

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

IN THE MATTER OF:
AMENDMENTS TO THE MISSISSIPPI UNIFORM RULES OF YOUTH COURT
PRACTICE

MISC. NO. 89-R-99033-
SCT

PETITION TO AMEND
THE MISSISSIPPI UNIFORM RULES OF YOUTH COURT PRACTICE

COMES NOW the Mississippi Council of Youth Court Judges (Council), acting pursuant to section 43-21-125 of the Mississippi Code, and petitions the Mississippi Supreme Court to approve amendments of the Mississippi Uniform Rules of Youth Court Practice in order to provide conformity with legislative changes, to improve and clarify procedures of existing rules for the best interests of the child and the interest of justice, and to correct any errata. On September 16, 2010, this Council established a Youth Court Rules Committee (Committee) to study and make recommendations to the Council, whenever advisable, on revisions to the Mississippi Uniform Rules of Youth Court Practice. On May 21, 2021, the Council accepted by acclamation the Committee's latest recommended amendments to the Mississippi Uniform Rules of Youth Court Practice, as set forth in Exhibit A of the Petition, for adoption by the Mississippi Supreme Court.

WHEREFORE, the Mississippi Council of Youth Court Judges respectfully recommends and requests that the Mississippi Supreme Court amend the Mississippi Uniform Rules of Youth Court Practice by adopting the suggested revisions set forth in Exhibit A.

Submitted this the 28th day of MAY, 2021.

MISSISSIPPI COUNCIL OF YOUTH COURT JUDGES

BY: J. H. Broome

Judge Thomas H. Broome
Chair of the Mississippi Council of Youth Court Judges

FILED

MAY 28 2021

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

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MOTION# 2021-1461

EXHIBIT A OF PETITION MISC. NO. 89-R-99033-SET

The Mississippi Council of Youth Court Judges recommends that the Mississippi Supreme Court adopt the following amendments to the Uniform Rules of Youth Court Practice:

Comments & Procedures:

Retitle "Comments & Procedures" as "The Mississippi Council of Youth Court Judges' Advisory Notes" *WHEREVER FOUND WITHIN THE RULES.*

RULE 2:

Amend Rule 2 of the Uniform Rules of Youth Court Practice to read:

RULE 2 SCOPE OF RULES

(a) Proceedings subject to these rules. The following proceedings are subject to these rules:

- (1) any youth court proceeding;
- (2) any chancery court proceeding when hearing, pursuant to section 93-11-65 of the Mississippi Code, an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action;
- (3) any proceeding conducted by a referee appointed pursuant to section 43-21-111 of the Mississippi Code;
- (4) any proceeding conducted by a designee appointed pursuant to the Mississippi Youth Court Law when acting in a judicial capacity.

(b) Commencement of proceedings. Proceedings commence when a report or complaint of a child within the jurisdiction of the youth court requires an action by the youth court or by the chancery court or by a referee appointed pursuant to section 43-21-111 of the Mississippi Code or by a designee appointed pursuant to the Mississippi Youth Court Law when acting in a judicial capacity.

(c) All orders of the court to be in substantial compliance with these rules. Courts conducting any proceedings subject to these rules shall utilize the Mississippi Youth Court Information Delivery System (MYCIDS) pursuant to sections 9-21-9 and 43-21-351 of the Mississippi Code and comply with any applicable orders and policies of the Mississippi Supreme Court and the Mississippi Administrative Office of Courts.

~~Comments & Procedures~~ The Mississippi Council of Youth Court Judges' Advisory Notes

Rule 2(a)(1).

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ATTACHMENT:

MOTION# 2021-1461

The Mississippi Youth Court Law provides for the creation of youth courts throughout the state. See Miss. Code Ann. § 43-21-107 (2008); see also In re T.L.C., 566 So. 2d 691, 696 (Miss. 1990) (“In a sense our youth courts are neither superior, equal to, or inferior to other “inferior” courts - they are special courts due to the special nature of their function.”).

Rule 2(a)(2).

Chancery court may hear an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action when there has been no prior proceeding in youth court concerning that same child or, if there has been a prior proceeding in youth court concerning that same child, the youth court has terminated its jurisdiction of that case pursuant to the Mississippi Youth Court Law. See Miss. Code Ann. §§ 43-21-151(1)(c); 93-11-65(4) (2008); B.A.D. v. Finnegan, 82 So. 3d 608, 613 (Miss. 2012) (“Because the youth court had terminated its jurisdiction, there was no chance of conflicting orders and the like, as expressed in [K.M.K. v. S.L.M. ex rel. J.H., 775 So.2d 115 (Miss.2000)].”). All proceedings on the abuse and neglect charge shall be conducted in accordance with these rules.

Rule 2(a)(4).

