of the harm reported, (c) the name and address of the person responsible for the care of the child, and (d) the name and address of the substantiated perpetrator of the harm reported. "Substantiated perpetrator" shall be defined as an individual who has committed an act(s) of sexual abuse or physical abuse that would otherwise be deemed as a felony or any child neglect that would be deemed as a threat to life, as determined upon investigation by the Office of Family and Children's Services. "Substantiation" for the purposes of the Mississippi Department of Human Services Central Registry shall require a criminal conviction or an adjudication by a youth court judge or court of competent jurisdiction, ordering that the name of the perpetrator be listed on the central registry, pending due process . The

Department of Human Services shall adopt such rules and administrative procedures, especially those procedures to afford due process to individuals who have been named as substantiated perpetrators before the release of their name from the central registry, 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 discloses or encourages the disclosure of any record involving children from the central registry without following the rules and administrative procedures of the department shall be subject to the penalty in Section 43-21-267. The Department of Human Services and its employees are exempt from any civil liability as a result of any action taken pursuant to the compilation and/or release of information on the central registry under this section and any other applicable section of the code, unless determined that an employee has willfully and maliciously violated the rules and administrative procedures of the department, pertaining to the central registry or any section of this code. If an employee is determined to have willfully and maliciously performed such a violation, said employee shall not be exempt from civil liability in this regard.

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

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

### **SEC. 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.

### **SEC. 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 written approval, and the child, through his or her representative, gives permission to release the information;

(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; and

(g) To any person pursuant to a finding by a judge of the youth court of compelling circumstances affecting the health or safety of a child and that such disclosure is in the best interests of the child.

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

(2) Any records involving children which are disclosed under an order of the youth court 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, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person.

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

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

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

(6) Information concerning an investigation into a report of child abuse or child neglect may be disclosed by the Department of Human Services without order of the youth court to any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, public or private school employee making that report pursuant to Section 43-21-353(1) if the reporter has a continuing professional relationship with the child and a need for such information in order to protect or treat the child.

(7) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court to any interagency child abuse task force established in any county or municipality by order of the youth court of that county or municipality.

(8) Names and addresses of juveniles twice adjudicated as delinquent for an act which would be a felony if committed by an adult or for the unlawful possession of a firearm shall not be held confidential and shall be made available to the public.

(9) Names and addresses of juveniles adjudicated as delinquent for murder, manslaughter, burglary, arson, armed robbery, aggravated assault, any sex offense as defined in Section 45-33-23, for any violation of Section 41-29-139(a)(1) or for any violation of Section 63-11-30, shall not be held confidential and shall be made available to the public.



(10) The judges of the circuit and county courts, and presentence investigators for the circuit courts, as provided in Section 47-7-9, shall have the right to inspect any youth court records of a person convicted of a crime for sentencing purposes only.

(11) The victim of an offense committed by a child who is the subject of a youth court cause shall have the right to be informed of the child's disposition by the youth court.

(12) A classification hearing officer of the State Department of Corrections, as provided in Section 47-5-103, shall have the right to inspect any youth court records, excluding abuse and neglect records, of any offender in the custody of the department who as a child or minor was a juvenile offender or was the subject of a youth court cause of action, and the State Parole Board, as provided in Section 47-7-17, shall have the right to inspect such records when the offender becomes eligible for parole.

(13) The youth court shall notify the Department of Public Safety of the name, and any other identifying information such department may require, of any child who is adjudicated delinquent as a result of a violation of the Uniform Controlled Substances Law.

(14) The Administrative Office of Courts shall have the right to inspect any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose.

(15) Upon a request by a youth court, the Administrative Office of Courts shall disclose all information at its disposal concerning any previous youth court intakes alleging that a child was a delinquent child, child in need of supervision, child in need of special care, truant child, abused child or neglected child, as well as any previous youth court adjudications for the same and all dispositional information concerning a child who at the time of such request comes under the jurisdiction of the youth court making such request.

(16) In every case where an abuse or neglect allegation has been made, the confidentiality provisions of this section shall not apply to prohibit access to a child's records by any state regulatory agency, any state or local prosecutorial agency or law enforcement agency; however, no identifying information concerning the child in question may be released to the public by such agency except as otherwise provided herein.

(17) In every case where there is any indication or suggestion of either abuse or neglect and a child's physical condition is medically labeled as medically "serious" or "critical" or a child dies, the confidentiality provisions of this section shall not apply. In cases of child deaths, the following information may be released by the Mississippi Department of Human Services: (a) child's name; (b) address or location; (c) verification from the Department of Human Services of

case status (no case or involvement, case exists, open or active case, case closed); (d) if a case exists, the type of report or case (physical abuse, neglect, etc.), date of intake(s) and investigation(s), and case disposition (substantiated or unsubstantiated). Notwithstanding the aforesaid, the confidentiality provisions of this section shall continue if there is a pending or planned investigation by any local, state or federal governmental agency or institution.

(18) Any member of a foster care review board designated by the Department of Human Services shall have the right to inspect youth court records relating to the abuse, neglect or child in need of supervision cases assigned to such member for review.

(19) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court in any administrative or due process hearing held, pursuant to Section 43-21-257, by the Department of Human Services for individuals whose names will be placed on the central registry as substantiated perpetrators.

### **SEC. 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.

### **SEC. 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. No records, however, may be destroyed without the approval of the director of the department of archives and history.

### **SEC. 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.

### **SEC. 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 Human Services, or any other person unless the judge or his designee has issued a custody order to take the child into custody.

(3) The judge or his designee may issue an order to a law enforcement officer, the Department of Human Services, or any suitable person to take a child into custody for a period not longer than forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays if it appears that there is probable cause to believe that:

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

(b) Custody is necessary; custody shall be deemed 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 or her by any name or description by which he or she can be identified with reasonable certainty;

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

(c) Except in cases where the child is alleged to be a delinquent child or a child in need of supervision, state that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interests of the child, and unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), also state that (i) reasonable efforts have been made to maintain the child within his or her own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or (ii) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody. If the court makes a finding in accordance with (ii) of this paragraph, the court shall order that reasonable efforts be made towards the reunification of the child with his or her family.

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

(e) State the date issued and the youth court by which the order is issued; and

(f) Be signed by the judge or his designee with the title of his office.

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

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

(b) No accused or adjudicated juvenile offender, except for an accused or adjudicated juvenile offender in cases where jurisdiction is waived to the adult criminal court, shall be detained or placed into custody of any adult jail or lockup for a period in excess of six (6) hours.

(c) If any county violates the provisions of paragraph (a) or (b) of this subsection, the state agency authorized to allocate federal funds received pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, 88 Stat. 2750 (codified in scattered sections of 5, 18, 42 U.S.C.S.), shall withhold the county's share of such funds.

(d) Any county that does not have a facility in which to detain its juvenile offenders in compliance with the provisions of paragraphs (a) and (b) of this subsection may enter into a contractual agreement with any county or municipality that does have such a facility, or with the State of Mississippi, or with any private entity that maintains a juvenile correctional facility, or with the State of Mississippi, to detain or place into custody the juvenile offenders of the county not having such a facility.

(e) Notwithstanding the provisions of paragraphs (a), (b), (c) and (d) of this subsection, all counties shall be allowed a one-year grace period from March 27, 1993, to comply with the provisions of this subsection.

### **SEC. 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.

### **SEC. 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.

### **SEC. 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 and such custody order complies with the detention requirements provided in Section 43-21-301(6).

### **SEC. 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 or her parent, guardian or custodian; to his or her guardian ad litem, if any; and to his or her 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)

(a) 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 and the detention or shelter hearing order recites that:

(i) There is probable cause that the youth court has jurisdiction; and

(ii) Custody is necessary as defined in Section 43-21-301(3)(b).

(b) In the case of a shelter hearing, the shelter hearing order shall further recite that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interest of the child, and, unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), the order also must state:

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

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

(c) In the event that the court makes a finding in accordance with subparagraph (ii), the court shall order that reasonable efforts be made towards the reunification of the child with his or her family.

(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.

(6) Any order placing a child into custody shall comply with the requirements provided in Section 43-21-301.

### **SEC. 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;
- (e) The time and place of the detention hearing when the time and place is set; and
- (f) The conditions of his custody which shall be in compliance with the detention requirements provided in Section 43-21-301(6).

These rights shall be posted where the child may read them, and such rights must be read to the child when he or she is taken into custody.

(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.

### **SEC. 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.

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

### **SEC. 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 Human Services and all law enforcement agencies within the territorial jurisdiction of the youth court.

(2) Except as otherwise provided in this chapter, unless jurisdiction is transferred, no child shall be placed in any jail or place of detention of adults by any person or court unless the child shall be physically segregated from other persons not subject to the jurisdiction of the youth court and the physical arrangement of such jail or place of detention of adults prevents such child from having substantial contact with and substantial view of such other persons; but in any event, the child shall not be confined anywhere in the same cell with persons not subject to the jurisdiction of the youth court. Any order placing a child into custody shall comply with the detention requirements provided in Section 43-21-301(6). This subsection shall not be construed to apply to commitments to the training school under Section 43-21-605(1)(g)(iii).

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

(4) After a child is ordered into custody, the youth court may arrange for the custody of the child with any private institution or agency caring for children, may commit the child to the Department of Mental Health pursuant to Section 41-21-61 et seq., or may order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of such child. Provided, however, that the care, custody and maintenance of such child shall be within the statutory authorization and the budgetary means of such institution or facility.

### **SEC. 43-21-321. Health screening required upon admission to juvenile detention center; development of written procedures for admission; programs and services.**

(1) All juveniles shall undergo a health screening within one (1) hour of admission to any

juvenile detention center, or as soon thereafter as reasonably possible. Information obtained during the screening shall include, but shall not be limited to, the juvenile's:

- (a) Mental health;
- (b) Suicide risk;
- (c) Alcohol and other drug use and abuse;
- (d) Physical health;
- (e) Aggressive behavior;
- (f) Family relations;
- (g) Peer relations;
- (h) Social skills;
- (i) Educational status; and
- (j) Vocational status.

(2) If the screening instrument indicates that a juvenile is in need of emergency medical care or mental health intervention services, the detention staff shall refer those juveniles to the proper health care facility or community mental health service provider for further evaluation, as soon as reasonably possible. If the screening instrument, such as the Massachusetts Youth Screening Instrument version 2 (MAYSI-2) or other comparable mental health screening instrument indicates that the juvenile is in need of emergency medical care or mental health intervention services, the detention staff shall refer the juvenile to the proper health care facility or community mental health service provider for further evaluation, recommendation and referral for treatment, if necessary, within forty-eight (48) hours, excluding Saturdays, Sundays and statutory state holidays.

(3) All juveniles shall receive a thorough orientation to the center's procedures, rules, programs and services. The intake process shall operate twenty-four (24) hours per day.

(4) The directors of all of the juvenile detention centers shall amend or develop written procedures for admission of juveniles who are new to the system. These shall include, but are not limited to, the following:

- (a) Determine that the juvenile is legally committed to the facility;

- (b) Make a complete search of the juvenile and his possessions;
- (c) Dispose of personal property;
- (d) Require shower and hair care, if necessary;
- (e) Issue clean, laundered clothing, as needed;
- (f) Issue personal hygiene articles;
- (g) Perform medical, dental and mental health screening;
- (h) Assign a housing unit for the juvenile;
- (i) Record basic personal data and information to be used for mail and visiting lists;
- (j) Assist juveniles in notifying their families of their admission and procedures for mail and visiting;
- (k) Assign a registered number to the juvenile; and
- (l) Provide written orientation materials to the juvenile.

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

(6) All juvenile detention centers shall adhere to the following minimum standards:

(a) Each center shall have a manual that states the policies and procedures for operating and maintaining the facility, and the manual shall be reviewed annually and revised as needed;

(b) Each center shall have a policy that specifies support for a drug-free workplace for all employees, and the policy shall, at a minimum, include the following:

(i) The prohibition of the use of illegal drugs;

(ii) The prohibition of the possession of any illegal drugs except in the performance of official duties;

(iii) The procedure used to ensure compliance with a drug-free workplace policy;

(iv) The opportunities available for the treatment and counseling for drug abuse; and

- (v) The penalties for violation of the drug-free workplace policy;
- (c) Each center shall have a policy, procedure and practice that ensures that personnel files and records are current, accurate and confidential;
- (d) Each center shall promote the safety and protection of juvenile detainees from personal abuse, corporal punishment, personal injury, disease, property damage and harassment;
- (e) Each center shall have written policies that allow for mail and telephone rights for juvenile detainees, and the policies are to be made available to all staff and reviewed annually;
- (f) Center food service personnel shall implement sanitation practices based on State Department of Health food codes;
- (g) Each center shall provide juveniles with meals that are nutritionally adequate and properly prepared, stored and served according to the State Department of Health food codes;
- (h) Each center shall offer special diet food plans to juveniles under the following conditions:
  - (i) When prescribed by appropriate medical or dental staff; or
  - (ii) As directed or approved by a registered dietitian or physician; and
  - (iii) As a complete meal service and not as a supplement to or choice between dietary meals and regular meals;
- (i) Each center shall serve religious diets when approved and petitioned in writing by a religious professional on behalf of a juvenile and approved by the juvenile detention center director;
- (j) Juvenile detention center directors shall provide a written method of ensuring regular monitoring of daily housekeeping, pest control and sanitation practices, and centers shall comply with all federal, state and local sanitation and health codes;
- (k) Juvenile detention center staff shall screen detainees for medical, dental and mental health needs during the intake process. If medical, dental or mental health assistance is indicated by the screening, or if the intake officer deems it necessary, the detainee shall be provided access to appropriate health care professionals for evaluation and treatment. Youth who are held less than seventy-two (72) hours shall receive treatment for emergency medical, dental or mental health assistance or chronic conditions if a screening indicates such treatment is needed. A medical history of all detainees shall be completed by the intake staff of the detention center immediately after arrival at the facility by using a medical history form which shall include, but not be limited to, the following:
  - (i) Any medical, dental and mental health treatments and medications the juvenile is taking;
  - (ii) Any chronic health problems such as allergies, seizures, diabetes, hearing or sight loss,

hearing conditions or any other health problems; and

(iii) Documentation of all medications administered and all health care services rendered;

(l) Juvenile detention center detainees shall be provided access to medical care and treatment while in custody of the facility;

(m) Each center shall provide reasonable access by youth services or county counselors for counseling opportunities. The youth service or county counselor shall visit with detainees on a regular basis;

(n) Juvenile detention center detainees shall be referred to other counseling services when necessary including: mental health services; crisis intervention; referrals for treatment of drugs and alcohol and special offender treatment groups;

(o) Local school districts shall work collaboratively with juvenile detention center staff to provide special education services as required by state and federal law. Upon the written request of the youth court judge for the county in which the detention center is located, a local school district in the county in which the detention center is located, or a private provider agreed upon by the youth court judge and sponsoring school district, shall provide a certified teacher to provide educational services to detainees. The youth court judge shall designate said school district which shall be defined as the sponsoring school district. The local home school district shall be defined as the school district where the detainee last attended prior to detention. Teacher selection shall be in consultation with the youth court judge. The Legislature shall annually appropriate sufficient funds for the provision of educational services, as provided under this act, to detainees in detention centers.

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

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

(ii) Individualized instruction and practice to address any weaknesses identified in the assessment conducted under subparagraph (i), provided such detainee is in the center for more than forty-eight (48) hours; and

(iii) Character education to improve behavior.

(q) No later than the tenth day of detention, the detainee shall begin an extended detention education program. A team consisting of a certified teacher provided by the local sponsoring school district or a private provider agreed upon by the youth court judge and sponsoring school district, the appropriate official from the local home school district, and the youth court counselor or representative will develop an individualized education program for the detainee, where appropriate as determined by the teacher of the sponsoring school district, or a private provider

agreed upon by the youth court judge and sponsoring school district. The detainee's parent or guardian shall participate on the team unless excused by the youth court judge. Failure of any party to participate shall not delay implementation of this education program.

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

(s) The Mississippi Department of Education will collaborate with the appropriate state and local agencies, juvenile detention centers and local school districts to ensure the provision of educational services to every student placed in a juvenile detention center. Such services may include, but not be limited to: assessment and math and reading instruction, character education and behavioral counseling. The Mississippi Department of Education shall work with the appropriate state and local agencies, juvenile detention centers and local school districts to annually determine the proposed costs for educational services to youth placed in juvenile detention centers and annually request sufficient funding for such services as necessary.

(t) Recreational services shall be made available to juvenile detainees for purpose of physical exercise;

(u) Juvenile detention center detainees shall have the opportunity to participate in the practices of their religious faith as long as such practices do not violate facility rules and are approved by the director of the juvenile detention center;

(v) Each center shall provide sufficient space for a visiting room, and the facility shall encourage juveniles to maintain ties with families through visitation, and the detainees shall be allowed the opportunity to visit with the social workers, counselors and lawyers involved in the juvenile's care;

(w) Juvenile detention centers shall ensure that staffs create transition planning for youth leaving the facilities. Plans shall include providing the youth and his or her parents or guardian with copies of the youth's detention center education and health records, information regarding the youth's home community, referrals to mental and counseling services when appropriate, and providing assistance in making initial appointments with community service providers; the transition team will work together to help the detainee successfully transition back into the home school district once released from detention. The transition team will consist of a certified teacher provided by the local sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district, the appropriate official from the local home school district, the school attendance officer assigned to the local home school district, and the youth court counselor or representative. The detainee's parent or guardian shall participate on the team unless excused by the youth court judge. Failure of any party to participate shall not delay implementation of this education program; and

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

(7) Programs and services shall be initiated for all juveniles once they have completed the admissions process.

(8) Programs and professional services may be provided by the detention staff, youth court staff or the staff of the local or state agencies, or those programs and professional services may be provided through contractual arrangements with community agencies.

(9) Persons providing the services required in this section must be qualified or trained in their respective fields.

(10) All directors of juvenile detention centers shall amend or develop written procedures to fit the programs and services described in this section.

**SEC. 43-21-323. Juvenile Detention Facilities Monitoring Unit Established; Duty to Conduct Inspections of All Juvenile Detention Facilities; Additional Duties.**

(1) There is established the Juvenile Detention Facilities Monitoring Unit within the Department of Public Safety to work in cooperation with the Juvenile Justice Advisory Committee described in Section 45-1-33. The unit shall inspect all juvenile detention facilities and collect data on juveniles that are held in such facilities including, but not limited to, the state training school on a quarterly basis. The inspections shall encompass the following:

(a) Reviewing all records containing detention information and ensuring and certifying that the juvenile detention facilities are in compliance with the minimum standards of operation, as established in Section 43-21-321;

(b) Providing technical assistance and advice to juvenile detention facilities, which will assist the facilities in complying with the minimum standards.

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

(a) To conduct an assessment of all juvenile detention facilities and to determine how far each is from coming into compliance with the minimum standards, as established in Section 43-21-301(6) and Section 43-21-321; and

(b) To develop a strategic plan and a timeline for each juvenile detention facility to come into compliance with the minimum standards as described in this subsection.

### **SEC. 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 number that will be assigned by the court in accordance with the standards established by the Administrative Office of Courts pursuant to Section 9-21-9(d), and shall be preserved until destroyed on order of the court.

### **SEC. 43-21-353. Duty to inform state agencies and officials.**

(1) Any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, public or private school employee or any other person having reasonable cause to suspect that a child is a neglected child 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 Human Services, and immediately a referral shall be made by the Department of Human Services to the youth court intake unit, which unit shall promptly comply with Section 43-21-357. In the course of an investigation, at the initial time of contact with the individual(s) about whom a report has been made under this Youth Court Act or with the individual(s) responsible for the health or welfare of a child about whom a report has been made under this chapter, the Department of Human Services shall inform the individual of the specific complaints or allegations made against the individual. Consistent with subsection (4), the identity of the person who reported his or her suspicion shall not be disclosed. Where appropriate, the Department of Human Services shall additionally make a referral to the youth court prosecutor.

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

(3) The Department of Human Services shall maintain a statewide incoming wide-area telephone service or similar service for the purpose of receiving reports of suspected cases of child abuse; provided that any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker,



family protection worker, family protection specialist, child caregiver, minister, law enforcement officer or public or private school employee who is required to report under subsection (1) of this section shall report in the manner required in subsection (1).

(4) Reports of abuse 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 or when the identity of the reporter is released to law enforcement agencies and the appropriate prosecutor pursuant to subsection (1). Reports made under this section to any law enforcement agency or prosecutorial officer are for the purpose of criminal investigation and prosecution only and no information from these reports may be released to the public except as provided by Section 43-21-261. Disclosure of any information by the prosecutor shall be according to the Mississippi Uniform Rules of Circuit and County Court Procedure. The identity of the reporting party shall not be disclosed to anyone other than law enforcement officers or prosecutors without an order from the appropriate youth court. Any person disclosing any reports made under this section in a manner not expressly provided for in this section or Section 43-21-261, shall be guilty of a misdemeanor and subject to the penalties prescribed by Section 43-21-267.

(5) All final dispositions of law enforcement investigations described in subsection (1) of this section shall be determined only by the appropriate prosecutor or court. All final dispositions of investigations by the Department of Human Services as described in subsection (1) of this section shall be determined only by the youth court. Reports made under subsection (1) of this section by the Department of Human Services to the law enforcement agency and to the district attorney's office shall include the following, if known to the department:

(a) The name and address of the child;

(b) The names and addresses of the parents;

(c) The name and address of the suspected perpetrator;

(d) The names and addresses of all witnesses, including the reporting party if a material witness to the abuse;

(e) A brief statement of the facts indicating that the child has been abused and any other information from the agency files or known to the family protection worker or family protection specialist making the investigation, including medical records or other records, which may assist law enforcement or the district attorney in investigating and/or prosecuting the case; and

(f) What, if any, action is being taken by the Department of Human Services.

(6) In any investigation of a report made under this chapter of the abuse or neglect of a child as defined in Section 43-21-105(m), the Department of Human Services may request the appropriate law enforcement officer with jurisdiction to accompany the department in its investigation, and in such cases the law enforcement officer shall comply with such request.

(7) Anyone who willfully violates any provision of this section shall be, upon being found guilty, punished by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by imprisonment in jail not to exceed one (1) year, or both.

(8) If a report is made directly to the Department of Human Services that a child has been abused or neglected in an out-of-home setting, a referral shall be made immediately to the law enforcement agency in whose jurisdiction the abuse occurred and the department shall notify the district attorney's office within forty-eight (48) hours of such report. The Department of Human Services shall investigate the out-of-home setting report of abuse or neglect to determine whether the child who is the subject of the report, or other children in the same environment, comes within the jurisdiction of the youth court and shall report to the youth court the department's findings and recommendations as to whether the child who is the subject of the report or other children in the same environment require the protection of the youth court. The law enforcement agency shall investigate the reported abuse immediately and shall file a preliminary report with the district attorney's office within forty-eight (48) hours and shall make additional reports as new information or evidence becomes available. If the out-of-home setting is a licensed facility, an additional referral shall be made by the Department of Human Services to the licensing agency. The licensing agency shall investigate the report and shall provide the department of Human Services, the law enforcement agency and the district attorney's office with their written findings from such investigation as well as that licensing agency's recommendations and actions taken.