“Designee” means any person that the judge appoints to perform a duty which the Mississippi Youth Court Law requires to be done by the judge or the judge’s designee. The judge may not appoint a person who is involved in law enforcement to be a designee. See Miss. Code Ann. § 43-21-105(c) (2008). A designee, when acting in a judicial capacity, is subject to these rules. See, e.g., Miss. Code Ann. §§ 43-21-301, -307, -311, and -451 (2008). Designees appointed by the youth court judge are subject to the Code of Judicial Conduct. See Miss. Code Ann. § 43-21-201(5) (2008).

Rule 2(c).

Miss. Code Ann. § 43-21-351(2) provides:

There shall be in each youth court of the state an intake officer who shall be responsible for the accurate and timely entering of all intake and case information into the Mississippi Youth Court Information Delivery System (MYCIDS) for the Division of Youth Services, truancy matters and [the child welfare agency]. It shall be the responsibility of the youth court judge or referee of each county to ensure that the intake officer is carrying out the responsibility of this section.

See also Admin. Order No. 2015-AD-00001 (Miss. May 26, 2015).

RULE 4:

Amend Rule 4 of the Uniform Rules of Youth Court Practice to read:

RULE 4 DEFINITIONS

All words and phrases shall have the meaning ascribed in the Mississippi Youth Court Law or, if the context clearly requires otherwise, the appropriate sections of the Mississippi Code applicable to the particular issue before the court, provided such are not inconsistent with these rules. Any words or phrases within these rules that do not have a meaning ascribed in the Mississippi Youth Court Law, or other appropriate sections of the Mississippi Code applicable to the particular issue before the court, shall be ascribed the meaning set forth in the Mississippi Council of Youth Court Judges' Advisory Notes of this rule.

Comments & Procedures The Mississippi Council of Youth Court Judges' Advisory Notes

Definitions of words and phrases for purposes of these Rules are as follows:

"Abused child" has the same meaning as in section 43-21-105(m) of the Mississippi Code. See, e.g., In re A.R., 579 So. 2d 1269, 1270 (Miss. 1991) (dealing with corporal punishment in disciplining a child);

"Adjudication hearing" means a hearing to determine whether a child is a delinquent child, a child in need of supervision, an abused child or a neglected child;

"Child" has the same meaning as in section 43-21-105(d) of the Mississippi Code;

"Child in need of special care" has the same meaning as in section 43-21-105(o) of the Mississippi Code;

"Child in need of supervision" has the same meaning as in section 43-21-105(k) of the Mississippi Code;

"Child protection proceedings" means a proceeding concerning a child reported abused, neglected or dependent;

"Child welfare agency" means the state Title IV-E agency, or division thereof, primarily responsible for the development, execution and provision of services for the health, safety, and well-being of a child who is the subject of child protection proceedings under the Mississippi Youth Court Law and these rules;

"Complaint" means a report of abuse or neglect pursuant to section 43-21-353 of the Mississippi Code;

"Concurrent plan" means a permanency plan that runs concurrent with another permanency plan;

"Court" means any youth court created under the Mississippi Youth Court Law or any chancery court when hearing, pursuant to section 93-11-65 of the Mississippi Code, a charge of abuse or neglect of a child that first arises in the course of a custody or maintenance action;

"Custodian" has the same meaning as in section 43-21-105(g) of the Mississippi Code;

"Custody" has the same meaning as in section 43-21-105(q) of the Mississippi Code;

"Delinquent act" has the same meaning as in section 43-21-105(j) of the Mississippi Code;

“Delinquency proceeding” means a court proceeding concerning a child charged with a delinquent act;

“Delinquent child” has the same meaning as in section 43-21-105(i) of the Mississippi Code;

“Dependent child” has the same meaning as in section 43-21-105(p) of the Mississippi Code;

“Designee” has the same meaning as in section 43-21-105(c) of the Mississippi Code;

“Detention” has the same meaning as in section 43-21-105(s) of the Mississippi Code;

“Disposition hearing” means a hearing to determine the appropriate disposition for an adjudicated child;

“Durable legal custody” has the same meaning as in section 43-21-105(y) of the Mississippi Code;

“Durable legal relative guardianship” has the same meaning as in section 43-21-105(dd) of the Mississippi Code;

“Educational neglect” means neglect in providing the child with an education as required by law;

“Fictive kin” has the same meaning as in section 43-21-105(ff) of the Mississippi Code;

“Guardian” has the same meaning as in section 43-21-105(f) of the Mississippi Code;

“Legal custodian” has the same meaning as in section 43-21-105(h) of the Mississippi Code;

“Legal custody” has the same meaning as in section 43-21-105(r) of the Mississippi Code;

“Neglected child” has the same meaning as in section 43-21-105(l) of the Mississippi Code;

“Out-of-home setting” has the same meaning as in section 43-21-105(x) of the Mississippi Code;

“Parent” has the same meaning as in section 43-21-105(e) of the Mississippi Code. Cf. 42 U.S.C. § 675(2) (2008) (“The term “parents” means biological or adoptive parents or legal guardians, as determined by applicable State law.”);