**SEC. 43-21-354. Statewide incoming wide area telephone service to be maintained on twenty-four-hour seven days a week basis.**

The statewide incoming wide area telephone service established pursuant to Section 43-21-353, Mississippi Code of 1972, shall be maintained by the Department of Public Welfare, or its successor, on a twenty-four-hour seven (7) days a week basis.

**SEC. 43-21-355. Immunity for reporting information.**

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

**SEC. 43-21-357. Intake procedure.**

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

(a) That the youth court take no action;

(b) That an informal adjustment be made;

(c) The Department of Human Services, Division of Family and Children Services, monitor the child, family and other children in the same environment;

(d) That the child is warned or counseled informally; or

(e) That a petition be filed.

(2) The youth court shall then, without a hearing:

- (a) Order that no action be taken;
  - (b) Order that an informal adjustment be made;
  - (c) Order that the Department of Human Services, Division of Family and Children Services, monitor the child, family and other children in the same environment;
  - (d) order that a child is warned or counseled informally; or
  - (e) Order 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.

**SEC. 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.

### **SEC. 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.

### **SEC. 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-month period. In no event shall the custody or supervision of a child which has been placed with the Department of Public Welfare be continued or extended except upon a written finding by the youth court judge or referee that reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody, and that reasonable efforts will continue to be made towards reunification of the family.

### **SEC. 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.

### **SEC. 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 or shelter 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.

### **SEC. 43-21-453. Style of petition.**

The petition shall be entitled "IN THE INTEREST OF ----."

## **SEC. 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.

### **SEC. 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.

### **SEC. 43-21-459. Responsive pleadings.**

No party shall be required to file a responsive pleading.

### **SEC. 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.

### **SEC. 43-21-503. Form of summons.**

The form of the summons 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 ----, Mississippi, 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 h-- 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.

### **SEC. 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.

### **SEC. 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.

### **SEC. 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.

### **SEC. 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.

### **SEC. 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.

### **SEC. 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.

## **SEC. 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.

**SEC. 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.

**SEC. 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 that a child has been found guilty; but it shall recite that a child is found to be a delinquent child or a child in need of supervision or a neglected child or an abused child or a sexually abused child or a dependent child. 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 that adjudication be deemed a conviction. A person in whose interest proceedings have been brought in the youth court may deny, without any penalty, the existence of those proceedings and any adjudication made in those proceedings. Except for the right of a defendant or prosecutor in criminal proceedings and a respondent or a youth court prosecutor in youth court proceedings to cross-examine a witness, including a defendant or respondent, to show bias or interest, no adjudication shall be used for impeachment purposes in any court.

### **SEC. 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.

### **SEC. 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 that is material and relevant to the disposition of the cause, including hearsay and opinion evidence. At the conclusion of the evidence, the youth court shall give the parties an opportunity to present oral argument.

(3) If the child has been adjudicated a delinquent child, before entering a disposition order, the youth court should consider, among others, the following relevant factors:

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

(4) If the child has been adjudicated a child in need of supervision, before entering a disposition order, the youth court should consider, among others, the following relevant factors:

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

(5) If the child has been adjudicated a neglected child or an abused child, before entering a disposition order, the youth court shall consider, among others, the following relevant factors:

- (a) The child's physical and mental conditions;
- (b) The child's need of assistance;
- (c) The manner in which the parent, guardian or custodian participated in, tolerated or condoned the abuse, neglect or abandonment of the child;

(d) The ability of a child's parent, guardian or custodian to provide proper supervision and care of a child; and

(e) Relevant testimony and recommendations, where available, from the foster parent of the child, the grandparents of the child, the guardian ad litem of the child, representatives of any private care agency that has cared for the child, the family protection worker or family protection specialist assigned to the case, and any other relevant testimony pertaining to the case.

(6) After consideration of all the evidence and the relevant factors, the youth court shall enter a disposition order that shall not recite any of the facts or circumstances upon which the disposition is based, nor shall it recite that a child has been found guilty; but it shall recite that a child is found to be a delinquent child, a child in need of supervision, a neglected child or an abused child.

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

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

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

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

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

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

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

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

Once the reasonable efforts requirement is bypassed, the court shall have a permanency hearing

under Section 43-21-613 within thirty (30) days of the finding.

(8) Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the disposition order. If the disposition ordered by the youth court includes placing the child in the custody of a training school, an admission packet shall be prepared for the child that contains the following information:

- (a) The child's current medical history, including medications and diagnosis;
- (b) The child's mental health history;
- (c) Copies of the child's cumulative record from the last school of record, including special education records, if reasonably available;
- (d) Recommendation from the school of record based on areas of remediation needed;
- (e) Disciplinary records from the school of record; and
- (f) Records of disciplinary actions outside of the school setting, if reasonably available.

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

(9) When a child in the jurisdiction of the Youth Court is committed to the custody of the Mississippi Department of Human Services and is believed to be in need of treatment for a mental or emotional disability or infirmity, the Department of Human Services shall file an affidavit alleging that the child is in need of mental health services with the Youth Court. The Youth Court shall refer the child to the appropriate community mental health center for evaluation pursuant to Section 41-21-67. If said pre-screening evaluation recommends residential care, the Youth Court shall proceed with civil commitment pursuant to Sections 41-21-61 et seq., 43-21-315 and 43-21-611, and the Department of Mental Health, once commitment is ordered, shall provide appropriate care, treatment and services for at least as many adolescents as were provided services in fiscal year 2004 in its facilities.

### **SEC. 43-21-605. Disposition alternatives in delinquency cases.**

(1) In delinquency cases, the disposition order may include any of the following alternatives:

- (a) Release the child without further action;
- (b) Place the child in the custody of the parents, a relative or other persons subject to any conditions and limitations, including restitution, as the youth court may prescribe;

- (c) Place the child on probation subject to any reasonable and appropriate conditions and limitations, including restitution, as the youth court may prescribe;
- (d) Order terms of treatment calculated to assist the child and the child's parents or guardian which are within the ability of the parent or guardian to perform;
- (e) Order terms of supervision which may include participation in a constructive program of service or education or civil fines not in excess of Five Hundred Dollars (\$500.00), or restitution not in excess of actual damages caused by the child to be paid out of his own assets or by performance of services acceptable to the victims and approved by the youth court and reasonably capable of performance within one (1) year;
- (f) Suspend the child's driver's license by taking and keeping it in custody of the court for not more than one (1) year;
- (g) Give legal custody of the child to any of the following:
  - (i) The Department of Human Services for appropriate placement; or
  - (ii) Any public or private organization, preferably community-based, able to assume the education, care and maintenance of the child, which has been found suitable by the court; or
  - (iii) The Division of Youth Services for placement in the state-supported training school, except that no child under the age of ten (10) years shall be committed to the state training school, and no first-time nonviolent youth offenders shall be committed to the state training school until all other options provided for in this section have been considered and the court makes a specific finding of fact by a preponderance of the evidence by assessing what is in the best rehabilitative interest of the child and the public safety of communities and that there is no reasonable alternative to a nonsecure setting and therefore secure commitment is appropriate.

The training school may retain custody of the child until the child's twentieth birthday but for no longer. When the child is committed to the training school, the child shall remain in the legal custody of the training school until the child has made sufficient progress in treatment and rehabilitation and it is in the best interest of the child to release the child. However, the superintendent of the state training school, in consultation with the treatment team, may parole a child at any time he or she may deem it in the best interest and welfare of such child. 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. The Department of Human Services shall ensure that staffs create transition planning for youth leaving the facilities. Plans shall include providing the youth and his or her parents or guardian with copies of the youth's training school education and health records, information regarding the youth's home community, referrals to mental and counseling services when appropriate, and providing assistance in making initial appointments with community service providers. 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. No child shall be placed in the custody of the state training school for a status offense or for contempt of or revocation of a status offense adjudication unless the child is contemporaneously adjudicated for having committed an act of delinquency that is not a status offense. A disposition order rendered under this subparagraph shall meet the following requirements:

1. The disposition is the least restrictive alternative appropriate to the best interest of the child and the community;
2. The disposition allows the child to be in reasonable proximity to the family home community of each child given the dispositional alternatives available and the best interest of the child and the state; and
3. The disposition order provides that the court has considered the medical, educational, vocational, social and psychological guidance, training, social education, counseling, substance abuse treatment and other rehabilitative services required by that child as determined by the court;

(h) Recommend to the child and the child's parents or guardian that the child attend and participate in the Youth Challenge Program under the Mississippi National Guard, as created in Section 43-27-203, subject to the selection of the child for the program by the National Guard; however, the child must volunteer to participate in the program. The youth court shall not order any child to apply for or attend the program;

(i) (i) Adjudicate the juvenile to the Statewide Juvenile Work Program if the program is established in the court's jurisdiction. The juvenile and his or her parents or guardians must sign a waiver of liability in order to participate in the work program. The judge will coordinate with the youth services counselors as to placing participants in the work program;

(ii) The severity of the crime, whether or not the juvenile is a repeat offender or is a felony offender will be taken into consideration by the judge when adjudicating a juvenile to the work program. The juveniles adjudicated to the work program will be supervised by police officers or reserve officers. The term of service will be from twenty-four (24) to one hundred twenty (120) hours of community service. A juvenile will work the hours to which he or she was adjudicated on the weekends during school and weekdays during the summer. Parents are responsible for a juvenile reporting for work. Noncompliance with an order to perform community service will result in a heavier adjudication. A juvenile may be adjudicated to the community service program only two (2) times;

(iii) The judge shall assess an additional fine on the juvenile which will be used to pay the costs of implementation of the program and to pay for supervision by police officers and reserve officers. The amount of the fine will be based on the number of hours to which the juvenile has been adjudicated;

(j) Order the child to participate in a youth court work program as provided in Section 43-21-

627;

(k) Order the child into a juvenile detention center operated by the county or into a juvenile detention center operated by any county with which the county in which the court is located has entered into a contract for the purpose of housing delinquents. The time period for detention cannot exceed ninety (90) days, and any detention exceeding forty-five (45) days shall be administratively reviewed by the youth court no later than forty-five (45) days after the entry of the order. At that time the youth court counselor shall review the status of the youth in detention and shall report any concerns to the court. The youth court judge may order that the number of days specified in the detention order be served either throughout the week or on weekends only. No first-time nonviolent youth offender shall be committed to a detention center for a period in excess of ninety (90) days until all other options provided for in this section have been considered and the court makes a specific finding of fact by a preponderance of the evidence by assessing what is in the best rehabilitative interest of the child and the public safety of communities and that there is no reasonable alternative to a nonsecure setting and therefore commitment to a detention center is appropriate.

If a child is committed to a detention center for ninety (90) days, the disposition order shall meet the following requirements:

(i) The disposition order is the least restrictive alternative appropriate to the best interest of the child and the community;

(ii) The disposition order allows the child to be in reasonable proximity to the family home community of each child given the dispositional alternatives available and the best interest of the child and the state; and

(iii) The disposition order provides that the court has considered the medical, educational, vocational, social and psychological guidance, training, social education, counseling, substance abuse treatment and other rehabilitative services required by that child as determined by the court;

(l) The judge may consider house arrest in an intensive supervision program as a reasonable prospect of rehabilitation within the juvenile justice system. The Department of Human Services shall promulgate rules regarding the supervision of juveniles placed in the intensive supervision program; or

(m) Referral to A-team provided system of care services.

(2) If a disposition order requires that a child miss school due to other placement, the youth court shall notify a child's school while maintaining the confidentiality of the youth court process. If a disposition order requires placement of a child in a juvenile detention facility, the facility shall comply with the educational services and notification requirements of Section 43-21-321.

(3) In addition to any of the disposition alternatives authorized under subsection (1) of this section, the disposition order in any case in which the child is adjudicated delinquent for an

offense under Section 63-11-30 shall include an order denying the driver's license and driving privileges of the child as required under Section 63-11-30(9).

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

(5) Fines levied under this chapter shall be paid into the general fund of the county but, in those counties wherein the youth court is a branch of the municipal government, it shall be paid into the municipal treasury.

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

(7) The youth court shall not place a child in another school district who has been expelled from a school district for the commission of a violent act. For the purpose of this subsection, "violent act" means any action which results in death or physical harm to another or an attempt to cause death or physical harm to another.

(8) The youth court may require drug testing as part of a disposition order. If a child tests positive, the court may require treatment, counseling and random testing, as it deems appropriate. The costs of such tests shall be paid by the parent, guardian or custodian of the child unless the court specifically finds that the parent, guardian or custodian is unable to pay.

(9) The Mississippi Department of Human Services, Division of Youth Services, shall operate and maintain services for youth adjudicated delinquent at Oakley Training School. The program shall be designed for children committed to the training schools by the youth courts. The purpose of the program is to promote good citizenship, self-reliance, leadership and respect for constituted authority, teamwork, cognitive abilities and appreciation of our national heritage. The program must use evidenced-based practices and gender-specific programming and must develop an individualized and specific treatment plan for each female youth. The Division of Youth Services shall issue credit towards academic promotions and high school completion. The Division of Youth Services may award credits to each student who meets the requirements for a general education development certification. The Division of Youth Services must also provide to each special education eligible youth the services required by that youth's individualized education plan.

#### **SEC. 43-21-607. Disposition alternatives in children in need of supervision cases.**

(1) In children in need of supervision cases, the disposition order may include any of the

following alternatives or combination of the following alternatives, giving precedence in the following sequence:

- (a) Release the child without further action;
- (b) Place the child in the custody of the parent, a relative or other person subject to any conditions and limitations as the youth court may prescribe;
- (c) Place the child under youth court supervision subject to any conditions and limitations the youth court may prescribe;
- (d) Order terms of treatment calculated to assist the child and the child's parent, guardian or custodian which are within the ability of the parent, guardian or custodian to perform;
- (e) Order terms of supervision which may include participation in a constructive program of service or education or restitution not in excess of actual damages caused by the child to be paid out of his own assets or by performance of services acceptable to the parties and reasonably capable of performance within one (1) year;
- (f) Give legal custody of the child to any of the following but in no event to any state training school;
  - (i) The Department of Human Services for appropriate placement which may include a wilderness training program; or
  - (ii) Any private or public organization, preferably community-based, able to assume the education, care and maintenance of the child, which has been found suitable by the court. Prior to assigning the custody of any child to any private institution or agency, the youth court through its designee shall first inspect the physical facilities to determine that they provide a reasonable standard of health and safety for the child; or
- (g) Order the child to participate in a youth court work program as provided in Section 43-21-627.
- (2) The court may order drug testing as provided in Section 43-21-605(6).

### **SEC. 43-21-609. Disposition 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. If the court finds that temporary relative placement, adoption or foster care placement is inappropriate, unavailable or otherwise not in the best interest of the child, durable legal custody may be granted by the court to any person subject to any limitations and conditions the court may prescribe; such durable legal custody will not take effect unless the child or children have been in the physical custody of the proposed durable custodians for at least one (1) year under the supervision of the Department of Human Services. The requirements of Section 43-21-613 as to disposition review hearings does not apply to those matters in which the court has granted durable legal custody. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities;

(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 Human Services or child care agencies to assist the child and the child's parent, guardian or custodian to secure social or medical services to provide proper supervision and care of the child;

(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 Human Services for appropriate placement; or

(ii) Any private or public organization, preferably community-based, able to assume the education, care and maintenance of the child, which has been found suitable by the court. Prior to assigning the custody of any child to any private institution or agency, the youth court through its designee shall first inspect the physical facilities to determine that they provide a reasonable standard of health and safety for the child;

(f) If the court makes a finding that custody is necessary as defined in Section 43-21-301(3)(b), and that the child, in the action pending before the youth court had not previously been taken into custody, the disposition order shall recite that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interests of the child, and unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), the order also must state:

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

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

(iii) If the court makes a finding in accordance with (ii) of this paragraph, the court shall order

that reasonable efforts be made towards the reunification of the child with his or her family.

(g) If the court had, before the disposition hearing in the action pending before the court, taken the child into custody, the judge or referee shall determine, and the youth court order shall recite that reasonable efforts were made by the Department of Human Services to finalize the child's permanency plan that was in effect on the date of the disposition hearing.

### **SEC. 43-21-611. Disposition 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, an abused child or a dependent child is also a child in need of special care, the youth court may, in its discretion, make any appropriate additional disposition designed for the treatment of the disability or infirmity, which may include civil commitment to a state institution providing care for that disability or infirmity. Any commitment, including one to a Department of Mental Health facility, ordered pursuant to this section shall be in compliance with the requirements for civil commitment as set forth in Section 41-21-61 et seq. Discharge from a Department of Mental Health facility shall be made pursuant to the provisions of Section 41-21-87. Nothing contained in this section shall require any state institution, department or agency to provide any service, treatment or facility if said service, treatment or facility is not available, nor shall this section be construed to authorize the youth court to overrule an expulsion or suspension decision of appropriate school authorities.

### **SEC. 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 that complies with the sections governing petitions in this chapter and that includes a statement of the youth court's original disposition order, probation or parole, the alleged violation of that order, probation or parole, and the facts which show the violation of that order, probation or parole. Summons shall be served in the same manner as summons for an adjudicatory hearing.

(2) On motion of a child or a child's parent, guardian or custodian, the youth court may, in its discretion, conduct an informal hearing to review the disposition order. If the youth court finds a material change of circumstances relating to the disposition of the child, the youth court may modify the disposition order to any appropriate disposition of equal or greater precedence which the youth court could have originally ordered.

(3) (a) 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 judge or referee at least annually to determine if continued placement, probation or supervision is in the best interest of the child or the public. For children who have

been adjudicated abused or neglected, the youth court shall conduct a permanency hearing within twelve (12) months after the earlier of:

(i) An adjudication that the child has been abused or neglected; or

(ii) The date of the child's removal from the allegedly abusive or neglectful custodian/parent. Notice of such hearing shall be given in accordance with the provisions of Section 43-21-505(5). In conducting the hearing, the judge or referee shall require a written report and may require 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. The judge or referee shall, at the permanency hearing determine the future status of the child, including, but not limited to, whether the child should be returned to the parent(s) or placed with suitable relatives, placed for adoption, placed for the purpose of establishing durable legal custody or should, because of the child's special needs or circumstances, be continued in foster care on a permanent or long-term basis. If the child is in an out-of-state placement, the hearing shall determine whether the out-of-state placement continues to be appropriate and in the best interest of the child. At the permanency hearing the judge or referee shall determine, and the youth court order shall recite that reasonable efforts were made by the Department of Human Services to finalize the child's permanency plan that was in effect on the date of the permanency hearing. The judge or referee may find that reasonable efforts to maintain the child within his home shall not be required in accordance with Section 43-21-603(7)(c), and that the youth court shall continue to conduct permanency hearings for a child who has been adjudicated abused or neglected, at least annually thereafter, for as long as the child remains in the custody of the Mississippi Department of Human Services.

(b) The court may find that the filing of a termination of parental rights petition is not in the child's best interest if:

(i) The child is being cared for by a relative; and/or

(ii) The Department of Human Services has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child.

(c) The provisions of this subsection shall also apply to review of cases involving a dependent child; however, such reviews shall take place not less frequently than once each one hundred eighty (180) days. A dependent child shall be ordered by the youth court judge or referee to be returned to the custody and home of the child's parent, guardian or custodian unless the judge or referee, upon such review, makes a written finding that the return of the child to the home would be contrary to the child's best interests.

(d) Reviews are not to be conducted unless explicitly ordered by the youth court concerning those cases in which the court has granted durable legal custody. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities, and relieved of physical and legal custody and supervision of the child.

### **SEC. 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.

### **SEC. 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.

### **SEC. 43-21-619. Power to order parents to pay child's expenses and restitution or to participate in counseling or family treatment program; orders to constitute civil judgment.**

(1) The youth court may order financially able parents to pay for court ordered medical and other examinations and treatment of a child; for reasonable attorney's fees and court costs; and for other expenses found necessary or appropriate in the best interest of the child as determined by the youth court. The youth court is authorized to enforce payments ordered under this subsection.

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

guardians or custodians of a child who is under the jurisdiction of the youth court and who willfully or maliciously has caused personal injury or damaged or destroyed property to participate in a counseling program or other suitable family treatment program for the purpose of preventing future occurrences of malicious destruction of property or personal injury.

(3) Such orders under this section shall constitute a civil judgment and may be enrolled on the judgment rolls in the office of the circuit clerk of the county where such order was entered, and further, such order may be enforced in any manner provided by law for civil judgments.

**SEC. 43-21-621. Power to order public school to enroll child; placement in alternative school program; school-related conditions of probation; notification of principal.**

(1) The youth court may, in compliance with the laws governing education of children, order any state-supported public school in its jurisdiction after notice and hearing to enroll or reenroll any compulsory-school-age child in school, and further order appropriate educational services. Provided, however, that the youth court shall not order the enrollment or reenrollment of a student that has been suspended or expelled by a public school pursuant to Section 37-9-71 or 37-7-301 for possession of a weapon on school grounds, for an offense involving a threat to the safety of other persons or for the commission of a violent act. For the purpose of this section "violent act" means any action which results in death or physical harm to another or an attempt to cause death or physical harm to another. The superintendent of the school district to which such child is ordered may, in his discretion, assign such child to the alternative school program of such school established pursuant to Section 37-13-92, Mississippi Code of 1972. The court shall have jurisdiction to enforce school and education laws. Nothing in this section shall be construed to affect the attendance of a child in a legitimate home instruction program.

(2) The youth court may specify the following conditions of probation related to any juvenile ordered to enroll or reenroll in school: That the juvenile maintain passing grades in up to four (4) courses during each grading period and meet with the court counselor and a representative of the school to make a plan for how to maintain those passing grades.

(3) If the adjudication of delinquency was for an offense involving a threat to the safety of the juvenile or others and school attendance is a condition of probation, the youth court judge shall make a finding that the principal of the juvenile's school should be notified. If the judge orders that the principal be notified, the youth court counselor shall within five (5) days or before the juvenile begins to attend school, whichever occurs first, notify the principal of the juvenile's school in writing of the nature of the offense and the probation requirements related to school attendance. A principal notified by a juvenile court counselor shall handle the report according to the guidelines and rules adopted by the State Board of Education.

(4) The Administrative Office of the Courts shall report to the Legislature on the number of juveniles reported to principals in accordance with this section no later than January 1, 1996.

**SEC. 43-21-623. Testing of Juvenile delinquents under the jurisdiction of the Youth Court for HIV and AIDS.**

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

**SEC. 43-21-625. Wilderness training program for Certain Juvenile Offenders.**

(1) The Department of Human Services shall develop and implement a wilderness training program for first time youth offenders sentenced or classified as delinquency cases or as children in need of supervision.

(2) The program shall include supervised camping trips, calisthenics, manual labor assignments, physical training with obstacle courses, training in decision-making and personal development and drug counseling and rehabilitation programs.

(3) The department shall adopt rules requiring that wilderness training participants complete a structured disciplinary program and allowing for a restriction on general inmate population privileges.

(4) Upon receipt of youth offenders, the department shall screen offenders for the wilderness training program. To participate, an offender must have no physical limitations which would preclude participation in strenuous activity, must not be impaired and must not have been previously incarcerated in a state or federal correctional facility. In screening offenders for the wilderness training program, the department shall consider the offender's criminal history and the possible rehabilitative benefits of the program. If an offender meets the specified criteria and space is available, the department shall request in writing from the sentencing court, approval to participate in the wilderness training program. If the person is classified by the court as a delinquent or child in need of supervision and the department is requesting approval from the sentencing court for placement in the program, the department shall, at the same time, notify the prosecuting attorney that the offender is being considered for placement in the wilderness training program. The notice shall explain that the purpose of such placement is diversion from

lengthy incarceration when a wilderness training program could produce the same deterrent effect, and that the person given notice may, within fourteen (14) days of the mailing of the notice, notify the sentencing court in writing of objections, if any, to the placement of the offender in the wilderness training program. The sentencing court shall notify the department in writing of placement approval no later than twenty-one (21) days after receipt of the department's request for placement of the youthful offender in the wilderness training program. Failure to notify the department within twenty-one (21) days shall be considered an approval by the sentencing court for placing the youthful offender in the wilderness training program. The offices of the prosecuting attorneys may develop procedures for notifying each victim that the offender is being considered for placement in the wilderness training program.

(5) The program shall provide a period of rigorous training to offenders who require a greater degree of supervision than community control or probation provides. Wilderness training programs may be operated in secure areas in or adjacent to adult institutions or in any area approved by the department. The program is not intended to divert offenders away from probation or community control but to divert them from long periods of incarceration when a wilderness training program could produce the same deterrent effect.

(6) If an offender in the wilderness training program becomes unmanageable, the department may place him in an appropriate facility to complete the remainder of his sentence. Any period of time in which the offender is unable to participate in the wilderness training program activities may be excluded from the specified time requirements in the program. The portion of the sentence served prior to placement in the wilderness training program shall not be counted toward program completion. Upon the offender's completion of the wilderness training program, the department shall submit a report to the court that describes the offender's performance. If the offender's performance has been satisfactory, the court shall issue an order modifying the sentence imposed and placing the offender on probation. If the offender violates the conditions of probation, the court may revoke probation and impose any sentence which it might have originally imposed.

(7) The department shall provide a special training program for staff selected for the wilderness training program.

(8) The department is authorized to contract with any private or public nonprofit organization or entity to carry out the purpose of this section.

**SEC. 43-21-627. Alternative work program; qualified offenders; volunteers; supervision; removal from program.**

Each youth court is authorized to establish a youth court work program as an alternative disposition for nonviolent offenders. The youth court work program shall be used only for first time nonviolent youth offenders. The court shall solicit and approve the assistance of volunteers from the area served by the youth court, including business and community volunteers. The

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

**SEC. 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 supersedes, 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.

**SEC. 43-21-701. Mississippi Commission on a Uniform Youth Court Systems and Procedures established.**

(1) There is hereby established the Mississippi Commission on a Uniform Youth Court System and Procedures. The commission shall consist of the following nineteen (19) members:

(a) One (1) circuit court judge appointed by the Chief Justice of the Mississippi Supreme Court;



- (b) One (1) chancery court judge, appointed by the Chief Justice of the Mississippi Supreme Court;
  - (c) The President of the Mississippi Council of Youth Court Judges, or his designee;
  - (d) Two (2) who may be either family court judges or county court judges, appointed by the President of the Mississippi Council of Youth Court Judges;
  - (e) Two (2) youth court referees, appointed by the President of the Mississippi Council of Youth Court Judges;
  - (f) One (1) member of the Mississippi House of Representatives to be appointed by the Speaker of the House;
  - (g) One (1) member of the Mississippi Senate to be appointed by the Lieutenant Governor;
  - (h) The directors of the following state agencies or their designated representatives: the Mississippi Department of Youth Services and the Mississippi Department of Public Welfare;
  - (i) The director or his designated representative of the Governor's Office of Federal-State Programs;
  - (j) One (1) employee, other than the director, of the Department of Public Welfare who is a supervisor of social workers primarily assigned to youth cases, appointed by the Governor;
  - (k) One (1) municipal police chief, appointed by the Governor;
  - (l) One (1) county sheriff, appointed by the Governor;
  - (m) Two (2) lawyers experienced in youth court work, appointed by the Governor; and
  - (n) Two (2) prosecuting attorneys who prosecute cases in youth court, appointed by the Governor.
- (2) The members shall be appointed to the commission within fifteen (15) days of the effective date of sections 43-21-701 and 43-21-703 and shall serve until the end of their respective terms of office, if applicable, or until October 1, 1989, whichever occurs first. Vacancies on the commission shall be filled in the manner of the original appointment. Members shall be eligible for reappointment provided that upon such reappointment they meet the qualifications required of a new appointee.
- (3) The commission may elect any officers from among its membership as it deems necessary for the efficient discharge of the commission's duties.

(4) The commission shall adopt rules and regulations governing times and places for meetings and governing the manner of conducting its business. Ten (10) or more members shall constitute a quorum for the purpose of conducting any business of the commission; provided, however, a vote of not less than twelve (12) members shall be required for any recommendations to the Legislature.

(5) Members of the commission shall serve without compensation, except that state and county employees and officers shall receive any per diem as authorized by law from appropriations available to their respective agencies or political subdivisions. All commission members shall be entitled to receive reimbursement for any actual and reasonable expenses incurred as a necessary incident to service on the commission, including mileage as provided by law.

(6) The commission may select and employ a research director who shall perform the duties which the commission directs, which duties shall include the hiring of such other employees for the commission as the commission may approve. The research director and all other employees of the commission shall be in the state service and their salaries shall be established by the commission subject to approval by the State Personnel Board. Employees of the commission shall be reimbursed for the expenses necessarily incurred in the performance of their official duties in the same manner as other state employees. The commission may also employ any consultants it deems necessary, including consultants to compile any demographic data needed to accomplish the duties of the commission.

(7) The Governor's Office of Federal-State Programs shall support the Commission on a Uniform Youth Court System and shall act as agent for any funds made available to the commission for its use. In order to expedite the implementation of the Commission on a Uniform Youth Court System, any funds available to the Governor's Office of Federal-State Programs for the 1988-1989 fiscal year may be expended for the purpose of defraying the expenses of the commission created herein.

(8) The commission may contract for suitable office space in accordance with the provisions of Section 29-5-2, Mississippi Code of 1972. In addition, the commission may utilize, with their consent, the services, equipment, personnel, information and resources of other state agencies; and may accept voluntary and uncompensated services, contract with individuals, public and private agencies, and request information, reports and data from any agency of the state, or any of its political subdivisions, to the extent authorized by law.

(9) In order to conduct and carry out its purposes, duties and related activities as provided for in this act, the commission is authorized to apply for and accept gifts, grants, subsidies and other funds from persons, corporations, foundations, the United States Government or other entities, provided that the receipt of such gifts, grants, subsidies and funds shall be reported and otherwise accounted for in the manner provided by law.

### **SEC. 43-21-703. Duties of Commission.**

(1) The commission shall study the youth court system in Mississippi, and prepare a report including any proposed changes in the youth court system and/or its procedures. It shall submit the report to the Legislature, on or before October 1, 1989, along with a report detailing any legislation which may be needed to implement the plan. In preparing the report, the commission shall evaluate the existing juvenile services in the state and may recommend changes in the organizational concepts, institutions, laws and resources.

(2) In formulating its report, the commission shall take into consideration the following:

(a) Whether a uniform statewide youth court system would be desirable;

(b) How best the service needs of the state could be met in relation to the taxing and resource capacity of various multi-county districts now existing or proposed;

(c) Whether counties in a given service area or district may develop district shelters, detention centers and diagnostic centers to serve a multi-county area; and

(d) What proposals or alternatives would update or modernize the system to provide staffing for all counties and citizens.

(3) The commission, in addition to recommending the plan described in this section, shall serve as a clearinghouse and information center for the collection, preparation, analysis and dissemination of information on the youth court system in Mississippi and shall conduct ongoing research relating to the improvement of the youth court system. Pursuant to its duties under this subsection, the commission may request the regular submission to it of such reports, information and statistics by the courts, judges, prosecuting attorneys and agencies of this state which the commission deems necessary for the development of its reports.

### **SEC. 43-21-751. Short title.**

This article shall be known as the "Teen Court Pilot Program Act."

### **SEC. 43-21-753. Establishment; teen court program.**

The youth court of any county in the state may establish a teen court program for the diversion of certain offenders who have waived all right of confidentiality and privilege against self-incrimination. The youth court of Rankin County may extend its teen court program within the city limits of Pearl. The offenders eligible to participate shall be those offenders who in the discretion of the youth court are suitable and compulsory-school-age children who have come into the jurisdiction of the youth court as a result of not attending school. The teen court shall be a preventive program for juveniles comprised of youth who are not less than thirteen (13) nor more than seventeen (17) years of age, which students shall serve as prosecutor, defense counsel, bailiff, court clerk and jurors. The program is to administer the "sentencing" or disposition phase

of the proceedings against offenders who elect to participate, shall be under the guidance of the local youth court, and shall be approved by the local youth court. The youth court judge, or his designee who is a licensed attorney, shall preside. The teen court is authorized to require eligible offenders who choose to go to teen court in lieu of youth court to perform up to one hundred twelve (112) hours of community service, require offenders to make a personal apology to a victim, require offenders to submit a research paper on any relevant subject, attend counseling and make restitution or any other disposition authorized by the youth court. The youth court shall establish rules and regulations, including sentencing guidelines, for the operation of a teen court. The teen court is authorized to accept monies from any available public or private source, including public or private donations, grants, gifts and appropriated funds for funding expenses of operating the court.

Teen court may be held at whatever location the youth court selects at whatever time or times. Eligible offenders shall be only those children who agree to participate in the teen court and to abide by the teen court's rulings, whose parents or legal guardian shall also so agree, and who are otherwise qualified to participate.

The youth court judge may require an offender who elects to participate in the teen court to pay a fee not to exceed Five Dollars (\$5.00); any such fees shall be used in administering this article, and the fee shall not be refunded, regardless of whether the child successfully completes the teen court program.

**SEC. 43-21-755. Instructional time.**

Any school participating in the Teen Court Program established by this article shall be allowed to credit the time of teachers and students spent in participating in teen court as instructional time.

**INTERSTATE COMPACT FOR JUVENILES**

**ARTICLE I**

**PURPOSE**

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 USCS Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

- (a) Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;
- (b) Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected.
- (c) Return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return;
- (d) Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;
- (e) Provide for the effective tracking and supervision of juveniles;
- (f) Equitably allocate the costs, benefits and obligations of the compacting states;
- (g) Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders;
- (h) Ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;
- (i) Establish procedures to resolve pending charges (detainers) against juvenile offenders before transfer or release to the community under the terms of this compact.
- (j) Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state, executive, judicial, and legislative branches and juvenile and criminal justice administrators;
- (k) Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;
- (l) Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in that activity; and
- (m) Coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise.

It is the policy of the compacting states that the activities conducted by the Interstate Commission created by this compact are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

## **ARTICLE II**

### **DEFINITIONS**

As used in this compact, unless the context clearly requires a different construction:

- (a) "Bylaws" means those bylaws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.
- (b) "Compact administrator" means the individual in each compacting state appointed under the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.
- (c) "Compacting state" means any state that has enacted the enabling legislation for this compact.
- (d) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.
- (e) "Court" means any court having jurisdiction over delinquent, neglected or dependent children.
- (f) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator under the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.
- (g) "Interstate Commission" means the Interstate Commission for Juveniles created by Article III of this compact.
- (h) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:
  - (i) Accused delinquent, which is a person charged with an offense that, if committed by an adult, would be a criminal offense;
  - (ii) Adjudicated delinquent, which is a person found to have committed an offense that, if committed by an adult, would be a criminal offense;
  - (iii) Accused status offender, which is a person charged with an offense that would not be a criminal offense if committed by an adult;
  - (iv) Adjudicated status offender, which is a person found to have committed an offense that would not be a criminal offense if committed by an adult; and
  - (v) Nonoffender, which is a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

(i) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(j) "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(k) "Rules" means a written statement by the Interstate Commission promulgated under Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal or suspension of an existing rule.

(l) "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa and the Northern Marianas Islands.

### **ARTICLE III**

#### **INTERSTATE COMMISSION FOR JUVENILES**

(1) The compacting states create the "Interstate Commission for Juveniles." The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth in this compact, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(2) The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created under this compact. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under the applicable law of the compacting state.

(3) In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Those noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio nonvoting members. The Interstate Commission may provide in its bylaws for additional ex officio nonvoting members, including members of other national organizations, in such numbers as determined by the commission.

(4) Each compacting state represented at any meeting of the commission is entitled to one (1) vote. A majority of the compacting states shall constitute a quorum for the transaction of

business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(5) The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(6) The Interstate Commission shall establish an executive committee, which shall include commission officers, members and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules and performs such other duties as directed by the Interstate Commission or set forth in the bylaws.

(7) Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the State Council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(8) The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(9) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds (2/3) vote that an open meeting would be likely to:

- (a) Relate solely to the Interstate Commission's internal personnel practice and procedures;
- (b) Disclose matters specifically exempted from disclosure by statute;
- (c) Disclose trade secrets or commercial or financial information that is privileged or confidential;
- (d) Involve accusing any person of a crime, or formally censuring any person;
- (e) Disclose information of a personal nature where disclosure would constitute a clearly



unwarranted invasion of personal privacy;

(f) Disclose investigative records compiled for law enforcement purposes;

(g) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of the person or entity;

(h) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

(i) Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(10) For every meeting closed under this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes that shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in the minutes.

(11) The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules, which shall specify the data to be collected, the means of collection, data exchange and reporting requirements. Those methods of data collection, exchange and reporting shall, insofar as is reasonably possible, conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

## **ARTICLE IV**

### **POWERS AND DUTIES OF THE INTERSTATE COMMISSION**

The commission shall have the following powers and duties:

(a) To provide for dispute resolution among compacting states.

(b) To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(c) To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission.

(d) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including, but not limited to,

the use of judicial process.

(e) To establish and maintain offices, which shall be located within one or more of the compacting states.

(f) To purchase and maintain insurance and bonds.

(g) To borrow, accept, hire or contract for services of personnel.

(h) To establish and appoint committees and hire staff that it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties under this compact.

(i) To elect or appoint officers, attorneys, employees, agents or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish

the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation and qualifications of personnel.

(j) To accept any and all donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of it.

(k) To lease, purchase, accept contributions or donations of or otherwise to own, hold, improve or use any property, real, personal or mixed.

(l) To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed.

(m) To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.

(n) To sue and be sued.

(o) To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

(p) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(q) To report annually to the legislatures, governors, judiciary, and State Councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Those reports also shall include any recommendations that may have been adopted by the Interstate Commission.

(r) To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in that activity.

- (s) To establish uniform standards of the reporting, collecting and exchanging of data.
- (t) To maintain its corporate books and records in accordance with the bylaws.

## **ARTICLE V**

### **ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION**

(1) Bylaws. The Interstate Commission shall, by a majority of the members present and voting, within twelve (12) months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

- (a) Establishing the fiscal year of the Interstate Commission;
- (b) Establishing an executive committee and such other committees as may be necessary;
- (c) Providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;
- (d) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;
- (e) Establishing the titles and responsibilities of the officers of the Interstate Commission;
- (f) Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;
- (g) Providing "start-up" rules for initial administration of the compact; and
- (h) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(2) Officers and Staff. (a) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; however, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

(b) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary

to the Interstate Commission, but shall not be a member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

(3) Qualified Immunity, Defense and Indemnification. (a) The commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property, personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; however, any such person shall not be protected from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(b) The liability of any commissioner, or the employee of an agent of a commissioner, acting within the scope of the person's employment or duties for acts, errors or omissions occurring within the person's state, may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(c) The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend the commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant has a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of the person.

(d) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against those persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that those persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

## **ARTICLE VI**

### **RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION**

(1) The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(2) Rule making shall occur using the criteria set forth in this article and the bylaws and rules

adopted under this article. That rule making shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Volume 15, page 1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the commission.

(3) When promulgating a rule, the Interstate Commission shall, at a minimum:

(a) Publish the proposed rule's entire text stating the reason(s) for that proposed rule;

(b) Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record, and be made publicly available;

(c) Provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and

(d) Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

(4) Allow not later than sixty (60) days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of the rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rule making record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

(5) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that the rule shall have no further force and effect in any compacting state.

(6) The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this act shall be null and void twelve (12) months after the first meeting of the Interstate Commission created under this compact.

(7) Upon determination by the Interstate Commission that a state of emergency exists, it may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided under this article retroactively applied to the rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

## **ARTICLE VII**

### **OVERSIGHT, ENFORCEMENT AND DISPUTES RESOLUTION BY THE INTERSTATE COMMISSION**

(1) Oversight. (a) The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor those activities being administered in noncompacting states that may significantly affect compacting states.

(b) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact shall be received by all the judges, public officers, commissions and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

(2) Dispute Resolution. (a) The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact, as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

(b) The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

## **ARTICLE VIII**

### **FINANCE**

(1) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(2) The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff, which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state, and shall promulgate a rule binding upon all compacting states which governs the assessment.

(3) The Interstate Commission shall not incur any obligations of any kind before securing the

funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(4) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

## **ARTICLE IX**

### **THE STATE COUNCIL**

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own State Council, its membership must include at least one (1) representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each State Council will advise and may exercise oversight and advocacy concerning the state's participation in Interstate Commission activities and other duties as may be determined by that state, including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

## **ARTICLE X**

### **COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT**

(1) Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa and the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five (35) of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis before adoption of the compact by all states and territories of the United States.

(3) The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

## **ARTICLE XI**

## **WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT**

(1) Withdrawal. (a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; however, a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repeal.

(c) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

(d) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(e) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

(2) Technical Assistance, Fines, Suspension, Termination and Default. (a) If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

(i) Remedial training and technical assistance as directed by the Interstate Commission;

(ii) Alternative dispute resolution;

(iii) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

(iv) Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature and the State Council. The grounds for default include, but are not limited to, failure of a compacting state to perform the obligations or responsibilities imposed upon it by this compact, the bylaws or duly promulgated rules and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure



the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

(b) Within sixty (60) days of the effective date of termination of a defaulting state, the commission shall notify the governor, the chief justice or the chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the State Council of that termination.

(c) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(d) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(e) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

(3) Judicial Enforcement. The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district court where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of the litigation, including reasonable attorney's fees.

(4) Dissolution of Compact. (a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one (1) compacting state.

(b) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

## **ARTICLE XII**

### **SEVERABILITY AND CONSTRUCTION**

(1) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

## ARTICLE XIII

### BINDING EFFECT OF COMPACT AND OTHER LAWS

(1) Other Laws. (a) Nothing in this compact prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(b) All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

(2) Binding Effect of the Compact. (a) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

(b) All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding that meaning or interpretation.

(d) If any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the Interstate Commission shall be ineffective and those obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Sections 43-25-1 through 43-25-17, Mississippi Code of 1972, which provide for the Interstate Compact on Juveniles, are repealed.

## REGISTRATION OF SEX OFFENDERS

### SEC. 45-33-21. Legislative findings and declaration of purpose.

The Legislature finds that the danger of recidivism posed by criminal sex offenders and the protection of the public from these offenders is of paramount concern and interest to government. The Legislature further finds that law enforcement agencies' efforts to protect their communities, conduct investigations, and quickly apprehend criminal sex offenders are impaired by the lack of information shared with the public, which lack of information may result in the failure of the criminal justice system to identify, investigate, apprehend, and prosecute criminal sex offenders.

The Legislature further finds that the system of registering criminal sex offenders is a proper exercise of the state's police power regulating present and ongoing conduct. Comprehensive registration and periodic address verification will provide law enforcement with additional information critical to preventing sexual victimization and to resolving promptly incidents involving sexual abuse and exploitation. It will allow law enforcement agencies to alert the public when necessary for the continued protection of the community.

Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in safety and in the effective operation of government. In balancing offenders' due process and other rights, and the interests of public security, the Legislature finds that releasing such information about criminal sex offenders to the general public will further the primary governmental interest of protecting vulnerable populations and, in some instances the public, from potential harm.

Therefore, the state's policy is to assist local law enforcement agencies' efforts to protect their communities by requiring criminal sex offenders to register, to record their addresses of residence, to be photographed and fingerprinted, and to authorize the release of necessary and relevant information about criminal sex offenders to the public as provided in this chapter, which may be referred to as the Mississippi Sex Offenders Registration Law.

#### **SEC. 45-33-23. DEFINITIONS.**

For the purposes of this chapter, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Conviction" shall mean that, regarding the person's offense, there has been a determination or judgment of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere regardless of whether adjudication is withheld. "Conviction of similar offenses" includes, but is not limited to, a conviction by a federal or military tribunal, including a court martial conducted by the Armed Forces of the United States, a conviction for an offense committed on an Indian Reservation or other federal property, a conviction in any state of the United States and a conviction in a foreign country if the foreign country's judicial system is such that it satisfies minimum due process set forth in the guidelines under Section 111(5)(B) Public Law 109-28.

(b) "Jurisdiction" shall mean any state court, federal court, military court, Indian tribunal or foreign court.

(c) "Permanent residence" is defined as a place where the person abides, lodges, or resides for a period of fourteen (14) or more consecutive days.

(d) "Registration" means providing information to the appropriate agency within the time frame specified as required by this chapter.

(e) "Registration duties" means obtaining the registration information required on the form

specified by the department as well as the photograph, fingerprints and biological sample of the registrant. Biological samples are to be forwarded to the State Crime Laboratory pursuant to Section 45-33-37; the photograph, fingerprints and other registration information are to be forwarded to the Department of Public Safety immediately.

(f) "Responsible agency" is defined as the person or government entity whose duty it is to obtain information from a criminal sex offender upon conviction and to transmit that information to the Mississippi Department of Public Safety.