“Party” means the child, the child’s parent(s), the child’s guardian or custodian, and any other person whom the court deems necessary to designate a party. Additionally, the child welfare agency is a party to the case whenever it is serving as the legal and/or physical custodian of the child under the Mississippi Youth Court Law;

“Permanency hearing” means a hearing conducted pursuant to Rule 29 of these rules;

“Permanency plan” means a judicial plan to achieve, in compliance with federal requirements, a permanent living arrangement for a child taken into protective custody;

“Permanency review hearing” means a hearing conducted pursuant to Rule 31 of these rules;

“Person responsible for care or support” has the same meaning as in section 43-21-105(v) of the Mississippi Code;

“Placement” means placing the child in the care and custody of an appropriate person or organization;

"Reasonable efforts" has the same meaning as in section 43-21-105(gg) of the Mississippi Code;

"Records involving children" has the same meaning as in section 43-21-105(u) of the Mississippi Code;

"Report" means a report to intake of a matter within the jurisdiction of the youth court;

"Relative" has the same meaning as in section 43-21-105(ee) of the Mississippi Code;

"Residential child-caring agency" has the same meaning as in section 43-15-103(p) of the Mississippi Code;

"Sexual abuse" has the same meaning as in section 43-21-105(n) of the Mississippi Code;

"Shelter" has the same meaning as in section 43-21-105(t) of the Mississippi Code;

"Social history" means a history of significant events and relationships throughout the child's life;

"Status offense" has the same meaning as in section 43-21-105(z) of the Mississippi Code;

"Summons" means notice issued as required by these rules;

"Truant child" means a compulsory-school-age child who is in violation of Mississippi's Compulsory School Attendance Law for reasons of nonattendance or unlawful absences;

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

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

"Volunteer trained layperson" means a qualified person appointed, pursuant to section 43-21-121(7) of the Mississippi Code, to assist the child in addition to the appointment of a guardian ad litem;

"Youth" has the same meaning as in section 43-21-105(d) of the Mississippi Code;

"Youth court" has the same meaning as in section 43-21-105(a) of the Mississippi Code;

"Youth court clerk" means the clerk of the court exercising jurisdiction of the matter.

Words and phrases defined in the Mississippi Compulsory School Attendance Law, which may apply to youth court proceedings under section 43-21-621 of the Mississippi Code, include: appropriate school official; compulsory-school-age child; custodian; guardian; nonpublic school; parent; school; school attendance officer; and school day. See Miss. Code Ann. § 37-13-91 (2008).

RULE 5:

Amend Rule 5 of the Uniform Rules of Youth Court Practice to read:

RULE 5 CONFIDENTIALITY OF RECORDS AND PROCEEDINGS

(a) Delinquency and child in need of supervision proceedings.

(1) Confidential records. Records involving children, as defined under section 43-21-105 of the Mississippi Code, shall not be disclosed except as authorized by Mississippi's Youth Court Law and these rules.

(2) Disclosure of records involving children by court order. The court may order the disclosure of records involving children pursuant to section 43-21-261(1) of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of section 43-21-261(2) of the Mississippi Code. The procedures set forth in Rule 6 of these rules must be followed whenever any court other than youth court issues a subpoena duces tecum for records involving children if, in court proceedings other than youth court proceedings, a party to the proceedings, or a guardian ad litem for a child who is a subject of the proceedings, seeks the disclosure of records involving children that are in the possession or control of a youth court.

(3) Disclosure of records involving children not requiring a court order. Certain records involving children may be disclosed without an order of the court pursuant to sections 43-21-261 ~~(1) through (18)~~ and 43-21-623 of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of section 43-21-261(2) of the Mississippi Code.

(4) Media and electronic media access to proceedings. Media and electronic media coverage, as such terms are defined under Rule 2 of the Rules for Electronic and Photographic Coverage of Judicial Proceedings, in delinquency or child in need of supervision proceedings is strictly prohibited except upon findings of facts and conclusions of law by the court of extraordinary and compelling circumstances.

(5) Court observers.

(A) Requests and procedures.

(i) Who may observe court proceedings. Upon request, subject to the provisions of Rule 5(a)(5)(A)(ii) and (iii) of this rule, the youth court may allow any of the following persons to observe the court proceedings:

- chancery court judges, youth court judges, and youth court referees;
- attorneys licensed to practice law in Mississippi who meet the qualifications for appointment as a guardian ad litem under Rule 13(b) of these rules or who have successfully completed the annual training and continuing education requirements under section 43-21-201 of the Mississippi Code for representing either a delinquent child or a parent or guardian in an abuse, neglect or termination of parental rights proceeding;

- qualified health professionals and qualified mental health professionals as defined by section 93-15-103 of the Mississippi Code;
- law students who have completed, or are currently enrolled in, a class on youth court practices;
- persons who have a legitimate educational or research purpose unrelated to the specific case at issue; and
- persons who are fictive kin or hold a special relationship to the child who is the subject of the youth court matter.