(i) For a criminal sex offender being released from the custody of the Department of Corrections, the responsible agency is the Department of Corrections.

(ii) For a criminal sex offender being released from a county jail, the responsible agency is the sheriff of that county.

(iii) For a criminal sex offender being released from a municipal jail, the responsible agency is the police department of that municipality.

(iv) For a sex offender in the custody of youth court, the responsible agency is the youth court.

(v) For a criminal sex offender who is being placed on probation, including conditional discharge or unconditional discharge, without any sentence of incarceration, the responsible agency is the sentencing court.

(vi) For an offender who has been committed to a mental institution following an acquittal by reason of insanity, the responsible agency is the facility from which the offender is released. Specifically, the director of said facility shall notify the Department of Public Safety prior to the offender's release.

(vii) For a criminal sex offender who is being released from a jurisdiction outside this state or who has a prior conviction in another state and who is to reside in this state, the responsible agency is the Department of Public Safety.

(g) "Sex offense" means any of the following offenses:

(i) Section 97-3-53 relating to kidnapping, if the victim was below the age of eighteen (18);

(ii) Section 97-3-65 relating to rape; however, conviction or adjudication under Section 97-3-65(1) (a) on or after July 1, 1998, when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registrable sex offense;

(iii) Section 97-3-71 relating to rape and assault with intent to ravish;

(iv) Section 97-3-95 relating to sexual battery; however, conviction or adjudication under Section 97-3-95(1) (c) on or after July 1, 1998, when the offender was eighteen (18) years of age or younger at the

time of the alleged offense, shall not be a registrable sex offense;

- (v) Section 97-5-5 relating to enticing child for concealment, prostitution or marriage;
- (vi) Section 97-5-23 relating to the touching of a child, mentally defective or incapacitated person or physically helpless person for lustful purposes;
- (vii) Section 97-5-27 relating to the dissemination of sexually oriented material to children;
- (viii) Section 97-5-33 relating to the exploitation of children;
- (ix) Section 97-5-41 relating to the carnal knowledge of a stepchild, adopted child or child of a cohabiting partner;
- (x) Section 97-29-59 relating to unnatural intercourse;
- (xi) Section 97-1-7 relating to attempt to commit any of the above-referenced offenses;
- (xii) Section 97-29-3 relating to adultery or fornication between teacher and pupil;
- (xiii) Section 43-47-18 relating to sexual abuse of a vulnerable adult;
- (xiv) Section 97-3-54.1(1)(c) relating to procuring sexual servitude of a minor;
- (xv) Section 97-29-63, relating to filming another without permission where there is an expectation of privacy;
- (xvi) Any other offense resulting in a conviction in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere;
- (xvii) Any offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had;
- (xviii) Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this section;
- (xix) Capital murder when one (1) of the above described offenses is the underlying crime.

(h) "Temporary residence" is defined as a place where the person abides, lodges, or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address; for a person whose permanent residence is not in this state, the place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in the state; or a place where a person routinely abides, lodges or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

(i) "Department" unless otherwise specified is defined as the Mississippi Department of Public Safety.

**SEC. 45-33-25. REGISTRATION WITH MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY OF ALL CONVICTED SEX OFFENDERS RESIDING IN THE STATE; REGISTRATION INFORMATION.**

(1) (a) Any person having a permanent or temporary residence in this state who has been convicted of any sex offense or attempted sex offense or who has been acquitted by reason of insanity for any sex offense or attempted sex offense shall register with the Mississippi Department of Public Safety. Registration shall not be required for an offense that is not a registrable sex offense or for an offender who is under fourteen (14) years of age. The department shall provide the initial registration information as well as every change of address to the sheriff of the county of the residence address of the registrant through either written notice, electronic or telephone transmissions, or online access to registration information. Further, the department shall provide this information to the Federal Bureau of Investigation. Additionally, upon notification by the registrant that he intends to reside outside the State of Mississippi, the department shall notify the appropriate state law enforcement agency of any state to which a registrant is moving or has moved.

(b) Any person having a permanent or temporary residence in this state who has been adjudicated delinquent for a registrable sex offense listed in this paragraph that involved use of force against the victim shall register as a sex offender with the Mississippi Department of Public Safety:

(i) Section 97-3-71 relating to rape and assault with intent to ravish;

(ii) Section 97-3-95 relating to sexual battery;

(iii) Section 97-3-65 relating to statutory rape; or

(iv) Conspiracy to commit, accessory to the commission of, or attempt to commit any offense listed in this paragraph.

(2) Any person required to register under this chapter shall submit the following information at the time of registration:

(a) Name, including a former name which has been legally changed;

(b) Street address of all current permanent and temporary residences within state or out of state;

(c) Date, place and address of employment;

(d) Crime for which convicted;

(e) Date and place of conviction, adjudication or acquittal by reason of insanity;

(f) Aliases used;

(g) Social security number;

- (h) Date and place of birth;
  - (i) Age, race, sex, height, weight, hair and eye colors, and any other physical description or identifying factors;
  - (j) A brief description of the offense or offenses for which the registration is required;
  - (k) Driver's license or state identification card number, which license or card may be electronically accessed by the Department of Public Safety;
  - (l) Anticipated future residence;
  - (m) If the registrant's residence is a motor vehicle, trailer, mobile home or manufactured home, the registrant shall also provide vehicle identification number, license tag number, registration number and a description, including color scheme, of the motor vehicle, trailer, mobile home or manufactured home; if the registrant's place of residence is a vessel or houseboat, the registrant shall also provide the hull identification number, manufacturer's serial number, name of the vessel or houseboat, registration number and a description, including color scheme, of the vessel or houseboat;
  - (n) Vehicle make, model, color and license tag number;
  - (o) Offense history;
  - (p) Photograph;
  - (q) Fingerprints and palm prints;
  - (r) Documentation of any treatment received for any mental abnormality or personality disorder of the person;
  - (s) Biological sample;
  - (t) Name of any public or private educational institution, including any secondary school, trade or professional institution or institution of higher education at which the offender is employed, carries on a vocation (with or without compensation) or is enrolled as a student, and the registrant's status;
  - (u) Copy of conviction or sentencing order for the sex offense for which registration is required;
  - (v) The offender's parole, probation or supervised release status and the existence of any outstanding arrest warrants;
  - (w) Every online identity, screen name or username used, registered or created by a registrant; and
  - (x) Any other information deemed necessary.
- (3) For purposes of this chapter, a person is considered to be residing in this state if he maintains a permanent or temporary residence as defined in Section 45-33-23, including students, temporary employees and military personnel on assignment.

(4) (a) A person required to register under this chapter shall not reside within one thousand five hundred (1,500) feet of the real property comprising a public or nonpublic elementary or secondary school, a child care facility, a residential child-caring agency, a children's group care home or any playground, ball park or other recreational facility utilized by persons under the age of eighteen (18) years.

(b) A person residing within one thousand five hundred (1,500) feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility does not commit a violation of this subsection if any of the following apply:

(i) The person is serving a sentence at a jail, prison, juvenile facility or other correctional institution or facility.

(ii) The person is subject to an order of commitment under Title 41, Mississippi Code of 1972.

(iii) The person established the subject residence prior to July 1, 2006, or the school or child care facility is located within one thousand five hundred (1,500) feet of the person's residence subsequent to the date the person established residency.

(iv) The person is a minor or a ward under a guardianship.

(c) A person residing within one thousand five hundred (1,500) feet of the real property comprising a residential child-caring agency, a children's group care home or any playground, ball park or other recreational facility utilized by persons under the age of eighteen (18) years does not commit a violation of this subsection if any of the following apply:

(i) The person established the subject residence prior to July 1, 2008, or the residential child-caring agency, a children's group care home, playground, ball park or other recreational facility utilized by persons under the age of eighteen (18) years is established within one thousand five hundred (1,500) feet of the person's residence subsequent to the date the person established residency.

(ii) Any of the conditions described in subsection (4)(b)(i), (ii) or (iv) exist.

(5) The Department of Public Safety is required to obtain the text of the law defining the offense or offenses for which the registration is required.

## **SEC. 45-33-27. TIME FRAME FOR REGISTRATION OF OFFENDERS.**

(1) A person required to register on the basis of a conviction, adjudication of delinquency or acquittal by reason of insanity entered shall register with the responsible agency within three (3) business days of the date of judgment unless the person is immediately confined or committed, in which case the person shall register before release in accordance with the procedures established by the department. The responsible agency shall immediately forward the registration information to the Department of Public Safety. The person is also required to personally appear at a Department of Public Safety Driver's License Station within ten (10) days of registration with the responsible agency and to obtain a sex offender registration card.



(2) If a person who is required to register under this section is released from prison or placed on parole or supervised release or in a restitution center or community work center, the Department of Corrections shall perform the registration duties before placement in a center or before release and immediately forward the registration information to the Department of Public Safety. The person is also required to personally appear at a Department of Public Safety Driver's License Station within ten (10) days of release or placement in a restitution center or community work center.

(3) If a person required to register under this section is placed on probation, the court, at the time of entering the order, shall register the person and immediately forward the registration information to the Department of Public Safety. The person is also required to personally appear at a Department of Public Safety Driver's License Station within ten (10) days of the entry of the order.

(4) Any person required to register who is neither incarcerated, detained nor committed at the time the requirement to register attaches shall present himself to the county sheriff to register within three (3) business days, and shall personally appear at a Department of Public Safety Driver's License Station within ten (10) days of the time the requirement to register attaches.

(5) An offender moving to or returning to this state from another jurisdiction shall notify the Department of Public Safety ten (10) days before the person first resides in or returns to this state and shall present himself to the sheriff of the county of his residence within three (3) business days after first residing in or returning to a county of this state to provide the required registration information. The person is also required to register by personally appearing at a Department of Public Safety Driver's License Station within ten (10) days after first residing in or moving to a county of this state.

(6) A person, other than a person confined in a correctional or juvenile detention facility or involuntarily committed on the basis of mental illness, who is required to register on the basis of a sex offense for which a conviction, adjudication of delinquency or acquittal by reason of insanity was entered prior to July 1, 1995, shall register with the sheriff of the county in which he resides no later than August 15, 2000.

(7) Every person required to register shall show proof of domicile. The commissioner shall promulgate any rules and regulations necessary to enforce this requirement and shall prescribe the means by which such person may show domicile.

(8) Any driver's license photograph, I.D. photograph, sex offender photograph, finger print, driver's license application and/or anything submitted to the Department of Public Safety by a known convicted sex offender, registered or not registered, can be used by the Department of Public Safety or any other authorized law enforcement agency for any means necessary in registration, identification,

investigation regarding their tracking or identification.

### **SEC. 45-33-29. ADDRESS CHANGE NOTIFICATION; CHANGE IN EMPLOYMENT STATUS.**

(1) Upon any change of address, an offender under this chapter must notify the department in writing no less than ten (10) days before he intends to first reside at the new address.

(2) Upon any change in the status of a registrant's enrollment, employment or vocation at any public or private educational institution, including any secondary school, trade or professional institution or institution of higher education, the offender is required to personally appear at a Department of Public Safety Driver's License Station within three (3) business days of the change.

(3) Upon any change of employment or change of name, a registrant is required to personally appear at a Department of Public Safety Driver's License Station within three (3) business days of the change.

### **SEC. 45-33-31. Reregistration.**

All registrants are required to personally appear at a Department of Public Safety Driver's License Station to reregister every ninety (90) days. Reregistration includes the submission of current information and photograph to the department and the verification of registration information, including the street address and telephone number of the registrant; name, street address and telephone number of the registrant's employment along with any other registration information that may need to be verified and the payment of any required fees. A person who fails to reregister and obtain a renewal sex offender registration card as required by this section commits a violation of this chapter.

### **SEC. 45-33-32. Disclosure by sex offenders volunteering for organizations serving minors.**

(1) A person convicted of a sex offense who volunteers for an organization in which volunteers have direct, private and unsupervised contact with minors shall notify the organization of the person's conviction at the time of volunteering. Such notification must be in writing to the organization. Any organization which accepts volunteers must notify volunteers of this disclosure requirement upon application of the volunteer to serve or prior to acceptance of any of the volunteer's service, whichever occurs first.

(2) If the organization, after notification by the offender as provided in subsection (1), accepts the offender as a volunteer, the organization must notify the parents or guardians of any minors involved in the organization of the offender's criminal record.

(3) This act [Laws, 2004, ch. 493] applies to all registered sex offenders regardless of the date of conviction.

(4) Any person previously registered as a sex offender and who has a continuing obligation to be registered as a sex offender shall be notified of the person's duty under this section with the first reregistration form to be sent to the person after July 1, 2004.

(5) If the registered sex offender is currently volunteering for such an organization, the sex offender must resign or notify the organization immediately upon receipt of notice or be subject to the penalties of this chapter.

### **SEC. 45-33-33. FAILURE TO REGISTER; PENALTIES AND ENFORCEMENT.**

(1) (a) The failure of an offender to personally appear at a Department of Public Safety Driver's License Station or to provide any registration or other information, including, but not limited to, initial registration, reregistration or change of address information, change of employment, change of name or required notification to a volunteer organization, as required by this chapter, is a violation of the law. Additionally, forgery of information or submission of information under false pretenses is also a violation of the law.

(b) A person commits a violation of this chapter who:

(i) Knowingly harbors, or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this chapter; or

(ii) Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this chapter; or

(iii) Provides information to a law enforcement agency regarding a sex offender which the person knows to be false.

(2) Unless otherwise specified, a violation of this chapter shall be considered a felony and shall be punishable by a fine not more than Five Thousand Dollars (\$5,000.00) or imprisonment in the State Penitentiary for not more than five (5) years, or both fine and imprisonment.

(3) Whenever it appears that an offender has failed to comply with the duty to register or reregister, the department shall promptly notify the sheriff of the county of the last known address of the offender. Upon notification, the sheriff shall attempt to locate the offender at his last known address.

(a) If the sheriff locates the offender, he shall enforce the provisions of this chapter. The sheriff shall then notify the department with the current information regarding the offender.

(b) If the sheriff is unable to locate the offender, the sheriff shall promptly notify the department and initiate a criminal prosecution against the offender for the failure to register or reregister. The sheriff

shall make the appropriate transactions into the Federal Bureau of Investigation's wanted-person database.

(4) A first violation of this chapter may result in the arrest of the offender. Upon any second or subsequent violation of this chapter, the offender shall be arrested for the violation.

(5) Any prosecution for a violation of this section shall be brought by a prosecutor in the county of the violation.

(6) A person required to register under this chapter who commits any act or omission in violation of this chapter may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the sex offender, the county in which the conviction occurred for the offense or offenses that meet the criteria requiring the person to register, or in the county in which he was designated a sex offender.

(7) The Commissioner of Public Safety or his authorized agent shall suspend the driver's license or driving privilege of any offender failing to comply with the duty to report, register or reregister.

#### **SEC. 45-33-34. NOTIFICATION TO THE DEPARTMENT OF PUBLIC SAFETY REGARDING REINCARCERATION OR COMMITMENT OF REGISTERED SEX OFFENDER.**

(1) The Department of Corrections and all law enforcement agencies shall notify the department when a registered sex offender is arrested or incarcerated for another offense or as the result of having violated probation, parole, conditional discharge or other sentence or court order.

(2) The offender, offender's guardian, offender's conservator or the administrator of the institution shall notify the department when a registered sex offender is committed to a mental institution for a reason other than the initial confinement following an acquittal by reason of insanity for a sex offense.

#### **SEC. 45-33-35. CENTRAL REGISTRY OF OFFENDERS; DUTIES OF AGENCIES TO PROVIDE INFORMATION.**

(1) The Mississippi Department of Public Safety shall maintain a central registry of sex offender information as defined in Section 45-33-25 and shall adopt rules and regulations necessary to carry out this section. The responsible agencies shall provide the information required in Section 45-33-25 on a form developed by the department to ensure accurate information is maintained.

(2) Upon conviction, adjudication or acquittal by reason of insanity of any sex offender, if the sex offender is not immediately confined or not sentenced to a term of imprisonment, the clerk of the court which convicted and sentenced the sex offender shall inform the person of the duty to register and shall perform the registration duties as described in Section 45-33-23 and forward the information to the

department.

(3) Before release from prison or placement on parole, supervised release or in a work center or restitution center, the Department of Corrections shall inform the person of the duty to register, including the duty to personally appear at a Department of Public Safety Driver's License Station, and shall perform the registration duties as described in Section 45-33-23 and forward the information to the Department of Public Safety.

(4) Before release from confinement in a mental institution following an acquittal by reason of insanity, the director of the facility shall inform the offender of the duty to register, including the duty to personally appear at a Department of Public Safety Driver's License Station, and shall notify the Department of Public Safety of the offender's release.

(5) Before release from a youthful offender facility, the director of the facility shall inform the person of the duty to register, including the duty to personally appear at a Department of Public Safety Driver's License Station, and shall perform the registration duties as described in Section 45-33-23 and forward the information to the Department of Public Safety.

(6) In addition to performing the registration duties, the responsible agency shall:

(a) Inform the person having a duty to register that:

(i) The person shall report in writing any change of address to the department ten (10) days before changing address.

(ii) Any change of address to another state shall be reported to the department in writing no less than ten (10) days before the change of address. The offender shall comply with any registration requirement in the new state.

(iii) The person must register in any state where the person is employed, carries on a vocation, is stationed in the military or is a student.

(iv) Address verifications shall be made by personally appearing at a Department of Public Safety Driver's License Station within the required time period.

(v) Notification or verification of a change in status of a registrant's enrollment, employment or vocation at any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education shall be reported to the department by personally appearing at a Department of Public Safety Driver's License Station within three (3) business days of the change.

(vi) If the person has been convicted of a sex offense, the person shall notify any organization for

which the person volunteers in which volunteers have direct, private or unsupervised contact with minors that the person has been convicted of a sex offense as provided in Section 45-33-32(1).

(vii) Upon any change of name or employment, a registrant is required to personally appear at a Department of Public Safety Driver's License Station within three (3) business days of the change.

(b) Require the person to read and sign a form stating that the duty of the person to register under this chapter has been explained.

(c) Obtain or facilitate the obtaining of a biological sample from every registrant as required by this chapter if such biological sample has not already been provided to the Mississippi Crime Lab.

(d) Provide a copy of the order of conviction or sentencing order to the department at the time of registration.

**SEC. 45-33-37. DNA IDENTIFICATION SYSTEM; CONVICTED SEX OFFENDER TO SUBMIT BIOLOGICAL SAMPLE FOR PURPOSES OF DNA IDENTIFICATION ANALYSIS.**

(1) The Mississippi Crime Laboratory shall develop a plan for and establish a deoxyribonucleic acid (DNA) identification system. In implementing the plan, the Mississippi Crime Laboratory shall purchase the appropriate equipment. The DNA identification system as established herein shall be compatible with that utilized by the Federal Bureau of Investigation.

(2) From and after January 1, 1996, every individual convicted of a sex offense or in the custody of the Mississippi Department of Corrections for a sex offense as defined in Section 45-33-23 shall submit a biological sample for purposes of DNA identification analysis before release from or transfer to a state correctional facility or county jail or other detention facility.

(3) From and after January 1, 1996, any person having a duty to register under Section 45-33-25 for whom a DNA analysis is not already on file shall submit a biological sample for purposes of DNA identification analysis within five (5) working days after registration.

(4) The Mississippi Crime Laboratory shall be responsible for the policy management and administration of the state DNA identification record system to support law enforcement and other criminal justice agencies and shall:

(a) Promulgate rules and regulations to implement the provisions of this section; and

(b) Provide for cooperation with the Federal Bureau of Investigation and other criminal justice agencies relating to the state's participation in the Combined DNA Index System (CODIS) program and the national DNA identification index or in any DNA database designated by the crime laboratory.

(5) A DNA sample obtained in good faith shall be deemed to have been obtained in accordance with the requirements of this section. Any entry into the database which is found to be erroneous shall not

prohibit law enforcement officials from the legitimate use of information in the furtherance of a criminal investigation.

**SEC. 45-33-39. Notification to defendant charged with sex offense; notice included on any guilty plea form judgment and sentence.**

(1) The court shall provide written notification to any defendant charged with a sex offense as defined by this chapter of the registration requirements of Sections 45-33-25 and 45-33-31. Such notice shall be included on any guilty plea forms and judgment and sentence forms provided to the defendant. The court shall obtain a written acknowledgment of receipt on each occasion.

(2) A court imposing a sentence, disposition or order of commitment following acquittal by reason of insanity shall notify the offender of the registration requirements of Sections 45-33-25 and 45-33-31. The court shall obtain a written acknowledgment of receipt on each occasion.

**SEC. 45-33-41. Notification to inmates and offenders by Department of Corrections, county or municipal jails, and juvenile detention facilities; victim information.**

(1) The Department of Corrections or any person having charge of a county or municipal jail or any juvenile detention facility shall provide written notification to an inmate or offender in the custody of the jail or other facility due to a conviction of or adjudication for a sex offense of the registration and notification requirements of Sections 45-33-25, 45-33-31, 45-33-32 and 45-33-59 at the time of the inmate's or offender's confinement and release from confinement, and shall receive a signed acknowledgment of receipt on both occasions.

(2) At least ten (10) days prior to the inmate's release from confinement, the Department of Corrections shall notify the victim of the offense or a designee of the immediate family of the victim regarding the date when the offender's release shall occur, provided a current address of the victim or designated family member has been furnished in writing to the Director of Records for such purpose.

**SEC. 45-33-43. Written notification to certain applicants for a drivers license.**

At the time a person surrenders a driver's license from another jurisdiction or makes an application for a driver's license, temporary driving permit, intermediate license, commercial driver's license or identification card issued under Section 45-35-3, the department shall provide the applicant with written information on the registration requirements of this chapter and shall require written acknowledgment by the applicant of receipt of the notification.

**SEC. 45-33-47. PETITION FOR RELIEF FROM DUTY TO REGISTER; GROUNDS; CERTAIN OFFENDERS SUBJECT TO LIFE REGISTRATION.**

(1) A sex offender with a duty to register under Section 45-33-25 shall only be relieved of the duty

under subsection (2) of this section.

(2) A person having a duty to register under Section 45-33-25 may petition the circuit court of the sentencing jurisdiction, or for a person whose duty to register arose in another jurisdiction, the county in which the registrant resides, to be relieved of that duty under the following conditions:

(a) The offender has maintained his registration in Mississippi for not less than twenty-five (25) years from the most recent date of occurrence of at least one (1) of the following: release from prison, placement on parole, supervised release or probation. Incarceration for any offense will restart the twenty-five-year minimum registration requirement. Registration in any other jurisdiction does not reduce the twenty-five-year time requirement for maintaining registration in Mississippi.