(ii) Disqualifications. A person is ineligible from being a court observer under this rule if that person is:

- engaged in any current, pending, or prospective litigation involving the facts or any party, witness, or participant in the case;
- related to any party, witness, or participant in the case by consanguinity or affinity;
- currently dating, or formerly dated, any party, witness, or participant in the case;
or
- connected to any party, witness, or participant in the case by financial business dealings or economic interests.

(iii) Court observer to submit sworn declaration.

Prior to the observance of the court proceedings, the judge shall require each court observer to submit a sworn declaration that:

- states the purpose for the observation;
- certifies eligibility under this rule to observe the proceedings; and
- agrees to maintain the dignity, integrity, and confidentiality of the court proceedings, and of the confidentiality of any records involving children, as required by the Mississippi Youth Court Law, these rules, or the court's order(s) under penalty of contempt and/or other sanctions authorized by law.

Additionally, the court may impose reasonable conditions as deemed necessary for ensuring the dignity, integrity, and confidentiality of the court proceedings; for safeguarding the confidentiality of records involving children; and for preserving the due process rights of the parties to the action.

(B) Objections.

If any party, a guardian ad litem appointed by the youth court pursuant to Rule 13 of these rules to protect the child's best interests, or an attorney who has made an entry of appearance under Rule 14 of these rules for any child, parent, guardian, or custodian in

the case objects to the observance of the court proceedings, then the youth court shall deny the requested observance unless the youth court judge or referee makes written findings of compelling and extraordinary reasons that the observance is in the best interests of the child.

(C) If observance is denied.

Upon request, the youth court shall explain on the record the reasons for denying a request to observe the court proceedings. Denial of a request for observing court proceedings under this rule is neither appealable nor a ground for a continuance.

(D) Disruptive conduct.

A court observer may be excluded or removed from the courtroom for engaging in disorderly, disruptive, or contemptuous conduct, or when that person's conduct or presence constitutes a threat or menace to the court, parties, attorneys, witnesses, officials, or a fair trial.

(b) Child protection proceedings.

(1) Confidential records. Records involving children, as defined under section 43-21-105 of the Mississippi Code, shall not be disclosed except as authorized by Mississippi's Youth Court Law and these rules.

(2) Disclosure of records involving children by court order. The court may order the disclosure of records involving children pursuant to section 43-21-261(1) of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of section 43-21-261(2) of the Mississippi Code. The procedures set forth in Rule 6 of these rules must be followed whenever any court other than youth court issues a subpoena duces tecum for records involving children if, in court proceedings other than youth court proceedings, a party to the proceedings, or a guardian ad litem for a child who is a subject of the proceedings, seeks the disclosure of records involving children that are in the possession or control of a youth court.

(3) Disclosure of records involving children not requiring a court order. Certain records involving children may be disclosed without an order of the court pursuant to section 43-21-261~~(1) through (18)~~ of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of section 43-21-261(2) of the Mississippi Code.

(4) Media and electronic media access to proceedings. Media or electronic media coverage, as such terms are defined under Rule 2 of the Rules for Electronic and Photographic Coverage of Judicial Proceedings, is strictly prohibited except upon

findings of facts and conclusions of law by the court of extraordinary and compelling circumstances.

(5) Court observers.

(A) Requests and procedures.

(i) Who may observe court proceedings. Upon request, subject to the provisions of Rule 5(b)(5)(A)(ii) and (iii) of this rule, the youth court may allow any of the following persons to observe the court proceedings:

- chancery court judges, youth court judges, and youth court referees;
- attorneys licensed to practice law in Mississippi who meet the qualifications for appointment as a guardian ad litem under Rule 13(b) of these rules or who have successfully completed the annual training and continuing education requirements under section 43-21-201 of the Mississippi Code for representing either a delinquent child or a parent or guardian in an abuse, neglect or termination of parental rights proceeding;
- qualified health professionals and qualified mental health professionals as defined by section 93-15-103 of the Mississippi Code;
- law students who have completed, or are currently enrolled in, a class on youth court practices;
- persons who have a legitimate educational or research purpose unrelated to the specific case at issue; and
- persons who are fictive kin or hold a special relationship to the child who is the subject of the youth court matter.

(ii) Disqualifications. A person is ineligible from being a court observer under this rule if that person is:

- engaged in any current, pending, or prospective litigation involving the facts or any party, witness, or participant in the case;
- related to any party, witness, or participant in the case by consanguinity or affinity;
- currently dating, or formerly dated, any party, witness, or participant in the case;
or
- connected to any party, witness, or participant in the case by financial business dealings or economic interests.

(iii) Court observer to submit sworn declaration.

Prior to the observance of the court proceedings, the judge shall require each court observer to submit a sworn declaration that:

- states the purpose for the observation;
- certifies eligibility under this rule to observe the proceedings; and
- agrees to maintain the dignity, integrity, and confidentiality of the court proceedings, and of the confidentiality of any records involving children, as required by the Mississippi Youth Court Law, these rules, or the court's order(s) under penalty of contempt and/or other sanctions authorized by law.

Additionally, the court may impose reasonable conditions as deemed necessary for ensuring the dignity, integrity, and confidentiality of the court proceedings; for safeguarding the confidentiality of records involving children; and for preserving the due process rights of the parties to the action.

(B) Objections.

If any party, a guardian ad litem appointed by the youth court pursuant to Rule 13 of these rules to protect the child's best interests, or an attorney who has made an entry of appearance under Rule 14 of these rules for any child, parent, guardian, or custodian in the case objects to the observance of the court proceedings, then the youth court shall deny the requested observance unless the youth court judge or referee makes written findings of compelling and extraordinary reasons that the observance is in the best interests of the child.

(C) If observance is denied.

Upon request, the youth court shall explain on the record the reasons for denying a request to observe the court proceedings. Denial of a request for observing court proceedings under this rule is neither appealable nor a ground for a continuance.

(D) Disruptive conduct.

A court observer may be excluded or removed from the courtroom for engaging in disorderly, disruptive, or contemptuous conduct, or when that person's conduct or presence constitutes a threat or menace to the court, parties, attorneys, witnesses, officials, or a fair trial.

Comments & Procedures *The Mississippi Council of Youth Court Judges' Advisory Notes*

Rule 5(a)(1), -(b)(1).

Records involving children shall be kept confidential except as authorized by Mississippi's Youth Court Law or as otherwise provided by law. See Miss. Code Ann. § 43-21-259 (2008). This confidentiality requirement is conducive to the protective and rehabilitative purposes of the court. See, e.g., Smith v. Daily Mail Pub. Co., 443 U.S. 97,

107 (1979) (Rehnquist, J., concurring) (“The prohibition of publication of a juvenile’s name is designed to protect the young person from the stigma of his misconduct and is rooted in the principle that a court concerned with juvenile affairs serves as a rehabilitative and protective agency of the State.”). It is not, however, absolute. See *Windham v. State*, 800 So. 2d 1257, 1260 (Miss. Ct. App. 2001) (“[Section 43-21-261] itself provides that the confidentiality requirement may be overridden by a determination that disclosure would advance the child’s best interests or the public safety.”).

Rule 5(a)(2), -(b)(2).

A court order for the disclosure of records involving children must specify the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Additionally, the order must be limited to those persons listed in section 43-21-261(1)(a) through (g) of the Mississippi Code and must contain a finding that the particular disclosure is in the best interests of the child, the public safety or the functioning of the youth court. See Miss. Code Ann. § 43-21-261 (2008).

Rule 5(a)(3), -(b)(3).

Statutory provisions allowing for limited disclosure of records involving children restrict the persons to whom the records may be disclosed, the extent of the records which may be disclosed, and the purpose of the disclosure. See Miss. Code Ann. § 43-21-261(2) (2008); see also Miss. Code Ann. § 43-21-267 (2008) (providing sanctions for disclosing or encouraging the disclosure of any records involving children without proper authorization).

Rule 5(a)(4), -(b)(4).

Media and electronic media access to youth court proceedings is seldom consistent with the philosophy expressed in section 43-21-103 of the Mississippi Code.

RULE 6:

Amend Rule 6 of the Uniform Rules of Youth Court Practice to read:

RULE 6 SUBPOENA DUCES TECUM ORDERS FOR DISCLOSURE OF YOUTH COURT RECORDS FOR USE IN COURT PROCEEDINGS OTHER THAN YOUTH COURT PROCEEDINGS

(a) Procedures for issuing a subpoena duces tecum. No subpoena duces tecum for records involving children, as such records are defined under section 43-21-105 of the Mississippi Code, shall issue from any court other than youth court except upon compliance with the following procedures:

- (1) the party shall make an application to the court specifying which records are sought;
- (2) the court shall issue a subpoena duces tecum to the youth court for these records;

(3) the youth court, unless a hearing is conducted pursuant to Rule 6(b) of these rules, shall transfer copies of the records to the court;

(4) the court shall conduct an in camera inspection of the records, in accordance with the procedures set forth in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), to determine which records should be disclosed to the party;

(5) the court shall, at all times, protect the confidentiality of the records to the extent required of the youth court under Mississippi's Youth Court Law.

(a) Procedures.

(1) Confidential records. Records involving children, as defined under section 43-21-105 of the Mississippi Code, shall not be disclosed except as authorized by Mississippi's Youth Court Law and these rules.

(2) Application for records involving children. In court proceedings other than youth court proceedings, a party to the proceedings, or a guardian ad litem for a child who is a subject of the proceedings, seeking the disclosure of records involving children that are in the possession or control of a youth court shall make an application to the court conducting those proceedings [hereinafter: "the requesting court"] that specifies the records sought and the reasons for seeking them.

(3) Order for production. Upon receiving the application, the requesting court shall issue an order to the youth court requesting their production. Within 14 days after receipt of the order, the youth court shall either issue an order to transfer copies of the specified records to the requesting court or schedule a hearing pursuant to Rule 6(b) of these rules. Unless the requesting court is a chancery court, the youth court may not order the transfer of records of a forensic interview conducted by a child advocacy center in abuse and neglect investigations except after conducting a hearing pursuant to Rule 6(b) of these rules. Scheduling a hearing automatically stays the request for records.