(b) If the offender has been convicted of one (1) of the following offenses, the offender is subject to lifetime registration and shall not be relieved of the duty to register:

(i) Section 97-3-65 relating to rape;

(ii) Section 97-3-71 relating to rape and assault with intent to ravish;

(iii) Section 97-3-95 relating to sexual battery;

(iv) Subsection (1) or (2) of Section 97-5-33 relating to the exploitation of children;

(v) Section 97-5-41 relating to the carnal knowledge of a stepchild, adopted child or child of a cohabiting partner;

(vi) Section 97-3-53 relating to kidnapping if the victim is under the age of eighteen (18);

(vii) Section 97-3-54.1(1)(c) relating to procuring sexual servitude of a minor;

(viii) Section 43-47-18 relating to sexual abuse of a vulnerable adult; or

(ix) Any conviction for violation of a similar law of another jurisdiction or designation as a sexual predator in another jurisdiction.

(c) Notwithstanding another provision of this section, an offender may petition the appropriate circuit court to be relieved of the duty to register upon fifteen (15) years satisfaction of the requirements of this section for a conviction of misdemeanor dissemination of sexually oriented material to children, Section 97-5-27(1).

(d) An offender who has two (2) separate convictions for any of the offenses described in Section 45-



33-23 is subject to lifetime registration and shall not be eligible to petition to be relieved of the duty to register as long as at least one (1) of the convictions was entered on or after July 1, 1995.

(e) An offender, twenty-one (21) years of age or older, who is convicted of any sex offense where the victim was fourteen (14) years of age or younger shall be subject to lifetime registration and shall not be relieved of the duty to register.

(f) A first-time *offender* fourteen (14) years of age or older adjudicated delinquent in a youth court for the crime of rape pursuant to Section 96-3-65 or sexual battery pursuant to Section 97-3-95 is subject to lifetime registration and shall be eligible to petition to be relieved of the duty to register after twenty-five (25) years of registration.

(g) Registration following arrest or arraignment for failure to register is not a defense and does not relieve the sex offender of criminal liability for failure to register.

(h) The department shall continue to list in the registry the name and registration information of all registrants who no longer work, reside or attend school in this state even after the registrant moves to another jurisdiction and registers in the new jurisdiction as required by law. The registry shall note that the registrant moved out of state.

(3) In determining whether to release an offender from the obligation to register, the court shall consider the nature of the registrable offense committed and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction. The court may relieve the offender of the duty to register only if the petitioner shows, by clear and convincing evidence, that the registrant properly maintained his registration as required by law and that future registration of the petitioner will not serve the purposes of this chapter and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety. The district attorney in the circuit in which the petition is filed must be given notice of the petition at least three (3) weeks before the hearing on the matter. The district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the petitioner may not again petition the court for relief until one (1) year has elapsed unless the court orders otherwise in its order of denial of relief.

(4) The offender will be required to continue registration for any sex offense conviction unless the conviction is set aside in any post-conviction proceeding, the offender receives a pardon, \* \* \* the charge is dismissed or the offender has received a court order pursuant to this section relieving him of the duty to register. Upon submission of the appropriate documentation to the department of one (1) of these occurrences, registration duties will be discontinued.

(5) The Department of Public Safety shall maintain an Internet site in a manner that will permit the public to obtain relevant information for each sex offender in the registry. The Web site shall permit the public to obtain relevant information for each offender by a single query for any given zip code or geographic radius set by the user, such as a municipality or county. The Department of Public Safety shall participate in the Dru Sjodin National Sex Offender Public Web site.

**SEC. 45-33-49. Disclosure to public; notification of schools and day care centers; guidelines for sheriffs as to notification; maintenance of records.**

(1) Records maintained pursuant to this chapter shall be open to law enforcement agencies which shall be authorized to release relevant and necessary information regarding sex offenders to the public.

(2) The identity of a victim of an offense that requires registration under this chapter shall not be released.

(3) A sheriff shall maintain records for registrants of the county and shall make available to any person upon request the name, address, place of employment, crime for which convicted, date and place of conviction of any registrant, and any other information deemed necessary for the protection of the public. The sheriffs shall be responsible for verifying their respective registries annually against the department's records to ensure current information is available at both levels.

(4) Upon written request, the department may also provide to any person the name, address, photograph, if available, date of photograph, place of employment, crime for which convicted, date and place of conviction of any registrant, hair, eye color, height, race, sex and date of birth of any registrant, and any other information deemed necessary for the protection of the public. Additionally, the department may utilize an internet web site or other electronic means to release the information.

(5) The Department of Education, the Mississippi Private School Association and the Department of Health shall notify all schools and licensed day care centers annually regarding the availability upon request of this information.

(6) Nothing in this section shall be construed to prevent law enforcement officers from notifying members of the public exposed to danger of any circumstances or individuals that pose a danger under circumstances that are not enumerated in this section.

(7) Nothing in this chapter shall be construed to prevent law enforcement officers from providing community notification of any circumstances or individuals that pose or could pose a danger under circumstances that are not enumerated in this chapter.

**SEC. 45-33-51. Misuse of information; penalties.**

(1) Any person who willfully misuses or alters public record information relating to a sex offender or sexual predator, or a person residing or working at an address reported by a sex offender, including information displayed by law enforcement agencies on web sites, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or imprisonment in the county jail not more than six (6) months, or both.

(2) The sale or exchange of sex offender information for profit is prohibited. Any violation of this subsection (2) is a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or imprisonment in the county jail not more than six (6) months, or both.

**SEC. 45-33-53. Immunity from civil liability; immunity from civil liability; immunity for exercise of discretion.**

(1) An elected public official, public employee, or public agency is immune from civil liability for damages for any discretionary decision to release relevant and necessary information unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

(2) Nothing in this chapter shall be deemed to impose any liability upon or to give rise to a cause of action against any public official, public employee, or public agency for failing to release information as authorized in this section.

(3) Notwithstanding any other provision of law to the contrary, any person who provides or fails to provide information relevant to the procedures set forth in this chapter shall not be liable therefor in any civil or criminal action. Nothing herein shall be deemed to grant any such immunity to any person for his willful or wanton act of commission or omission.

**SEC. 45-33-55. Exemptions for expunction.**

Except for juvenile criminal history information that has been sealed by order of the court, this chapter exempts sex offenses from laws of this state or court orders authorizing the destroying, expunging, purging or sealing of criminal history records to the extent such information is authorized for dissemination under this chapter.

**SEC. 45-33-57. Fees.**

The Department of Public Safety may adopt regulations to establish fees to be charged for information requests.

**SEC. 45-33-59. Sex offenders employed in positions of close contact with children required to notify employers in writing of sex offender status.**

(1) Any person convicted of a sex offense who is employed in any position, or who contracts with a person to provide personal services, where the employment position or personal services contract will bring the person into close regular contact with children shall notify in writing the employer or the person with whom the person has contracted of his sex offender status.

**TERMINATION OF RIGHTS OF UNFIT PARENTS**

## **SEC. 93-15-101. Short title.**

This chapter shall be known and may be cited as the "Termination of Rights of Unfit Parents Law."

## **SEC. 93-15-103. Factors justifying adoption; grounds for termination of parental rights; alternatives.**

(1) When a child has been removed from the home of its natural parents and cannot be returned to the home of his natural parents within a reasonable length of time because returning to the home would be damaging to the child or the parent is unable or unwilling to care for the child, relatives are not appropriate or are unavailable, and when adoption is in the best interest of the child, taking into account whether the adoption is needed to secure a stable placement for the child and the strength of the child's bonds to his natural parents and the effect of future contacts between them, the grounds listed in subsections (2) and (3) of this section shall be considered as grounds for the termination of parental rights. The grounds may apply singly or in combination in any given case.

(2) The rights of a parent with reference to a child, including parental rights to control or withhold consent to an adoption, and the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of the parent and child terminated by the execution of a written voluntary release, signed by the parent, regardless of the age of the parent.

(3) Grounds for termination of parental rights shall be based on one or more of the following factors:

(a) A parent has deserted without means of identification or abandoned a child as defined in Section 97-5-1, or

(b) A parent has made no contact with a child under the age of three (3) for six (6) months or a child three (3) years of age or older for a period of one (1) year; or

(c) A parent has been responsible for a series of abusive incidents concerning one or more children; or

(d) When the child has been in the care and custody of a licensed child caring agency or the department of Human Services for at least one (1) year, that agency or the department has made diligent efforts to develop and implement a plan for return of the child to its parents, and:

(i) The parent has failed to exercise reasonable available visitation with the child; or

(ii) The parent, having agreed to a plan to effect placement of the child with the parent, fails to implement the plan so that the child caring agency is unable to return the child to said parent; or

(e) The parent exhibits ongoing behavior which would make it impossible to return the child to the parent's care and custody:

(i) Because the parent has a diagnosable condition unlikely to change within a reasonable time such as alcohol or drug addiction, severe mental deficiencies or mental illness, or extreme physical

incapacitation, which condition makes the parent unable to assume minimally, acceptable care of the child; or

(ii) Because the parent fails to eliminate behavior, identified by the child caring agency or the court, which prevents placement of said child with the parent in spite of diligent efforts of the child caring agency to assist the parent; or

(f) When there is an extreme and deep-seated antipathy by the child toward the parent or when there is some other substantial erosion of the relationship between the parent and child which was caused at least in part by the parent's serious neglect, abuse, prolonged and unreasonable absence, unreasonable failure to visit or communicate, or prolonged imprisonment; or

(g) When a parent has been convicted of any of the following offenses against any child: (i) rape of a child under the provisions of Section 97-3-65, (ii) sexual battery of a child under the provisions of Section 97-3-95(c), (iii) touching a child for lustful purposes under the provisions of Section 97-5-23, (iv) exploitation of a child under the provisions of Section 97-5-31, (v) felonious abuse or battery of a child under the provisions of Section 97-5-39(2), (vi) carnal knowledge of a step or adopted child or a child of a cohabitating partner under the provisions of Section 97-5-41, or (vii) murder of another child of such parent, voluntary manslaughter of another child of such parent, aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of such parent; or

(h) The child has been adjudicated to have been abused or neglected and custody has been transferred from the child's parent (s) for placement pursuant to Section 43-15-13, and a court of competent jurisdiction has determined that reunification shall not be in the child's best interest.

(4) Legal custody and guardianship by persons other than the parent as well as other permanent alternatives which end the supervision by the Department of Human Services should be considered as alternatives to the termination of parental rights, and these alternatives should be selected when, in the best interest of the child, parental contacts are desirable and it is possible to secure such placement without termination of parental rights.

(5) When a parent has been convicted of rape of a child under the provisions of Section 97-3-65, sexual battery of a child under the provisions of Section 97-3-95(c), touching a child for lustful purposes under the provisions of Section 97-5-23, exploitation of a child under the provisions of Section 97-5-31, felonious abuse or battery of a child under the provisions of Section 97-5-39(2), or carnal knowledge of a step or adopted child or a child of a cohabitating partner under the provisions of Section 97-5-41, notice of the conviction shall be forwarded by the circuit clerk of the county in which the conviction occurred to the Mississippi Department of Human Services, Division of Social Services.

(6) In any case where a child has been removed from the parent's home due to sexual abuse or serious bodily injury to the child, the court shall treat such case for termination of parental rights as a preference case to be determined with all reasonable expedition.

**SEC. 93-15-105. Petition for termination of parental rights; setting cause for hearing; service of process.**

(1) Any person, agency or institution may file for termination of parental rights in the chancery court or the family or county court sitting as the youth court of the county in which a defendant or the child resides, or in the county where an agency or institution holding custody of the child is located. The chancery court, or the chancellor in vacation, or the family court, or the family court judge in vacation, or the county court when sitting as the youth court, or such county court judge in vacation, may set the cause for hearing in termtime or in vacation. The petition shall be triable either in termtime or in vacation, thirty (30) days after personal service of process, and in case of nonresident defendants, or defendants whose addresses are unknown after diligent search, thirty (30) days after completion of publication; such publication to be otherwise as provided in the Mississippi Rules of Civil Procedure.

(2) In all cases involving termination of parental rights, minor parents may be served with process as an adult.

(3) In the event that one (1) parent voluntarily releases his child for adoption, a copy of the summons served on the child shall not be required to be served on the releasing parent.

(4) In an appropriate case, determination of the rights of the father of a child born out of wedlock may be made in proceedings pursuant to a petition for determination of rights as provided in Section 93-17-6.

(5) In the event that an adoptive child was born in a foreign country, the child was put up for adoption in the birth country, and the child has been legally admitted into this country, the thirty (30) days' service of process required by subsection (1) of this section, whether by personal service or publication, may be waived by the controlling court.

**SEC. 93-15-107. Parties to proceeding to terminate parental rights.**

(1) In an action to terminate parental rights, the mother of the child, the legal father of the child, and the putative father of the child, when known, shall be made parties defendant. A guardian ad litem shall be appointed to protect the interest of the child in the termination of parental rights. A child may be made party plaintiff, and any agency holding custody of a minor shall act as party plaintiff.

(2) The Department of Human Services shall initiate proceedings to terminate parental rights in accordance with Section 93-15-101 et seq. in cases where a child has been placed in the physical custody of a relative and the department has been given the legal custody of the child. The department may provide necessary funds to defray the costs and attorney fees for any adoption proceedings brought by the relative of such child in cases where the relative is unable to pay such costs and fees based on criteria established by the department in compliance with federal law and the availability of funds to the department to pay such costs and fees.

**SEC. 93-15-109. Termination of parental rights.**

After hearing all the evidence in regard to such petition, if the chancellor, family court judge or county court judge is satisfied by clear and convincing proof that the parent or parents are within the grounds requiring termination of parental rights as set forth in this chapter, then the court may terminate all the parental rights of the parent or parents regarding the child, and terminate the right of the child to inherit from such parent or parents. The termination of the parental rights of one (1) parent may be made without affecting the parental rights of the other parent, should circumstances and evidence ever so warrant.

**SEC. 93-15-111. Placing child in custody of suitable person, institution or agency; adoption.**

Should the court terminate the parental rights of the parents or only one (1) of the parents (if they both be living), then the court shall place the child in the custody of some suitable person, agency or institution, and such person, agency or institution shall have full power to enter a petition under section 93-17-5, consenting to adoption, and no further notice shall be given in the adoption proceeding to such parent or parents.

## **GRANDPARENTS' VISITATION RIGHTS**

### **SEC. 93-16-1. Jurisdiction of court to grant grandparents visitation rights with minor child.**

Any court of this state which is competent to decide child custody matters shall have jurisdiction to grant visitation rights with a minor child or children to the grandparents of such minor child or children as provided in this chapter.

### **SEC. 93-16-3. Who may petition for visitation rights; when; court in which to file petition.**

(1) Whenever a court of this state enters a decree or order awarding custody of a minor child to one (1) of the parents of the child or terminating the parental rights of one (1) of the parents of a minor child, or whenever one (1) of the parents of a minor child dies, either parent of the child's parents may petition the court in which the decree or order was rendered or, in the case of the death of a parent, petition the chancery court in the county in which the child resides, and seek visitation rights with the child.

(2) Any grandparent who is not authorized to petition for visitation rights pursuant to subsection (1) of this section may petition the chancery court and seek visitation rights with his or her grandchild, and the court may grant visitation rights to the grandparent, provided the court finds:

(a) That the grandparent of the child had established a viable relationship with the child and the parent or custodian of the child unreasonably denied the grandparent visitation rights with the child; and

(b) That visitation rights of the grandparent with the child would be in the best interests of the child.

(3) For purposes of subsection (3) of this section, the term "viable relationship" means a relationship in which the grandparents or either of them have voluntarily and in good faith supported the child financially in whole or in part for a period of not less than six (6) months before filing any petition for visitation rights with the child, the grandparents have had frequent visitation including occasional overnight visitation with said child for a period of not less than one (1) year, or the child has been cared for by the grandparents or either of them over a significant period of time during the time the parent has been in jail or on military duty that necessitates the absence of the parent from the home.

(4) Any petition for visitation rights under subsection (2) of this section shall be filed in the county where an order of custody as to the child has previously been entered. If no custody order has been entered, then the grandparents' petition shall be filed in the county where the child resides or may be found. The court shall on motion of the parent or parents direct the grandparents to pay reasonable attorney's fees to the parent or parents in advance and prior to any hearing, except in cases in which the court finds that no financial hardship will be imposed upon the parents. The court may also direct the



grandparents to pay reasonable attorney's fees to the parent or parents of the child and court costs regardless of the outcome of the petition.

**SEC. 93-16-5. Parties to proceeding; discretion of court in granting, enforcing, modifying or terminating rights.**

All persons required to be made parties in child custody proceedings or proceedings for the termination of parental rights shall be made parties to any proceeding in which a grandparent of a minor child or children seeks to obtain visitation rights with such minor child or children; and the court may, in its discretion, if it finds that such visitation rights would be in the best interest of the child, grant to a grandparent reasonable visitation rights with the child. Whenever visitation rights are granted to a grandparent, the court may issue such orders as shall be necessary to enforce such rights and may modify or terminate such visitation rights for cause at any time.

**SEC. 93-16-7. Application of chapter.**

This chapter shall not apply to the granting of visitation rights to the natural grandparents of any child who has been adopted by order or decree of any court unless: (a) one (1) of the legal parents of such child is also a natural parent of such child; or (b) one (1) of the legal parents of such child was related to the child by blood or marriage prior to the adoption. This chapter shall apply to persons who become grandparents of a child by virtue of adoption.

**CRIMES AGAINST PERSONS**

**SEC. 97-3-1. Abduction for purposes of marriage.**

Every person who shall take any person over the age of fourteen (14) years unlawfully, against his or her will, and by force, menace, fraud, deceit, stratagem or duress, compel or induce him or her to marry such person or to marry any other person, or to be defiled, and shall be thereof duly convicted, shall be punished by imprisonment in the penitentiary not less than five (5) years and not more than fifteen (15) years.

**SEC. 97-3-3. Abortion; causing abortion or miscarriage.**

(1) Any person wilfully and knowingly causing, by means of any instrument, medicine, drug or other means whatever, any woman pregnant with child to abort or miscarry, or attempts to procure or produce an abortion or miscarriage shall be guilty of a felony unless the same were done by a duly licensed, practicing physician:

(a) Where necessary for the preservation of the mother's life;

(b) Where pregnancy was caused by rape.

Said person shall, upon conviction, be imprisoned in the State Penitentiary not less than one (1) year nor more than ten (10) years; provided, however, if the death of the mother results therefrom, the person procuring, causing or attempting to procure or cause the illegal abortion or miscarriage shall be guilty of murder.

(2) No act prohibited in subsection (1) of this section shall be considered exempt under the provisions of subparagraph (a) thereof unless performed upon the prior advice in writing, of two (2) reputable licensed physicians.

(3) The license of any physician or nurse shall be automatically revoked upon conviction under the provisions of this section.

(4) Nothing in this section shall be construed as conflicting with s 41-41-73.

### **SEC. 97-3-5. Abortion; advertisement, sale or gift of drugs or instruments.**

A person who sells, lends, gives away, or in any manner exhibits, or offers to sell, lend, or give away, or has in his possession with intent to sell, lend, or give away, or advertises or offers for sale, loan or distribution any instrument or article, or any drug or medicine, for causing unlawful abortion; or who writes or prints, or causes to be written or printed, a card, circular, pamphlet, advertisement, or notice of any kind, or gives information orally, stating when, where, how, of whom, or by what means such article or medicine can be purchased or obtained, or who manufactures any such article or medicine, is guilty of a misdemeanor, and, on conviction, shall be punished by fine not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00), and by imprisonment in the county jail not exceeding three (3) months.

### **SEC. 97-3-7. Simple assault; aggravated assault; domestic violence.**

(1) A person is guilty of simple assault if he (a) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or (b) negligently causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or (c) attempts by physical menace to put another in fear of imminent serious bodily harm; and, upon conviction, he shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for not more than six (6) months, or both. However, a person convicted of simple assault (a) upon a statewide elected official, law enforcement officer, fireman, emergency medical personnel, public health personnel, social worker or family protection specialist or family protection worker employed by the Department of Human Services or another agency, youth detention center personnel, training school juvenile care worker, any county or municipal jail officer, superintendent, principal, teacher or other instructional personnel, school attendance officer, school bus driver, or a judge of a

circuit, chancery, county, justice, municipal or youth court or a judge of the Court of Appeals or a justice of the Supreme Court, district attorney, legal assistant to a district attorney, county prosecutor, municipal prosecutor, court reporter employed by a court, court administrator, clerk or deputy clerk of the court, or public defender, while such statewide elected official, judge or justice, law enforcement officer, fireman, emergency medical personnel, public health personnel, social worker, family protection specialist, family protection worker, youth detention center personnel, training school juvenile care worker, any county or municipal jail officer, superintendent, principal, teacher or other instructional personnel, school attendance officer, school bus driver, district attorney, legal assistant to a district attorney, county prosecutor, municipal prosecutor, court reporter employed by a court, court administrator, clerk or deputy clerk of the court, or public defender is acting within the scope of his duty, office or employment; (b) upon a legislator while the Legislature is in regular or extraordinary session or while otherwise acting within the scope of his duty, office or employment; or (c) upon a person who is sixty-five (65) years of age or older or a person who is a vulnerable adult as defined in Section 43-47-5, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than five (5) years, or both.

(2) A person is guilty of aggravated assault if he (a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or (b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; and, upon conviction, he shall be punished by imprisonment in the county jail for not more than one (1) year or in the Penitentiary for not more than twenty (20) years. However, a person convicted of aggravated assault (a) upon a statewide elected official, law enforcement officer, fireman, emergency medical personnel, public health personnel, social worker, family protection specialist, family protection worker employed by the Department of Human Services or another agency, youth detention center personnel, training school juvenile care worker, any county or municipal jail officer, superintendent, principal, teacher or other instructional personnel, school attendance officer, school bus driver, or a judge of a circuit, chancery, county, justice, municipal or youth court or a judge of the Court of Appeals or a justice of the Supreme Court, district attorney, legal assistant to a district attorney, county prosecutor, municipal prosecutor, court reporter employed by a court, court administrator, clerk or deputy clerk of the court, or public defender, while such statewide elected official, judge or justice, law enforcement officer, fireman, emergency medical personnel, public health personnel, social worker, family protection specialist, family protection worker, youth detention center personnel, training school juvenile care worker, any county or municipal jail officer, superintendent, principal, teacher or other instructional personnel, school attendance officer, school bus driver, district attorney, legal assistant to a district attorney, county prosecutor, municipal prosecutor, court reporter employed by a court, court administrator, clerk or deputy clerk of the court, or public defender is acting within the scope of his duty, office or employment; (b) upon a legislator while the Legislature is in regular or extraordinary session or while otherwise acting within the scope of his duty, office or employment; or (c) upon a person who is sixty-five (65) years of age or older or a person who is a vulnerable adult as defined in Section 43-47-5, shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than thirty (30) years, or both.

(3) A person is guilty of simple domestic violence who commits simple assault as described in subsection (1) of this section against a current or former spouse or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant or a child of that person, other persons related by consanguinity or affinity who reside with or formerly resided with the defendant, a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child and, upon conviction, the defendant shall be punished as provided under subsection (1) of this section; however, upon a third or subsequent conviction of simple domestic violence, whether against the same or another victim and within five (5) years, the defendant shall be guilty of a felony and sentenced to a term of imprisonment not less than five (5) nor more than ten (10) years. In sentencing, the court shall consider as an aggravating factor whether the crime was committed in the physical presence or hearing of a child under sixteen (16) years of age who was, at the time of the offense, living within either the residence of the victim, the residence of the perpetrator, or the residence where the offense occurred.

(4) A person is guilty of aggravated domestic violence who commits aggravated assault as described in subsection (2) of this section against a current or former spouse or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant, other persons related by consanguinity or affinity who reside with or formerly resided with the defendant or a child of that person, a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child and, upon conviction, the defendant shall be punished as provided under subsection (2) of this section; however, upon a third or subsequent offense of aggravated domestic violence, whether against the same or another victim and within five (5) years, the defendant shall be guilty of a felony and sentenced to a term of imprisonment of not less than five (5) nor more than twenty (20) years. In sentencing, the court shall consider as an aggravating factor whether the crime was committed in the physical presence or hearing of a child under sixteen (16) years of age who was, at the time of the offense, living within either the residence of the victim, the residence of the perpetrator, or the residence where the offense occurred. Reasonable discipline of a child, such as spanking, is not an offense under this subsection (4).

(5) "Dating relationship" means a social relationship as defined in Section 93-21-3.

(6) Every conviction of domestic violence may require as a condition of any suspended sentence that the defendant participate in counseling or treatment to bring about the cessation of domestic abuse. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

(7) When investigating allegations of a violation of subsection (3) or (4) of this section, law enforcement officers shall utilize the form prescribed for such purposes by the Office of the Attorney General in consultation with the sheriff's and police chief's associations. \* \* \*

(8) In any conviction of assault as described in any subsection of this section which arises from an incident of domestic violence, the sentencing order shall include the designation "domestic violence." The court shall forward a copy of each sentencing order bearing the designation "domestic violence" to the Office of the Attorney General.

### **SEC. 97-3-13. False confinement; sending sane person to insane asylum.**

Every person or officer who maliciously sends to or confines in a psychiatric hospital or institution or other place, any sane person as a person with mental illness, knowing the person to be sane, shall be guilty of a felony, and, on conviction, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment in the Penitentiary not more than one (1) year, or in the county jail not more than six (6) months.

### **SEC. 97-3-15. Homicide; justifiable homicide.**

(1) The killing of a human being by the act, procurement, or omission of another shall be justifiable in the following cases:

(a) When committed by public officers, or those acting by their aid and assistance, in obedience to any judgment of a competent court;

(b) When necessarily committed by public officers, or those acting by their command in their aid and assistance, in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty;

(c) When necessarily committed by public officers, or those acting by their command in their aid and assistance, in retaking any felon who has been rescued or has escaped;

(d) When necessarily committed by public officers, or those acting by their command in their aid and assistance, in arresting any felon fleeing from justice;

(e) When committed by any person in resisting any attempt unlawfully to kill such person or to commit any felony upon him, or upon or in any dwelling, in any occupied vehicle, in any place of business, in any place of employment or in the immediate premises thereof in which such person shall be;

(f) When committed in the lawful defense of one's own person or any other human being, where there shall be reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and there shall be imminent danger of such design being accomplished;

(g) When necessarily committed in attempting by lawful ways and means to apprehend any

person for any felony committed;

(h) When necessarily committed in lawfully suppressing any riot or in lawfully keeping and preserving the peace.

(2) (a) As used in subsection (1)(c) and (d) of this section, the term "when necessarily committed" means that a public officer or a person acting by or at the officer's command, aid or assistance is authorized to use such force as necessary in securing and detaining the felon offender, overcoming the offender's resistance, preventing the offender's escape, recapturing the offender if the offender escapes or in protecting himself or others from bodily harm; but such officer or person shall not be authorized to resort to deadly or dangerous means when to do so would be unreasonable under the circumstances. The public officer or person acting by or at the officer's command may act upon a reasonable apprehension of the surrounding circumstances; however, such officer or person shall not use excessive force or force that is greater than reasonably necessary in securing and detaining the offender, overcoming the offender's resistance, preventing the offender's escape, recapturing the offender if the offender escapes or in protecting himself or others from bodily harm.

(b) As used in subsection (1)(c) and (d) of this section the term "felon" shall include an offender who has been convicted of a felony and shall also include an offender who is in custody, or whose custody is being sought, on a charge or for an offense which is punishable, upon conviction, by death or confinement in the Penitentiary.

(c) As used in subsections (1)(e) and (3) of this section, "dwelling" means a building or conveyance of any kind that has a roof over it, whether the building or conveyance is temporary or permanent, mobile or immobile, including a tent, that is designed to be occupied by people lodging therein at night, including any attached porch;

(3) A person who uses defensive force shall be presumed to have reasonably feared imminent death or great bodily harm, or the commission of a felony upon him or another or upon his dwelling, or against a vehicle which he was occupying, or against his business or place of employment or the immediate premises of such business or place of employment, if the person against whom the defensive force was used, was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered, a dwelling, occupied vehicle, business, place of employment or the immediate premises thereof or if that person had unlawfully removed or was attempting to unlawfully remove another against the other person's will from that dwelling, occupied vehicle, business, place of employment or the immediate premises thereof and the person who used defensive force knew or had reason to believe that the forcible entry or unlawful and forcible act was occurring or had occurred. This presumption shall not apply if the person against whom defensive force was used has a right to be in or is a lawful resident or owner of the dwelling, vehicle, business, place of employment or the immediate premises thereof or is the lawful resident or owner of the dwelling, vehicle, business, place of employment or the immediate premises thereof or if the person who uses defensive force is engaged in unlawful activity or if the person is a law enforcement officer engaged in the performance of his official duties;

(4) A person who is not the initial aggressor and is not engaged in unlawful activity shall have no duty to retreat before using deadly force under subsection (1)(e) or (f) of this section if the person is in a place where the person has a right to be, and no finder of fact shall be permitted to consider the person's failure to retreat as evidence that the person's use of force was unnecessary, excessive or unreasonable.

(5) (a) The presumptions contained in subsection (3) of this section shall apply in civil cases in which self-defense or defense of another is claimed as a defense.

(b) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant acted in accordance with subsection (1)(e) or (f) of this section. A defendant who has previously been adjudicated "not guilty" of any crime by reason of subsection (1)(e) or (f) of this section shall be immune from any civil action for damages arising from same conduct.

### **SEC. 97-3-17. Homicide; excusable homicide.**

The killing of any human being by the act, procurement, or omission of another shall be excusable:

(a) When committed by accident and misfortune in doing any lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent;

(b) When committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation;

(c) When committed upon any sudden combat, without undue advantage being taken, and without any dangerous weapon being used, and not done in a cruel or unusual manner.

### **SEC. 97-3-19. Homicide; murder defined; capital murder.**

(1) The killing of a human being without the authority of law by any means or in any manner shall be murder in the following cases:

(a) When done with deliberate design to effect the death of the person killed, or of any human being;

(b) When done in the commission of an act eminently dangerous to others and evincing a depraved heart, regardless of human life, although without any premeditated design to effect the death of any particular individual;

(c) When done without any design to effect death by any person engaged in the commission of any felony other than rape, kidnapping, burglary, arson, robbery, sexual battery, unnatural intercourse

with any child under the age of twelve (12), or nonconsensual unnatural intercourse with mankind, or felonious abuse and/or battery of a child in violation of subsection (2) of Section 97-5-39, or in any attempt to commit such felonies;

\_\_\_\_\_ (d) When done with deliberate design to effect the death of an unborn child.

(2) The killing of a human being without the authority of law by any means or in any manner shall be capital murder in the following cases:

(a) Murder which is perpetrated by killing a peace officer or fireman while such officer or fireman is acting in his official capacity or by reason of an act performed in his official capacity, and with knowledge that the victim was a peace officer or fireman. For purposes of this paragraph, the term "peace officer" means any state or federal law enforcement officer, including, but not limited to, a federal park ranger, the sheriff of or police officer of a city or town, a conservation officer, a parole officer, a judge, senior status judge, special judge, district attorney, legal assistant to a district attorney, county prosecuting attorney or any other court official, an agent of the Alcoholic Beverage Control Division of the State Tax Commission, an agent of the Bureau of Narcotics, personnel of the Mississippi Highway Patrol, and the employees of the Department of Corrections who are designated as peace officers by the Commissioner of Corrections pursuant to Section 47-5-54, and the superintendent and his deputies, guards, officers and other employees of the Mississippi State Penitentiary;

(b) Murder which is perpetrated by a person who is under sentence of life imprisonment;

(c) Murder which is perpetrated by use or detonation of a bomb or explosive device;

(d) Murder which is perpetrated by any person who has been offered or has received anything of value for committing the murder, and all parties to such a murder, are guilty as principals;

(e) When done with or without any design to effect death, by any person engaged in the commission of the crime of rape, burglary, kidnapping, arson, robbery, sexual battery, unnatural intercourse with any child under the age of twelve (12), or nonconsensual unnatural intercourse with mankind, or in any attempt to commit such felonies;

(f) When done with or without any design to effect death, by any person engaged in the commission of the crime of felonious abuse and/or battery of a child in violation of subsection (2) of Section 97-5-39, or in any attempt to commit such felony;

(g) Murder which is perpetrated on educational property as defined in Section 97-37-17;

(h) Murder which is perpetrated by the killing of any elected official of a county, municipal, state or federal government with knowledge that the victim was such public official.

(3) An indictment for murder or capital murder shall serve as notice to the defendant that the



indictment may include any and all lesser included offenses thereof, including, but not limited to, manslaughter.

**SEC. 97-3-21. Homicide; penalty for murder or capital murder.**

Every person who shall be convicted of murder shall be sentenced by the court to imprisonment for life in the State Penitentiary.

Every person who shall be convicted of capital murder shall be sentenced (a) to death; (b) to imprisonment for life in the State Penitentiary without parole; or (c) to imprisonment for life in the State Penitentiary with eligibility for parole as provided in Section 47-7-3(1)(f).

**SEC. 97-3-23. Homicide; death following duels fought out of state.**

Every person who shall, by previous appointment, agreement, or understanding made in this state, fight a duel without the jurisdiction of this state, and, in so doing, shall inflict a wound upon his antagonist or any other person, whereof the person thus injured die within this state, and every second engaged in such duel, shall be guilty of murder in this state, and may be indicted, tried, and convicted in the county where such death shall happen.

**SEC. 97-3-25. Homicide; penalty for manslaughter.**

Any person convicted of manslaughter shall be fined in a sum not less than five hundred dollars, or imprisoned in the county jail not more than one year, or both, or in the penitentiary not less than two years, nor more than twenty years.

**SEC. 97-3-27. Homicide; killing while committing felony.**

The killing of a human being without malice, by the act, procurement, or culpable negligence of another, while such other is engaged in the perpetration of any felony, except those felonies enumerated in Section 97-3-19(2) (e) and (f), or while such other is attempting to commit any felony besides such as are above enumerated and excepted, shall be manslaughter.

**SEC. 97-3-29. Homicide; killing while committing a misdemeanor.**

The killing of a human being without malice, by the act, procurement, or culpable negligence of another, while such other is engaged in the perpetration of any crime or misdemeanor not amounting to felony, or in the attempt to commit any crime or misdemeanor, where such killing would be murder at common law, shall be manslaughter.

**SEC. 97-3-31. Homicide; killing unnecessarily, while resisting effort of slain to commit felony or do unlawful act.**

Every person who shall unnecessarily kill another, either while resisting an attempt by such

other person to commit any felony, or to do any unlawful act, or after such attempt shall have failed, shall be guilty of manslaughter.

**SEC. 97-3-33. Killing trespasser involuntarily.**

The involuntary killing of a human being by the act, procurement, or culpable negligence of another, while such human being is engaged in the commission of a trespass or other injury to private rights or property, or is engaged in an attempt to commit such injury, shall be manslaughter.

**SEC. 97-3-35. Homicide; killing without malice in the heat of passion.**

The killing of a human being, without malice, in the heat of passion, but in a cruel or unusual manner, or by the use of a dangerous weapon, without authority of law, and not in necessary self-defense, shall be manslaughter.

**SEC. 97-3-37. Homicide; killing of an unborn child; “human being includes” unborn child at every stage of gestation from conception to live birth for purposes of assault and homicide, “unborn child” defined; intentional injury to pregnant woman; penalties; provisions of section not applicable to legal medical procedures, including abortion.**

(1) For purposes of the offenses enumerated in this subsection (1), the term "human being" includes an unborn child at every stage of gestation from conception until live birth and the term "unborn child" means a member of the species homo sapiens, at any stage of development, who is carried in the womb:

- (a) Section 97-3-7, simple and aggravated assault and domestic violence;
- (b) Section 97-3-15, justifiable homicide;
- (c) Section 97-3-17, excusable homicide;
- (d) Section 97-3-19, capital murder;
- (e) Section 97-3-27, homicide while committing a felony;
- (f) Section 97-3-29, homicide while committing a misdemeanor;
- (g) Section 97-3-33, killing a trespasser unnecessarily;
- (h) Section 97-3-35, killing without malice in the heat of passion;
- (i) Section 97-3-45, homicide by means of a dangerous animal;
- (j) Section 97-3-47, all other homicides;

(k) Section 97-3-61, poisoning with intent to kill or injure.

(2) A person who intentionally injures a pregnant woman is guilty of a crime as follows:

(a) If the conduct results in a miscarriage or stillbirth by that individual, murder as defined in Section 97-3-19.

(b) If the conduct results in great bodily harm to the embryo or fetus, a felony punishable by imprisonment for not more than twenty (20) years or a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

(c) If the conduct results in serious or aggravated physical injury to the embryo or fetus, a misdemeanor punishable by imprisonment for not more than one (1) year or a fine of not more than One Thousand Dollars (\$1,000.00), or both.

(d) If the conduct results in physical injury to the embryo or fetus, a misdemeanor punishable by imprisonment for not more than ninety (90) days or a fine of not more than Five Hundred Dollars (\$500.00), or both.

(3) The provisions of this section shall not apply to any legal medical procedure performed by a licensed physician or other licensed medical professional, including legal abortions, when done at the request of a mother of an unborn child or the mother's legal guardian, or to the lawful dispensing or administration of lawfully prescribed medication.

### **SEC. 97-3-39. Homicide; drunken doctor, etc., unintentionally causing death.**

If any physician or other person, while in a state of intoxication, shall, without a design to effect death, administer or cause to be administered, any poison, drug, or other medicine, or shall perform any surgical operation on another, which shall cause the death of such other person, he shall be guilty of manslaughter.

### **SEC. 97-3-41. Homicide; overloading boat.**

Any person navigating any boat or vessel for gain, who shall wilfully or negligently receive so many passengers, or such quantity of lading, that by means thereof such boat or vessel shall sink or overset, and thereby any human being shall be drowned or otherwise killed, shall be guilty of manslaughter.

### **SEC. 97-3-43. Homicide; ignorant or negligent management of steamboat or railroad engine.**

If any captain, engineer, or any other person having charge of a steamboat or railroad engine connected with a car or cars used for the conveyance of passengers; or if the engineer or other person having charge of the boiler of such boat or engine, or of any other apparatus for the generation of steam, shall, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed,

or for the purpose of unusual speed, create or allow to be created such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, or shall thereby cause the said engine or cars to run off of said railroad track, or from any other ignorant or gross neglect shall permit or cause such cars or engine to be thus thrown, by which bursting, breaking, or running off the track any person shall be killed, every such captain, engineer, or other person, shall be guilty of manslaughter.

**SEC. 97-3-45. Homicide; owner of dangerous animal.**

If the owner of a mischievous animal, knowing its propensity, wilfully suffer it to go at large, or shall keep it without ordinary care, and such animal, while so at large, or not confined, kill any human being who shall have taken reasonable precautions to avoid the animal, such owner shall be guilty of manslaughter.

**SEC. 97-3-47. Homicide; all other killings.**

Every other killing of a human being, by the act, procurement, or culpable negligence of another, and without authority of law, not provided for in this title, shall be manslaughter.

**SEC. 97-3-49. Suicide; aiding.**

A person who wilfully, or in any manner, advises, encourages, abets, or assists another person to take, or in taking, the latter's life, or in attempting to take the latter's life, is guilty of felony and, on conviction, shall be punished by imprisonment in the penitentiary not exceeding ten years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not exceeding one year.

**SEC. 97-3-51. Interstate removal of child under age fourteen by noncustodial parent or relative.**

(1) For the purposes of this section, the following terms shall have the meaning herein ascribed unless the context otherwise clearly requires:

(a) "Child" means a person under the age of fourteen (14) years at the time a violation of this section is alleged to have occurred.

(b) "Court order" means an order, decree or judgment of any court of this state which is competent to decide child custody matters.

(2) It shall be unlawful for any noncustodial parent or relative with intent to violate a court order awarding custody of a child to another to remove the child from this state or to hold the child out of state after the entry of a court order.

(3) Any person convicted of a violation of subsection (2) of this section shall be guilty of a felony and may be punished by a fine of not more than Two Thousand Dollars (\$2,000.00), or by

imprisonment in the state penitentiary for a term not to exceed three (3) years, or by both such fine and imprisonment.

(4) The provisions of this section shall not be construed to repeal, modify or amend any other criminal statute of this state

**SEC. 97-3-53. Kidnapping; capital punishment authorized.**

Any person who, without lawful authority and with or without intent to secretly confine, shall forcibly seize and confine any other person, or shall inveigle or kidnap any other person with intent to cause such person to be confined or imprisoned against his or her will, or without lawful authority shall forcibly seize, inveigle or kidnap any child under the age of sixteen (16) years against the will of the parents or guardian or person having the lawful custody of the child, upon conviction shall be imprisoned for life in the custody of the Department of Corrections if the punishment is so fixed by the jury in its verdict. If the jury fails to agree on fixing the penalty at imprisonment for life, the court shall fix the penalty at not less than one (1) year nor more than thirty (30) years in the custody of the Department of Corrections.

This section shall not be held to repeal, modify or amend any other criminal statute of this state.

**SEC. 97-3-55. Libel; penalty.**

Any person who shall be convicted of writing or publishing any libel, shall be fined in such sum or imprisoned in the county jail for such term as the court, in its discretion, may adjudge, having regard to the nature and enormity of the offense, or be punished by both such fine and imprisonment.

**SEC. 97-3-57. Libel; truth as defense.**

In every criminal prosecution for libel it shall be lawful for the defendant, upon the trial, to give in evidence the truth of the matter written or published, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the defendant shall be acquitted.

**SEC. 97-3-59. Mayhem.**

Every person who, from premeditated design or with intent to kill or commit any felony, shall mutilate, disfigure, disable or destroy the tongue, eye, lip, nose, or any other limb or member of any person, shall be guilty of mayhem, and, on conviction thereof, shall be punished by imprisonment in the penitentiary not more than seven years or in the county jail not less than six months.

**SEC. 97-3-61. Poisoning with intent to kill or injure.**

Every person who shall mingle any poison with any food, drink, or medicine with intent to kill

or injure any human being, or who shall wilfully poison any well, spring, or reservoir of water, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding ten years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or both.

**SEC. 97-3-63. Poisoning with intent to kill; where death does not ensue.**

Every person who shall be convicted of having administered, or having caused or procured to be administered, any poison to any human being with intent to kill such human being, whereof death shall not ensue, shall be punished by imprisonment in the penitentiary for a term not less than ten years.

**SEC. 97-3-65. Statutory rape; enhanced penalty for forcible sexual intercourse or statutory rape by administering certain substances.**

(1) The crime of statutory rape is committed when:

(a) Any person seventeen (17) years of age or older has sexual intercourse with a child who:

(i) Is at least fourteen (14) but under sixteen (16) years of age;

(ii) Is thirty-six (36) or more months younger than the person; and

(iii) Is not the person's spouse; or

(b) A person of any age has sexual intercourse with a child who:

(i) Is under the age of fourteen (14) years;

(ii) Is twenty-four (24) or more months younger than the person; and

(iii) Is not the person's spouse.

(2) Neither the victim's consent nor the victim's lack of chastity is a defense to a charge of statutory rape

(3) Upon conviction for statutory rape, the defendant shall be sentenced as follows:

(a) If eighteen (18) years of age or older, but under twenty-one (21) years of age, and convicted under paragraph (1)(a) of this section, to imprisonment for not more than five (5) years in the State Penitentiary or a fine of not more than Five Thousand Dollars (\$5,000.00), or both;

(b) If twenty-one (21) years of age or older and convicted under paragraph (1)(a) of this section,

to imprisonment of not more than thirty (30) years in the State Penitentiary or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both, for the first offense, and not more than forty (40) years in the State Penitentiary for each subsequent offense;

(c) If eighteen (18) years of age or older and convicted under paragraph (1)(b) of this section, to imprisonment for life in the State Penitentiary or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years;

(d) If thirteen (13) years of age or older but under eighteen (18) years of age and convicted under paragraphs (1)(a) or (1)(b) of this section, such imprisonment, fine or other sentence as the court, in its discretion, may determine.

(4)(a) Every person who shall have forcible sexual intercourse with any person, or who shall have sexual intercourse not constituting forcible sexual intercourse or statutory rape with any person without that person's consent by administering to such person any substance or liquid which shall produce such stupor or such imbecility of mind or weakness of body as to prevent effectual resistance, upon conviction, shall be imprisoned for life in the State Penitentiary if the jury by its verdict so prescribes; and in cases where the jury fails to fix the penalty at life imprisonment, the court shall fix the penalty at imprisonment in the State Penitentiary for any term as the court, in its discretion, may determine

(b) This subsection (4) shall apply whether the perpetrator is married to the victim or not.

(5) In all cases where a victim is under the age of sixteen (16) years, it shall not be necessary to prove penetration where it is shown the genitals, anus or perineum of the child have been lacerated or torn in the attempt to have sexual intercourse with the child.

(6) For the purposes of this section, "sexual intercourse" shall mean a joining of the sexual organs of a male and female human being in which the penis of the male is inserted into the vagina of the female or the penetration of the sexual organs of a male or female human being in which the penis or an object is inserted into the genitals, anus or perineum of a male or female.