(4) Restrictions on disclosures. The requesting court, upon receiving copies of the requested records, shall:

(i) conduct an in camera inspection of the records, in accordance with the procedures set forth in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), to determine which records will be disclosed to the party or guardian ad litem;

(ii) specify in a written order 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; and

(iii) advise the party or guardian ad litem receiving such records that failure to protect the confidentiality of the records as required by the Mississippi Youth Court Law, these rules, or the court's order shall be punishable by contempt of court and/or other sanctions authorized by law.

(b) Hearing on access to confidential files records. The youth court may require a hearing to determine whether the party or guardian ad litem making the application to the requesting court has the court or parties have a legitimate interest to be allowed access to the confidential files records. In determining whether a person has a legitimate interest to this access, the youth court shall consider the nature of the proceedings, the welfare and safety of the public, and the interest of the child. Notice of the hearing shall be given not later than five days before the time fixed for the hearing, unless a different period is fixed by order of the court, to:

- the requesting court,
- the person who made the application for the records, and
- any other person that the court orders to receive notice.

For a request of records of a forensic interview conducted by a child advocacy center in abuse and neglect investigations, notice shall also be given to the director of the child advocacy center that conducted the interview and to all parties in the youth court proceedings from which the records originated who would be significantly affected by their disclosure. Attendance by the director of the child advocacy center that conducted the interview, and all parties in the youth court proceedings from which the records originated who would be significantly affected by their disclosure, is optional. The court may proceed with the hearing on the motion in their absence.

If the youth court determines that the person making the application to the requesting court has a legitimate interest to be allowed access to the confidential records, then it shall issue an order to transfer copies of the specified records to the requesting court subject to the directive that the requesting court conduct an in camera inspection of the transferred records pursuant to Rule 6(a)(4) of this rule. Additionally, the youth court may redact from the copies of the records to be transferred any portions of those records where the court has determined that the person making application to the requesting court has no legitimate interest to be allowed access to them. When transferring any records that have been redacted, the youth court shall specify in its order the reasons for the redactions.

(c) Out-of-state requests. This rule likewise governs the request for the disclosure of records involving children by a party in out-of-state proceedings or a guardian ad litem for a child who is a subject of those proceedings.

(d) Subpoenas for testimony. Except as otherwise authorized under the Mississippi Youth Court Law or these rules, a forensic interviewer or other person may not be compelled to testify in court proceedings other than youth court proceedings on confidential records in the possession or control of the youth court unless there has been compliance with the procedures under this rule for their disclosure.

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Rule 6(a)(4)(iii).

Sanctions.

§ 43-21-267 provides:

(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.

Rule 6(a)(3).

All forensic interviews conducted by a child advocacy center in abuse and neglect investigations that establish, in whole or in part, a basis for a referral to the youth court intake unit for initiating a preliminary inquiry pursuant to section 43-21-357 of the Mississippi Code are confidential records in the possession or control of the youth court. Any party, or a guardian ad litem for a child, seeking the disclosure of records of a forensic interview for use in court proceedings other than youth court proceedings must make an application for their disclosure pursuant to Rule 6 of these rules. Any request or subpoena for records of a forensic interview not in compliance with this rule should be redirected to the appropriate youth court for management and response.

Rule 6(b).

Notice to the director of the child advocacy center that conducted the interview, and to all parties in the youth court proceedings from which the records originated who would be significantly affected by their disclosure, is to allow such persons an opportunity to object to the disclosure of the forensic interview, in whole or in part, or to request that the court limit or set conditions on its disclosure, for reasons in the best interests of the child or the interest of justice.

RULE 7:

Amend Rule 7 of the Uniform Rules of Youth Court Practice to read:

RULE 7 FEDERAL LAWS AND REGULATIONS

(a) Federal laws requiring compliance. These rules require compliance with federal laws which impact funding for cases within the jurisdiction of the youth court, including:

- (1) Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109 (1974) (codified as amended in scattered sections of 18 and 42 U.S.C.);
- (2) Juvenile Justice and Delinquency Amendments of 1988, Pub. L. No. 100-690, 102 Stat. 4434 (1988) (codified as amended in scattered sections of 42 U.S.C.);
- (3) Juvenile Justice and Delinquency Prevention Act of 2002, Pub. L. No. 107-273, 116 Stat. 1869 (2002) (codified as amended in scattered sections of 42 U.S.C.);
- (4) Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997) (codified as amended in scattered sections of 42 U.S.C.);
- (5) Title IV-E of the Social Security Act., 42 U.S.C. §§ 670-79(b) (2008);
- (6) Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et seq.;
- (7) Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (codified as amended in scattered sections of 42 U.S.C.).

(b) Federal regulations requiring compliance. These rules require compliance with federal regulations which impact funding for cases within the jurisdiction of the youth court, including:

- (1) 28 C.F.R. § 31.303 (2008);
- (2) 28 C.F.R. § 31.304 (2008);
- (3) 45 C.F.R. §§ 1355, -1356 (2008).

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Rule 7.

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice.

Rule 7(a)(1)-(3).

The purposes of the Juvenile Justice and Delinquency Prevention Act are to: "(1) to support State and local programs that prevent juvenile involvement in delinquent behavior; (2) to assist State and local governments in promoting public safety by encouraging accountability for acts of juvenile delinquency; (3) to assist State and local governments in addressing juvenile crime through the provision of technical assistance, research, training, evaluation, and the dissemination of information on effective programs for combating juvenile delinquency." 42 U.S.C. § 5602 (2008).

Rule 7(a)(4).

Sections of Title IV-E of the Social Security Act affected by the Adoption and Safe Families Act include: 42 U.S.C. §§ 671, -672, -673, -673b; -674, -675, -677, -678, -679b (2008).

Rule 7(a)(5).

Title IV-E of the Social Security Act authorizes payments for foster care and transitional independent living programs for children pursuant to the eligibility criteria contained therein. See 42 U.S.C. § 670 (2008).

Rule 7(a)(6).

Child custody proceedings involving an Indian child shall be in compliance with the Indian Child Welfare Act, which is in keeping with the policy of the United States of America "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs." 25 U.S.C. § 1902 (2011).

~~Indian tribe jurisdiction over Indian child custody proceedings.~~

~~See 25 U.S.C. § 1911 provides:~~

~~(a) Exclusive jurisdiction~~

~~An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.~~

~~(b) Transfer of proceedings, declination by tribal court~~

~~In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe. Provided, That such transfer shall be subject to declination by the tribal court of such tribe.~~

~~(c) State court proceedings, intervention~~

~~In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.~~

~~(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes~~

~~The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.~~

~~Child custody proceeding under the Indian Child Welfare Act defined.~~

~~25 U.S.C. § 1911(1) provides:~~

(1) "child custody proceeding" shall mean and include--

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

Indian child under the Indian Child Welfare Act defined.

25 U.S.C. § 1911(4) provides--

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

Indian tribe under the Indian Child Welfare Act defined.

25 U.S.C. § 1911(8) provides--

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of Title 43;

Foster care placement or termination of parental rights proceedings involving an Indian child.

25 U.S.C. § 1912 provides--

(a) Notice; time for commencement of proceedings; additional time for preparation In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the

Secretary. Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs, preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Parental rights under the Indian Child Welfare Act.

25 U.S.C. § 1913 provides in part:

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the

parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement, withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement, withdrawal of consent, return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

Finalization of adoption requires compliance with the Indian Child Welfare Act.

Miss. Code Ann. § 93-17-3(8) provides:

No person may be adopted unless the provisions of the Indian Child Welfare Act (ICWA) have been complied with, if applicable. When applicable, proof of compliance shall be included in the court adoption file prior to finalization of the adoption. If not applicable, a written statement or paragraph in the petition for adoption shall be included in the adoption petition stating that the provisions of ICWA do not apply before finalization.

RULE 8:

Amend Rule 8 of the Uniform Rules of Youth Court Practice to read:

RULE 8 INTAKE

(a) Delinquency and child in need of supervision proceedings. Whenever an intake screening process has been conducted pursuant to section 43-21-357(1) of the Mississippi Code and it appears that the child is a delinquent child or a child in need of supervision, the youth court intake unit shall recommend to the court:

- (1) that the youth court take no action;
- (2) that an informal adjustment process be made;
- (3) that the child be warned or counseled informally;
- (4) that the child be referred to the youth court **intervention drug** court; or
- (5) that the matter be referred to the youth court prosecutor for consideration of initiating formal proceedings.

The youth court shall then, without a hearing, order the appropriate action to be taken in accordance with Rule 9(a) of these rules. If the intake screening process discloses that a child needs emergency medical treatment, the judge may order the necessary treatment.

(b) Child protection proceedings. Whenever an intake screening process has been conducted pursuant to section 43-21-357(1) of the Mississippi Code and it appears that

the child is an abused or neglected child, the youth court intake unit shall recommend to the court:

- (1) that the youth court take no action;
- (2) that an informal adjustment process be made;
- (3) that the Department of Human Services, Division of Family and Children's Services child welfare agency, or other appointed intake unit, monitor the child, family and other children in the same environment;
- (4) that the parents be warned or counseled informally; or
- (5) that the matter be referred to the youth court prosecutor for consideration of initiating formal proceedings.

The youth court shall then, without a hearing, order the appropriate action to be taken in accordance with Rule 9(b) of these rules. If the intake screening process discloses that a child needs emergency medical treatment, the judge may order the necessary treatment.