### **SEC. 97-3-68. Rape; procedure for introducing evidence of sexual conduct of complaining witness; "complaining witness" defined.**

(1) In any prosecution for rape under section 97-3-65, 97-3-67 or 97-3-71, if evidence of sexual conduct of the complaining witness is offered to attack the credibility of said complaining witness, the following procedure shall be followed:

(a) A written motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness.

(b) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated.

(c) If the court finds that the offer of proof is sufficient, the court shall order a closed hearing in chambers, out of the presence of the jury, if any, and at such closed hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.

(d) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant and otherwise admissible, the court may make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(2) As used in sections 97-3-68 and 97-3-70, "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this section.

**SEC. 97-3-69. Rape; "chaste character" presumed; uncorroborated testimony of victim insufficient.**

In the trial of all cases under the last preceding section, it shall be presumed that the female was previously of chaste character, and the burden shall be upon the defendant to show that she was not; but no person shall be convicted upon the uncorroborated testimony of the injured female.

**SEC. 97-3-71. Rape; assault with intent to ravish.**

Every person who shall be convicted of an assault with intent to forcibly ravish any female of previous chaste character shall be punished by imprisonment in the penitentiary for life, or for such shorter time as may be fixed by the jury, or by the court upon the entry of a plea of guilty.

**SEC. 97-3-73. Robbery; definition.**

Every person who shall feloniously take the personal property of another, in his presence or from his person and against his will, by violence to his person or by putting such person in fear of some immediate injury to his person, shall be guilty of robbery.

**SEC. 97-3-75. Robbery; penalty.**

Every person convicted of robbery shall be punished by imprisonment in the penitentiary for a term not more than fifteen years.

**SEC. 97-3-77. Robbery; threat to injure person or relative at another time.**

Every person who shall feloniously take the personal property of another, in his presence or



from his person, which shall have been delivered or suffered to be taken through fear of some injury threatened to be inflicted at some different time to his person or property, or to the person of any member of his family or relative, which fear shall have been produced by the threats of the person so receiving or taking such property, shall be guilty of robbery.

**SEC. 97-3-79. Robbery; use of deadly weapon.**

Every person who shall feloniously take or attempt to take from the person or from the presence the personal property of another and against his will by violence to his person or by putting such person in fear of immediate injury to his person by the exhibition of a deadly weapon shall be guilty of robbery and, upon conviction, shall be imprisoned for life in the state penitentiary if the penalty is so fixed by the jury; and in cases where the jury fails to fix the penalty at imprisonment for life in the state penitentiary the court shall fix the penalty at imprisonment in the state penitentiary for any term not less than three (3) years.

**SEC. 97-3-81. Robbery; threatening letter demanding money, property.**

Every person who shall knowingly send or deliver, or shall make, and, for the purpose of being sent or delivered, shall part with the possession of any letter or writing with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark, or other designation, threatening therein to accuse any person of a crime or to do any injury to the person or property of any one, with a view or intent to extort or gain money or property of any description belonging to another, shall be guilty of an attempt to rob, and shall, on conviction be punished by imprisonment in the penitentiary not exceeding five years.

**SEC. 97-3-82. Extortion; definitions; offense and penalties.**

(1) For the purposes of this section the following words and phrases shall have the meanings ascribed herein, unless the context clearly indicates otherwise:

(a) "Obtain" means: (i) in relation to property, to bring about a transfer or purported transfer of a legal interest in, or physical possession of, the property, whether to the obtainer or another; or (ii) in relation to labor or service, or any reward, favor, or advantage of any kind, to secure performance thereof; or attempt to do (i) or (ii).

(b) "Property" means anything of value, including, but not limited to, real estate, tangible and intangible personal property, contract rights, choses-in-action, reputation of a person and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power.

(c) "Property of another" includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as

contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

(d) "Public official" means any person elected or appointed to any office, position or employment whereby the person is paid a fee or salary by the State of Mississippi or any political subdivision thereof or any agency or subdivision of the government of the United States, regardless of the source or sources of the funds for the payment.

(2) A person is guilty of extortion if he purposely obtains or attempts to obtain property of another or any reward, favor, or advantage of any kind by threatening to inflict bodily injury on any person or by committing or threatening to commit any other criminal offense, violation of civil statute, or the public or private revelation of information not previously in the public domain for the purpose of humiliating or embarrassing the other person, without regard to whether the revelation otherwise constitutes a violation of a specific statute.

(3) (a) Except as provided in paragraph (d) of this subsection, any person, whether a public official or not, who commits the offense of extortion of property or things of value of another under the value of Five Hundred Dollars (\$500.00) shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not to exceed six (6) months.

(b) Except as provided in paragraph (d) of this subsection, any person, whether a public official or not, who commits the offense of extortion of property or things of value of another of the value of Five Hundred Dollars (\$500.00) or more shall be guilty of a felony and, upon conviction thereof, shall be punished by commitment to the custody of the Department of Corrections for a term not to exceed fifteen (15) years.

(c) Except as provided in paragraph (d) of this subsection, any person, whether a public official or not, who commits the offense of extortion in order to obtain any intangible reward, favor or advantage to which no monetary value is normally given shall be guilty of a felony and, upon conviction thereof, shall be punished by commitment to the custody of the Department of Corrections for a term not to exceed fifteen (15) years.

(d) Any public official acting in his official capacity or under color of his office who commits the offense of extortion in order to obtain any intangible reward, favor or advantage to which no monetary value is normally given, or who commits the offense of extortion of tangible property, regardless of the value of the property, shall be guilty of a felony and, upon conviction thereof, shall be punished by commitment to the custody of the Department of Corrections for a term not less than two (2) nor more than twenty (20) years.

### **SEC. 97-3-83. Robbery; bonds, bills, notes, etc., cotton receipts and railroad tickets.**

Robbery of obligations or bonds, bill obligatory, bank bills or bills of exchange, promissory notes for the payment of any money or specific property, paper bills of credit, cotton receipts, railroad

passenger tickets, certificates granted by or under authority of this state or the United States, or any state, territory, or district therein, or of any foreign country, shall be punished in the same manner, both as to the principal and accessory, as robbery of goods and chattels.

**SEC. 97-3-85. Threats and intimidation; by letter or notice.**

If any person shall post, mail, deliver, or drop a threatening letter or notice to another, whether such other be named or indicated therein or not, with intent to terrorize or to intimidate such other, he shall, upon conviction, be punished by imprisonment in the county jail not more than six months, or by fine not more than five hundred dollars, or both.

**SEC. 97-3-87. Threats and intimidation; whitecapping.**

Any person or persons who shall, by placards, or other writing, or verbally, attempt by threats, direct or implied, of injury to the person or property of another, to intimidate such other person into an abandonment or change of home or employment, shall, upon conviction, be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or in the penitentiary not exceeding five years, as the court, in its discretion may determine.

**SEC. 97-3-89. Timber, trees and saw logs; tampering with to injure or harass the owner prohibited.**

Any person who shall maliciously and knowingly drive, force, place, or otherwise insert, or cause to be driven, forced, placed or otherwise inserted any piece or kind of iron, steel, or metallic spike, nail, bar, rod, explosive, or other substance of any kind whatsoever into any kind of saw timber, trees, logs, or timber or logs, standing or fallen, which are not his own, and which are, or may be classed as commercial, or merchantable timber, logs or trees, from which lumber may be produced, with the intent and purpose of annoying, harassing, injuring or damaging the owner of same, in his person or property, or any other person, or for any other unauthorized purpose whatsoever, without the consent of the owner of such timber, logs, or trees, shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the county jail not less than three months nor more than six months, or by a fine not exceeding five hundred dollars, or both.

**SEC. 97-3-91. Timber, trees and saw logs; penalty for tampering when injury occurs.**

When any person shall be physically injured in handling, sawing, squaring, or otherwise manufacturing such trees, logs, or timber into lumber, or other sawmill products, by reason of such metallic or explosive substances having been driven, inserted or placed in such timber, trees, or logs, the person so offending shall be guilty of a felony and on conviction shall be imprisoned in the penitentiary for a period of not more than ten years.

**SEC. 97-3-93. Timber, trees and saw logs; penalty for tampering when death**

## **results.**

Whenever the death of any person shall be caused by reason of such metallic or explosive substances having been driven, placed or inserted in such merchantable timber as provided in s 97-3-89, the person so offending shall be guilty of manslaughter, and upon conviction shall be punished as the law directs.

### **SEC. 97-3-95. Sexual battery.**

(1) A person is guilty of sexual battery if he or she engages in sexual penetration with:

- (a) Another person without his or her consent;
- (b) A mentally defective, mentally incapacitated or physically helpless person;
- (c) A child at least fourteen (14) but under sixteen (16) years of age, if the person is thirty-six (36) or more months older than the child; or
- (d) A child under the age of fourteen (14) years of age, if the person is twenty-four (24) or more months older than the child.

(2) A person is guilty of sexual battery if he or she engages in sexual penetration with a child under the age of eighteen (18) years if the person is in a position of trust or authority over the child including without limitation the child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach.

### **SEC. 97-3-97. Sexual battery; definitions.**

For purposes of sections 97-3-95 through 97-3-103 the following words shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Sexual penetration" includes cunnilingus, fellatio, buggery or pederasty, any penetration of the genital or anal openings of another person's body by any part of a person's body, and insertion of any object into the genital or anal openings of another person's body.

(b) A "mentally defective person" is one who suffers from a mental disease, defect or condition which renders that person temporarily or permanently incapable of knowing the nature and quality of his or her conduct.

(c) A "mentally incapacitated person" is one rendered incapable of knowing or controlling his or her conduct, or incapable of resisting an act due to the influence of any drug, narcotic, anesthetic, or

other substance administered to that person without his or her consent.

(d) A "physically helpless person" is one who is unconscious or one who for any other reason is physically incapable of communicating an unwillingness to engage in an act.

**SEC. 97-3-99. Sexual battery; defense.**

A person is not guilty of any offense under Sections 97-3-95 through 97-3-103 if the alleged victim is that person's legal spouse and at the time of the alleged offense such person and the alleged victim are not separated and living apart; provided, however, that the legal spouse of the alleged victim may be found guilty of sexual battery if the legal spouse engaged in forcible sexual penetration without the consent of the alleged victim.

**SEC. 97-3-101. Sexual battery; penalty.**

(1) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(a), (b) or 2 shall be imprisoned in the State Penitentiary for a period of not more than thirty (30) years, and for a second or subsequent such offense shall be imprisoned in the penitentiary for not more than forty (40) years.

(2)(a) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(c) who is at least eighteen (18) but under twenty-one (21) years of age shall be imprisoned for not more than five (5) years in the State Penitentiary or fined not more than Five Thousand Dollars (\$5,000.00), or both;

(b) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(c) who is twenty-one (21) years of age or older shall be imprisoned not more than thirty (30) years in the State Penitentiary or fined not more than Ten Thousand Dollars (\$10,000.00), or both, for the first offense, and not more than forty (40) years in the State Penitentiary for each subsequent offense.

(3) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(d) who is eighteen (18) years of age or older shall be imprisoned for life in the State Penitentiary or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years.

(4) Every person who shall be convicted of sexual battery who is thirteen (13) years of age or older but under eighteen (18) years of age shall be sentenced to such imprisonment, fine or other sentence as the court, in its discretion, may determine.

**SEC. 97-3-103. Sexual battery; relationship with other criminal statutes.**

Sections 97-3-95 through 97-3-103 shall not be held to repeal, modify or amend any other criminal statute of this state.

**SEC. 97-3-104. Sexual penetration of incarcerated offenders by law enforcement**

## **officers or employees; offense; punishment.**

It is unlawful for any jailer, guard, employee of the Department of Corrections, sheriff, constable, marshal or other officer to engage in any sexual penetration, as defined in Section 97-3-97, or have carnal knowledge of any offender, with the offender's consent, who is incarcerated at any jail or any state, county or private correctional facility or who is serving on probation, parole, earned-release supervision, post-release supervision, earned probation or any other form of correctional supervision. Any person who violates this section is guilty of a felony and upon conviction shall be fined not more than Five Thousand Dollars (\$5,000.00) or imprisoned for a term not to exceed five (5) years, or both.

## **SEC. 97-3-105. Hazing; initiation into organization.**

(1) A person is guilty of hazing in the first degree when, in the course of another person's initiation into or affiliation with any organization, he intentionally or recklessly engages in conduct which creates a substantial risk of physical injury to such other person or a third person and thereby causes such injury.

(2) Any person violating the provisions of subsection (1) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Two Thousand Dollars (\$2,000.00) or imprisonment in the county jail for not more than six (6) months, or both.

(3) A person is guilty of hazing in the second degree when, in the course of another person's initiation into or affiliation with any organization, he intentionally or recklessly engages in conduct which creates a substantial risk of physical injury to such other person or a third person.

(4) Any person violating the provisions of subsection (3) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00).

(5) The provisions of this section shall be in addition to other criminal laws, and actions taken pursuant to this section shall not bar prosecutions for other violations of criminal law.

## **SEC. 97-3-107. Stalking.**

(1) Any person who willfully, maliciously and repeatedly follows or harasses another person, or who makes a credible threat, with the intent to place that person in reasonable fear of death or great bodily injury is guilty of the crime of stalking, and upon conviction thereof shall be punished by imprisonment in the county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment. A violation of this subsection by a person required to register as a sex offender for a sex offense listed in Section 45-33-23, in this state or another jurisdiction, whether state, federal or military, where the victim is under the age of eighteen (18) years, is a felony subject to a fine of Two Thousand Dollars (\$2,000.00) and

imprisonment for two (2) years in the State Penitentiary.

(2) Any person who violates subsection (1) of this section when there is a valid temporary restraining order, ex parte protective order, protective order after hearing, court approved consent agreement, or an injunction issued by a municipal, justice, county, circuit or chancery court, federal or tribal court or by a foreign court of competent jurisdiction in effect prohibiting the behavior described in subsection (1) of this section against the same party, shall be punishable by imprisonment in the county jail for not more than one (1) year and by a fine of not more than One Thousand Five Hundred Dollars (\$1,500.00). A violation of this subsection by a person required to register as a sex offender for a sex offense listed in Section 45-33-23, in this state or another jurisdiction, whether state, federal or military, where the victim is under the age of eighteen (18) years, is a felony subject to a fine of Three Thousand Dollars (\$3,000.00) and imprisonment for two (2) years in the State Penitentiary.

(3) A second or subsequent conviction occurring within seven (7) years of a prior conviction under subsection (1) of this section against the same victim, and involving an act of violence or "a credible threat" of violence as defined in subsection (5) of this section, shall be punishable by imprisonment for not more than three (3) years and by a fine of not more than Two Thousand Dollars (\$2,000.00). A second or subsequent conviction under this subsection by a person required to register as a sex offender for a sex offense listed in Section 45-33-23, in this state or another jurisdiction, whether state, federal or military, where the victim is under the age of eighteen (18) years, is punishable by imprisonment for six (6) years in the State Penitentiary and a fine of Four Thousand Dollars (\$4,000.00).

(4) For the purposes of this section, "harasses" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(5) For the purposes of this section, "a credible threat" means a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety.

### **SEC. 97-3-109. Drive-by shooting; drive-by bombing.**

(1) A person is guilty of a drive-by shooting if he attempts, other than for lawful self-defense, to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life by discharging a firearm while in or on a vehicle.

(2) A person is guilty of a drive-by bombing if he attempts to cause serious bodily injury to another or attempts to cause damage to the property of another, or causes such injury or damage

purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life by throwing or ejecting any bomb or explosive device from a vehicle while in or on the vehicle.

(3) A person convicted of violating subsection (1) or (2) of this section shall be punished by commitment to the custody of the State Department of Corrections for a term not to exceed thirty (30) years and a fine not to exceed Ten Thousand Dollars (\$10,000.00). A drive-by shooting or a drive-by bombing shall be a felony.

(4) This section shall not be construed to restrict the power to apprehend or arrest a person committing an offense if such apprehension or arrest is otherwise lawful.

### **SEC. 97-3-110. Seizure and forfeiture of firearms unlawfully possessed by juveniles and of motor vehicles used in drive-by shootings or bombings.**

(1) Whenever a person under eighteen (18) years of age is unlawfully in possession of a firearm, the firearm shall be seized and, after an adjudication of delinquency or conviction, shall be subject to forfeiture.

(2) Whenever a person under eighteen (18) years of age unlawfully discharges a firearm in or throws or ejects a bomb from a motor vehicle in violation of Section 97-3-109, Mississippi Code of 1972, the motor vehicle shall be subject to seizure and, after an adjudication of delinquency or conviction, be subject to forfeiture pursuant to the procedures set forth in Section 97-3-111, Mississippi Code of 1972.

### **SEC. 97-3-111. Forfeiture of vehicles used in drive-by shootings or bombings.**

(1) All vehicles which are used in any manner to facilitate the discharging of a firearm or the throwing or ejection of a bomb or explosive device in violation of Section 97-3-109 shall be subject to forfeiture, however:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Sections 97-3-109 and 97-3-111;

(b) No conveyance is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent; if the confiscating authority has reason to believe that the conveyance is a leased or rented conveyance, then the confiscating authority shall notify the owner of the conveyance within five (5) days of the confiscation;

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the



interest of the secured party if he neither had knowledge of nor consented to the act or omission.

(2) Except as otherwise provided in subsection (16), when any property is seized pursuant to subsection (1), proceedings under this section shall be instituted promptly.

(3) A petition for forfeiture shall be filed promptly in the name of the State of Mississippi, the county or the municipality and may be filed in the county in which the seizure is made, the county in which the criminal prosecution is brought or the county in which the owner of the seized property is found. Forfeiture proceedings may be brought in (a) the circuit court, or (b) the county court if a county court exists in the county and the value of the seized property is within the jurisdictional limits of the county court as set forth in Section 9-9-21, Mississippi Code of 1972, or (c) the youth court in the case of a person adjudicated delinquent where the underlying basis for the delinquency is a violation of Section 97-3-109, Mississippi Code of 1972. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(a) The owner of the property, if address is known;

(b) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the local law enforcement agency by making a good faith effort to ascertain the identity of such secured party as described in subsections (4), (5), (6), (7) and (8) of this section;

(c) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the local law enforcement agency has actual knowledge; and

(d) Any person in possession of property subject to forfeiture at the time that it was seized.

(4) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the local law enforcement agency shall make inquiry of the State Tax Commission as to what the records of the State Tax Commission show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(5) If the property is a motor vehicle and is not titled in the State of Mississippi, then the local law enforcement agency shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the local law enforcement agency shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device which affects the vehicle.

(6) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest or other interest which affects the property, the local law

enforcement agency shall cause any record owner and also any lienholder, secured party or other person who holds an interest in the property in the nature of a security interest which affects the property to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

(7) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, the local law enforcement agency shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of \_\_\_\_\_", filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, Mississippi Code of 1972, and shall be served as provided in Section 11-33-37, Mississippi Code of 1972, for publication of notice for attachments at law.

(8) No proceedings instituted pursuant to the provisions of this section shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by subsections (4) through (5) of this section shall be introduced into evidence at the hearing.

(9) Except as otherwise provided in subsection (16), an owner of property that has been seized pursuant to subsection (1) shall file an answer within thirty (30) days after the completion of service of process. If an answer is not filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the local law enforcement agency. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court, if court would not be in progress within thirty (30) days after filing the answer. Provided, however, that upon request by the local law enforcement agency or the owner of the property, the court may postpone said forfeiture hearing to a date past the time any criminal action is pending against said owner.

(10) If the owner of the property has filed an answer denying that the property is subject to forfeiture, then the burden is on the petitioner to prove that the property is subject to forfeiture. However, if an answer has not been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture. The standard of proof placed upon the petitioner in regard to property forfeited under the provisions of Sections 97-3-109 and 97-3-111 shall be by a preponderance of the evidence.

(11) At the hearing any claimant of any right, title or interest in the property may prove his lien, encumbrance, security interest or other interest in the nature of a security interest to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(12) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property to the local law enforcement agency. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party or other person holding an interest in the property in

the nature of a security interest is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited to the local law enforcement agency.

(13) All other property which is forfeited under Section 97-3-111 shall be liquidated and, after deduction of court costs and the expenses of liquidation, the proceeds shall be divided and deposited as follows:

(a) In the event only one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, fifty percent (50%) of the proceeds shall be forwarded to the State Treasurer and deposited in the General Fund of the state and fifty percent (50%) of the proceeds shall be deposited and credited to the budget of the participating law enforcement agency.

(b) In the event more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, fifty percent (50%) of the proceeds shall be deposited and credited to the budget of the law enforcement agency whose officers initiated the criminal case and fifty percent (50%) shall be divided equitably between or among the other participating law enforcement agencies, and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the other participating law enforcement agencies cannot agree on the division of their fifty percent (50%), a petition shall be filed by any one (1) of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

(14) All other property that has been forfeited shall, except as otherwise provided, be sold at a public auction for cash by the chief law enforcement officer of the initiating law enforcement agency, or his designee, to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation in the jurisdiction in which said law enforcement agency is located. Such notices shall contain a description of the property to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the property present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be disposed of as follows:

(a) To any bona fide lienholder, secured party or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(b) The balance, if any, remaining after deduction of all storage, court costs and expenses of liquidation shall be divided, forwarded and deposited in the same manner set out in subsection (13) of this section.

(15) The State Tax Commission shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

(16) When any property the value of which does not exceed Five Thousand Dollars (\$5,000.00)

is seized pursuant to subsection (1), the property may be forfeited by the administrative forfeiture procedures provided for in subsections (16) through (22).

(17) The attorney for the seizing law enforcement agency shall provide notice of intention to forfeit the seized property administratively, by certified mail, return receipt requested, to all persons who are required to be notified.

(18) In the event that notice of intention to forfeit the seized property administratively cannot be given as provided in subsection (17) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for the seizing law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks.

(19) Notice pursuant to subsections (17) and (18) of this section shall include the following information:

- (a) A description of the property;
- (b) The approximate value of the property;
- (c) The date and place of the seizure;
- (d) The connection between the property and the violation of Section 97-3-109;
- (e) The instructions for filing a request for judicial review; and

(f) A statement that the property will be forfeited to the seizing law enforcement agency if a request for judicial review is not timely filed.

(20) Persons claiming an interest in the seized property may initiate judicial review of the seizure and proposed forfeiture by filing a request for judicial review with the attorney for the seizing law enforcement agency, within thirty (30) days after receipt of the certified letter or within thirty (30) days after the first publication of notice, whichever is applicable.

(21) If no request for judicial review is timely filed, the attorney for the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject property and the forfeited property shall be used, distributed or disposed of in accordance with the provisions of this section.

(22) Upon receipt of a timely request for judicial review, the attorney for the seizing law enforcement agency shall promptly file a petition for forfeiture and proceed as provided in subsections (3) through (15).

**SEC. 97-3-113. Mississippi Carjacking Act; short title.**

Sections 97-3-113, 97-3-115 and 97-3-117 shall be known and may be cited as the "Mississippi Carjacking Act of 1993."

**SEC. 97-3-115. Mississippi Carjacking Act; definitions.**

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Carjacking" means taking of a motor vehicle from another person's immediate actual possession knowingly or recklessly by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, or attempting to do so, or by any other means.

(b) "Motor vehicle" includes every device in, upon or by which any person or property is or may be transported or drawn upon a highway, which is self-propelled.

**SEC. 97-3-117. Mississippi Carjacking Act; what constitutes offense of carjacking; attempted carjacking; armed carjacking; penalties.**

(1) Whoever shall knowingly or recklessly by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, or attempting to do so, or by any other means shall take a motor vehicle from another person's immediate actual possession shall be guilty of carjacking.

(a) A person who is convicted of carjacking shall be fined not more than Five Thousand Dollars (\$5,000.00) and be committed to the custody of the State Department of Corrections for not more than fifteen (15) years.

(b) A person who is convicted of attempted carjacking shall receive the same punishment as the person who is convicted of carjacking.

(2) Whoever commits the offense of carjacking while armed with or having readily available any pistol or other firearm or imitation thereof or other dangerous or deadly weapon, including a sawed-off shotgun, shotgun, machine gun, rifle, dirk, bowie knife, butcher knife, switchblade, razor, blackjack, billy, or metallic or other false knuckles, or any object capable of inflicting death or serious bodily harm, shall be guilty of armed carjacking.

(a) Any person who is convicted of armed carjacking shall be fined not more than Ten Thousand Dollars (\$10,000.00) and be committed to the custody of the State Department of Corrections for not more than thirty (30) years.

(b) Any person who is convicted of attempted armed carjacking shall receive the same punishment as the person who is convicted of armed carjacking.

(3) Any person convicted of a second or subsequent offense under this section shall be fined an amount up to twice that otherwise authorized and shall be imprisoned for a term up to twice the term otherwise authorized.

## **OFFENSES AFFECTING CHILDREN**

### **SEC. 97-5-1. Abandonment of child under age six.**

If the father or mother of any child under the age of six years, or any other person having the lawful custody of such child, or to whom such child shall have been confided, shall expose such child in any highway, street, field, house, outhouse, or elsewhere, with intent wholly to abandon it, such person shall, upon conviction, be punished by imprisonment in the penitentiary not more than seven years, or in the county jail not more than one year.

### **SEC. 97-5-3. Desertion or non-support of child under age sixteen.**

Any parent who shall desert or wilfully neglect or refuse to provide for the support and maintenance of his or her child or children, including the natural parent of an illegitimate child or children wherein paternity has been established by law or when the natural parent has acknowledged paternity in writing, while said child or children are under the age of eighteen (18) years shall be guilty of a felony and, on conviction thereof, shall be punished for a first offense by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or by commitment to the custody of the Department of Corrections not more than five (5) years, or both; and for a second or subsequent offense, by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by commitment to the custody of the Department of Corrections not less than two (2) years nor more than five (5) years, or both, in the discretion of the court.

### **SEC. 97-5-5. Enticing child for concealment, prostitution or marriage.**

Every person who shall maliciously, wilfully, or fraudulently lead, take, carry away, decoy or entice away, any child under the age of fourteen years, with intent to detain or conceal such child from its parents, guardian, or other person having lawful charge of such child, or for the purpose of prostitution, concubinage, or marriage, shall, on conviction, be imprisoned in the penitentiary not exceeding ten years, or imprisoned in the county jail not more than one year, or fined not more than one thousand dollars, or both.

### **SEC. 97-5-7. Enticing child for employment.**

Any person who shall persuade, entice or decoy away from its father or mother with whom it resides any child under the age of eighteen (18) years, being unmarried, for the purpose of employing such child without the consent of its parents, or one of them, shall upon conviction be punished by a fine of not more than twenty dollars (\$20.00) or imprisoned in the county jail not more than thirty (30) days, or both.

**SEC. 97-5-9. Iceboxes, etc.; abandonment without removing latch prohibited.**

If any person shall have on his premises, or shall suffer to be or remain upon his premises, any abandoned chest, icebox, refrigerator, or any other box-type container not in active use, any door to which has a latch or lock which automatically fastens upon the closing of such container's door, and which cannot be readily opened from the inside, he shall remove the latch or lock, or otherwise render it inoperative, and on failure to so do shall be guilty of a misdemeanor.

**SEC. 97-5-11. Pool room or billiard hall; certain minors prohibited from entering.**

No person under the age of eighteen (18) years shall be allowed to enter and remain in any poolroom or billiard hall except that municipalities shall have the discretion to establish a lower minimum age. However, no person under the age of eighteen (18) years shall be allowed to enter and remain in any poolroom or billiard hall in which beer is sold or consumed. No owner or manager of any poolroom or billiard hall, and no agent or employee of any such owner or manager, shall permit or allow any person under the age of eighteen (18) years to enter and remain in any such poolroom or billiard hall except when a municipality has established a lower minimum age, and provided that in such municipality beer is neither sold nor consumed in such poolroom or billiard hall. Any manager or owner of any poolroom or billiard hall, and any agent or employee of such owner or manager, shall for each offense, upon conviction, be fined not more than one hundred dollars (\$100.00).

For the purposes of this section, a poolroom or billiard hall shall not be deemed to include a place of amusement, either for profit or otherwise, wherein the operation of pool and billiard tables is not the main attraction held out to the public, or the primary amusement engaged in by the participants and wherein less than fifteen percent (15%) of the gross revenue derived directly from the operation of such amusement or recreation center within the same room or immediately connecting and adjacent rooms shall be derived directly or indirectly from the operation of such pool or billiard tables and further, all nonprofit corporations, associations and organizations, and educational and religious institutions, shall not be considered as operating poolrooms or billiard halls for the purposes of this section.

**SEC. 97-5-23. Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person.**

(1) Any person above the age of eighteen (18) years, who, for the purpose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch or rub with hands or any part of his or her body or any member thereof, any child under the age of sixteen (16) years, with or without the child's consent, or a mentally defective, mentally incapacitated or physically helpless

person as defined in Section 97-3-97, shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be committed to the custody of the State Department of Corrections not less than two (2) years nor more than fifteen (15) years, or be punished by both such fine and imprisonment, at the discretion of the court.

(2) Any person above the age of eighteen (18) years, who, for the purpose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch or rub with hands or any part of his or her body or any member thereof, any child younger than himself or herself and under the age of eighteen (18) years who is not such person's spouse, with or without the child's consent, when the person occupies a position of trust or authority over the child shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be committed to the custody of the State Department of Corrections not less than two (2) years nor more than fifteen (15) years, or be punished by both such fine and imprisonment, at the discretion of the court. A person in a position of trust or authority over a child includes without limitation a child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach.

(3) Upon a second conviction for an offense under this section, the person so convicted shall be punished by commitment to the State Department of Corrections for a term not to exceed twenty (20) years, however, upon conviction and sentencing, the offender shall serve at least one-half (1/2) of the sentence so imposed.

#### **SEC. 97-5-24. Sexual involvement of school employee with student; duty to report.**

If any person eighteen (18) years or older who is employed by any public or private school district in this state is accused of fondling or having any type of sexual involvement with any child under the age of eighteen (18) years who is enrolled in such school, the principal of such school and the superintendent of such school district shall timely notify the district attorney with jurisdiction where the school is located of such accusation, provided that such accusation is reported to the principal and to the school superintendent and that there is a reasonable basis to believe that such accusation is true.

#### **SEC. 97-5-25. [Repealed, effective February 1, 1998] Tobacco; sale or gift to child prohibited.**

If any person sells, barter, delivers or gives any cigar or cigars, cigarette or cigarettes, smoking tobacco, or snuff to any person under the age of eighteen (18) years, he shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than Twenty Dollars (\$20.00) nor more than One Hundred Dollars (\$100.00).

#### **SEC. 97-5-27. Dissemination of sexually oriented material to persons under eighteen years of age.**



(1) Any person who intentionally and knowingly disseminates sexually oriented material to any person under eighteen (18) years of age shall be guilty of a misdemeanor and upon conviction shall be fined for each offense not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000.00) or be imprisoned for not more than one (1) year in the county jail, or be punished by both such fine and imprisonment. A person disseminates sexually oriented material within the meaning of this section if he:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide, any sexually oriented writing, picture, record or other representation or embodiment that is sexually oriented; or

(b) Presents or directs a sexually oriented play, dance or other performance or participates directly in that portion thereof which makes it sexually oriented; or

(c) Exhibits, presents, rents, sells, delivers or provides, or offers or agrees to exhibit, present, rent or to provide any sexually oriented still or motion picture, film, filmstrip or projection slide, or sound recording, sound tape or sound track or any matter or material of whatever form which is a representation, embodiment, performance or publication that is sexually oriented.

(2) For purposes of this section, any material is sexually oriented if the material contains representations or descriptions, actual or simulated, of masturbation, sodomy, excretory functions, lewd exhibition of the genitals or female breasts, sadomasochistic abuse (for the purpose of sexual stimulation or gratification), homosexuality, lesbianism, bestiality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification or perversion.

(3) (a) A person is guilty of computer luring when:

(i) Knowing the character and content of any communication of sexually oriented material, he intentionally uses any computer communication system allowing the input, output, examination or transfer of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person under the age of eighteen (18); and

(ii) By means of such communication he importunes, invites or induces a person under the age of eighteen (18) years to engage in sexual intercourse, deviant sexual intercourse or sexual contact with him, or to engage in a sexual performance, obscene sexual performance or sexual conduct for his benefit.

(b) A person who engages in the conduct proscribed by this subsection (3) is presumed to do so with knowledge of the character and content of the material.

(c) In any prosecution for computer luring, it shall be a defense that:

(i) The defendant made a reasonable effort to ascertain the true age of the minor and was unable to do so as a result of actions taken by the minor; or

(ii) The defendant has taken, in good faith, reasonable, effective and appropriate actions under the circumstances to restrict or prevent access by minors to the materials prohibited, which may involve any appropriate measures to restrict minors from access to such communications, including any method which is feasible under available technology; or

(iii) The defendant has restricted access to such materials by requiring use of a verified credit card, debit account, adult access code or adult personal identification number; or

(iv) The defendant has in good faith established a mechanism such that the labeling, segregation or other mechanism enables such material to be automatically blocked or screened by software or other capabilities reasonably available to responsible adults wishing to effect such blocking or screening and the defendant has not otherwise solicited minors not subject to such screening or blocking capabilities to access that material or to circumvent any such screening or blocking.

(d) In any prosecution for computer luring:

(i) No person shall be held to have violated this subsection (3) solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software or other related capabilities that are incidental to providing such access or connection that do not include the creation of the content of the communication.

(ii) No employer shall be held liable for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency or the employer, having knowledge of such conduct, authorizes or ratifies such conduct, or recklessly disregards such conduct.

(iii) The limitations provided by this paragraph (d) shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate such provisions, or who knowingly advertises the availability of such communications, nor to a person who provides access or connection to a facility, system or network engaged in the violation of such provisions that is owned or controlled by such person.

(e) Computer luring is a felony, and any person convicted thereof shall be punished by commitment to the custody of the Department of Corrections for a term not to exceed three (3) years and by a fine not to exceed Ten Thousand Dollars (\$10,000.00).

### **SEC. 97-5-29. Public display of sexually oriented materials.**

(1) Any person who intentionally and knowingly places sexually oriented materials upon public display, or who knowingly and intentionally fails to take prompt action to remove such a display from property in his possession after learning of its existence shall be guilty of a misdemeanor and upon conviction shall be fined for each offense not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000.00) or be imprisoned for not more than one (1) year in the county jail, or be punished by both such fine and imprisonment.

(2) For purposes of this section any material is sexually oriented if the material consists of representations or descriptions of actual or simulated masturbation, sodomy, excretory functions, lewd exhibition of the genitals or female breasts, sadomasochistic abuse (for the purpose of sexual stimulation or gratification), homosexuality, lesbianism, bestiality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification or perversion.

(3) A person places sexually oriented material upon public display within the meaning of this section if he places the material on or in a billboard, viewing screen, theater stage or marquee, newsstand, display rack, window, showcase, display case or other similar place, including a viewing screen in a vehicle, so that sexually oriented material is easily visible from a public street, public road or sidewalk or from areas of public businesses in which minors are normally business invitees.

### **SEC. 97-5-31. Exploitation of children; definitions.**

As used in Sections 97-5-33 through 97-5-37, the following words and phrases shall have the meanings given to them in this section:

- (a) "Child" means any individual who has not attained the age of eighteen (18) years.
- (b) "Sexually explicit conduct" means actual or simulated:
  - (i) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
  - (ii) Bestiality;
  - (iii) Masturbation;
  - (iv) Sadistic or masochistic abuse;
  - (v) Lascivious exhibition of the genitals or pubic area of any person; or
  - (vi) Fondling or other erotic touching of the genitals, pubic area, buttocks, anus or breast.
- (c) "Producing" means producing, directing, manufacturing, issuing, publishing or advertising.
- (d) "Visual depiction" includes without limitation developed or undeveloped film and video tape or other visual unaltered reproductions by computer.
- (e) "Computer" has the meaning given in Title 18, United States Code, Section 1030.
- (f) "Simulated" means any depicting of the genitals or rectal areas that gives the appearance of sexual conduct or incipient sexual conduct.

### **SEC. 97-5-33. Exploitation of children; prohibitions.**

(1) No person shall, by any means including computer, cause, solicit or knowingly permit any child to engage in sexually explicit conduct or in the simulation of sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

(2) No person shall, by any means including computer, photograph, film, video tape or otherwise depict or record a child engaging in sexually explicit conduct or in the simulation of sexually explicit conduct.

(3) No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(4) No person shall, by any means including computer, receive with intent to distribute, distribute for sale, sell or attempt to sell in any manner any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(5) No person shall, by any means including computer, possess any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(6) No person shall, by any means including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce, or order a child to meet with the defendant or any other person for the purpose of engaging in sexually explicit conduct.

(7) No person shall by any means, including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce or order a child to produce any visual depiction of adult sexual conduct or any sexually explicit conduct.

(8) The fact that an undercover operative or law enforcement officer posed as a child or was involved in any other manner in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

(9) For purposes of determining jurisdiction, the offense is committed in this state if all or part of the conduct described in this section occurs in the State of Mississippi or if the transmission that constitutes the offense either originates in this state or is received in this state.

### **SEC. 97-5-35. Exploitation of children; penalties.**

Any person who violates any provision of Section 97-5-33 shall be guilty of a felony and upon conviction shall be fined not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00) and shall be imprisoned for not less than five (5) years nor more than forty (40) years. Any person convicted of a second or subsequent violation of Section 97-5-33 shall be fined not less than One Hundred Thousand Dollars (\$100,000.00) nor more than One

Million Dollars (\$1,000,000.00) and shall be confined in the custody of the Department of Corrections for life or such lesser term as the court may determine, but not less than twenty (20) years.

### **SEC. 97-5-37. Exploitation of children; other remedies.**

The provisions of sections 97-5-31 to 97-5-37 are supplemental to any statute relating to child abuse or neglect, obscenity, enticement of children or contributing to delinquency of a minor and acquittal or conviction pursuant to any other statute shall not be a bar to prosecution under sections 97-5-31 to 97-5-37. Acquittal or conviction under sections 97-5-31 to 97-5-37 shall not be a bar to prosecution and conviction under other statutes defining crimes or misdemeanors, nor to any civil or administrative remedy otherwise available.

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

(1) (a) Except as otherwise provided in this section, any parent, guardian or other person who willfully commits any act or omits the performance of any duty, which act or omission contributes to or tends to contribute to the neglect or delinquency of any child or which act or omission results in the abuse of any child, as defined in Section 43-21-105(m) of the Youth Court Law, or who knowingly aids any child in escaping or absenting himself from the guardianship or custody of any person, agency or institution, or knowingly harbors or conceals, or aids in harboring or concealing, any child who has absented himself without permission from the guardianship or custody of any person, agency or institution to which the child shall have been committed by the youth court shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment not to exceed one (1) year in jail, or by both such fine and imprisonment.

(b) If the child's deprivation of necessary food, clothing, shelter, health care or supervision appropriate to the child's age results in substantial harm to the child's physical, mental or emotional health, the person may be sentenced to imprisonment for not more than five (5) years or to payment of a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

(c) A parent, legal guardian or other person who knowingly permits the continuing physical or sexual abuse of a child is guilty of neglect of a child and may be sentenced to imprisonment for not more than ten (10) years or to payment of a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

(2) (a) Any person who shall intentionally (i) burn any child, (ii) torture any child or, (iii) 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 as to cause serious bodily harm, shall be guilty of felonious abuse of a child and, upon conviction, shall be sentenced to imprisonment in the custody of the Department of Corrections for life or such lesser term of imprisonment as the court may determine, but not less than ten (10) years. For any second or subsequent conviction under this subsection, the person shall be sentenced to imprisonment for life.

(b) (i) A parent, legal guardian or caretaker who endangers a child's person or health by knowingly

causing or permitting the child to be present where any person is selling, manufacturing or possessing immediate precursors or chemical substances with intent to manufacture, sell or possess a controlled substance as prohibited under Section 41-29-139 or 41-29-313, is guilty of child endangerment and may be sentenced to imprisonment for not more than ten (10) years or to payment of a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

(ii) If the endangerment results in substantial harm to the child's physical, mental or emotional health, the person may be sentenced to imprisonment for not more than twenty (20) years or to payment of a fine of not more than Twenty Thousand Dollars (\$20,000.00), or both.

(3) Nothing contained in this section shall prevent proceedings against the parent, guardian or other person under any statute of this state or any municipal ordinance defining any act as a crime or misdemeanor. Nothing in the provisions of this section shall preclude any person from having a right to trial by jury when charged with having violated the provisions of this section.

(4) After consultation with the Department of Human Services, a regional mental health center or an appropriate professional person, a judge may suspend imposition or execution of a sentence provided in subsections (1) and (2) of this section and in lieu thereof require treatment over a specified period of time at any approved public or private treatment facility. A person may be eligible for treatment in lieu of criminal penalties no more than one (1) time.

(5) In any proceeding resulting from a report made pursuant to Section 43-21-353 of the Youth Court Law, the testimony of the physician making the report regarding the child's injuries or condition or cause thereof shall not be excluded on the ground that the physician's testimony violates the physician-patient privilege or similar privilege or rule against disclosure. The physician's report shall not be considered as evidence unless introduced as an exhibit to his testimony.

(6) Any criminal prosecution arising from a violation of this section shall be tried in the circuit, county, justice or municipal court having jurisdiction; provided, however, that nothing herein shall abridge or dilute the contempt powers of the youth court.

#### **SEC. 97-5-40. Condoning child abuse.**

(1) Any parent, guardian, custodian, stepparent or any other person who lives in the household with a child, who knowingly condones an incident of felonious child abuse of that child, which consists of one or more violations of (a) subsection (2) of Section 97-5-39 or (b) felonious sexual battery of that child, which consists of one or more violations of Section 97-3-95 shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or both.

(2) A person shall not be considered to have condoned child abuse merely because such person does not report an act of child abuse.

(3) The provisions of this section shall be in addition to any other criminal law.

#### **SEC. 97-5-41. Carnal knowledge of step or adopted child; carnal knowledge of**

**child by cohabitating partner.**

(1) Any person who shall have carnal knowledge of his or her unmarried stepchild or adopted child younger than himself or herself and over fourteen (14) and under eighteen (18) years of age, upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding ten (10) years.

(2) Any person who shall have carnal knowledge of an unmarried child younger than himself or herself and over fourteen (14) and under eighteen (18) years of age, with whose parent he or she is cohabiting or living together as husband and wife, upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding ten (10) years.

**SEC. 97-5-43. [Repealed, effective February 1, 1998] Posting of sign declaring prohibition sale of tobacco products to minors; penalties for failure to post sign.**

(1) From and after July 1, 1994, every person who sells tobacco products at retail shall post conspicuously and keep so posted at the place of business a sign, no smaller than ninety-four (94) square inches, so as to ensure that it is likely to be read at each point of sale, stating the following: "STATE LAW STRICTLY PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 YEARS. PROOF OF AGE MAY BE REQUIRED."

(2) A person who violates subsection (1) of this section commits a misdemeanor and upon conviction shall be punished by a fine of Twenty-five Dollars (\$25.00) for the first offense within a two-year period and Seventy-five Dollars (\$75.00) for each succeeding offense within a two-year period. No notice regarding tobacco products, other than the notice required by this section, shall be required to be posted or maintained in any store that sells tobacco products at retail.

**SEC. 97-5-45. [Repealed, effective February 1, 1998] Notice to employees regarding prohibition of sale of tobacco products to minors; signing of agreement to that effect; penalties for violations.**

(1) Every person engaged in the business of selling tobacco products at retail shall notify each individual employed by that person as a retail sales clerk that state law (a) prohibits the sale or distribution of tobacco products, including samples, to any person under eighteen (18) years of age and the purchase or receipt of tobacco products by any person under eighteen (18) years of age, and (b) requires that proof of age be demanded from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under the age of eighteen (18) years. Every person employed by a person engaged in the business of selling tobacco products at retail shall sign an agreement with his employer in substantially the following form:

"I understand that state law prohibits the sale or distribution of tobacco products to persons under the age of eighteen (18) years and out-of-package sales, and requires that proof of age be demanded from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that

the prospective purchaser or recipient may be under the age of eighteen (18) years. I promise, as a condition of my employment, to observe this law."

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than Twenty Dollars (\$20.00) nor more than One Hundred Dollars (\$100.00).

**SEC. 97-5-47. [Repealed, effective February 1, 1998] Sale of tobacco products through vending machines; requirements; penalties for violations.**

(1) It shall be unlawful for any person to sell tobacco products through a vending machine unless the vending machine is located:

(a) In areas of factories, businesses, offices or other places that are not open to the public;

(b) In places that are open to the public but to which persons under the age of eighteen (18) years are not admitted;

(c) In places where alcoholic beverages are sold for consumption on the premises, but only if the vending machine (i) is under the continuous supervision of the owner or lessee of the premises or an employee thereof, and (ii) is inaccessible to the public when the establishment is closed;

(d) In any other retail establishment where the vending machine is constantly in the line of sight of the owner or operator of such business or one (1) of his or her employees.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than Twenty Dollars (\$20.00) nor more than One Hundred Dollars (\$100.00).