(c) Chancery court proceedings. When a chancery court orders the Department of Human Services, Division of Family and Children's Services child welfare agency, or other appointed intake unit, to investigate a charge of abuse and neglect that first arises in the course of a custody or maintenance action, the assigned caseworker shall conduct an intake screening process in the same manner as required in child protection proceedings and thereupon recommend to the court:

- (1) that the chancery court take no action;
- (2) that an informal adjustment process be made;
- (3) that the Department of Human Services, Division of Family and Children's Services child welfare agency, or other appointed intake unit, monitor the child, family and other children in the same environment;
- (4) that the parents be warned or counseled informally; or
- (5) that the matter be referred to the youth court prosecutor for consideration of initiating formal proceedings.

The chancery court shall then, without a hearing, order the appropriate action to be taken in accordance with Rule 9(b) of these rules. If the intake screening process discloses that a child needs emergency medical treatment, the judge may order the necessary treatment.

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

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Rule 8(a).

When the intake unit receives a report of a delinquent child or a child in need of supervision it may request, or the youth court may order, the Department of Human Services, Division of Youth Services, or other appointed intake unit, to make an

investigation concerning the child, and any other children in the same environment, and present the findings to the intake unit. If it appears from the intake screening process that the child is a delinquent child or a child in need a supervision, the intake unit must make a recommendation to the youth court pursuant to Rule 8(a) of this rule – even if the recommendation is that no action be taken. The youth court shall then, without a hearing, order the appropriate action to be taken. This procedure assures that the youth court is made aware of every valid report received by the intake unit. The youth court, and not the intake unit, determines how each case proceeds. See Miss. Code Ann. § 43-21-357(2).

Rule 8(b).

When the intake unit receives a report of an abused or neglected child it must immediately forward the complaint to the Department of Human Services, Division of Family and Children's Services child welfare agency, or other appointed intake unit, to make an investigation concerning the child, and any other children in the same environment, and promptly present the findings to the intake unit. If it appears from the intake screening process that the child is an abused or neglected child, the intake unit must make a recommendation to the youth court pursuant to Rule 8(b) of this rule – even if the recommendation is that no action be taken. The youth court shall then, without a hearing, order the appropriate action to be taken. This procedure assures that the youth court is made aware of every valid report received by the intake unit. The youth court, and not the intake unit, determines how each case proceeds. See Miss. Code Ann. § 43-21-357(2).

Rule 8(c).

Rule 8(c) is to assure, consistent with Rule 2 of these rules, that chancery court procedures for investigating charges of abuse or neglect are consistent with those applicable to youth court. When a chancellor orders the investigation of abuse or neglect, the Department of Human Services, Division of Family and Children's Services child welfare agency follows normal intake procedures. Upon receiving the intake recommendation, the chancery court must decide whether to hear the case or transfer it to youth court. If the chancery court decides to hear the case, then it must follow all procedures required of a youth court under these rules.

Uniform Youth Court Case Identification and Docket Numbering System.

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

Uniform Youth Court Case Tracking System and Form.

The Mississippi Supreme Court has adopted a Uniform Youth Court Case Tracking System and Form to be implemented by intake as a data collection procedure for every

matter coming before the youth courts of the State of Mississippi. See Special Order No. 47 (Miss. Dec. 16, 1996).

RULE 9:

Amend Rule 9 of the Uniform Rules of Youth Court Practice to read:

RULE 9 COURT ORDERS UPON INTAKE RECOMMENDATIONS

(a) Delinquency and child in need of supervision proceedings.

(1) No action to be taken. The court may order that no action be taken if such is in the best interest of the child and in the interest of justice.

(2) Informal adjustment process to be made. The court may order the Department of Human Services, Division of Youth Services, or other appointed intake unit, to conduct an informal adjustment process pursuant to sections 43-21-401 through 43-21-407 of the Mississippi Code. No informal adjustment process may commence except upon an order of the court. Every informal adjustment process shall include:

(i) the giving of counsel and advice to the child and the child's parent, guardian, or custodian;

(ii) referrals to public and private agencies which may provide benefits, guidance or services to the child or the child's parent, guardian or custodian; and

(iii) temporary placement of the child or supervision by the youth court counselor with the consent of the child and the child's parent, guardian or custodian, subject to review by the court.

If the child and the child's parent, guardian or custodian agree to participate in an informal adjustment process, the defense of a failure to provide a speedy trial is waived and a petition may be filed if the informal adjustment process is unsuccessfully terminated under section 43-21-407 of the Mississippi Code. If authorized by the court, the informal adjustment process may be commenced after the filing of a petition.

(3) The child be warned or counseled informally. The court may order the child to be warned or counseled informally in accordance with the policies of the Department of Human Services, Division of Youth Services.

(4) The child be referred to the youth court intervention drug court. The court may order the child to be referred to the youth court intervention drug court pursuant to the guidelines developed by the State Intervention Drug Court Advisory Committee.

(5) Referral to the youth court prosecutor for consideration of initiating formal proceedings. The court may refer the matter to the youth court prosecutor for consideration of initiating formal proceedings, whereupon the youth court prosecutor must:

(i) file a petition;

(ii) make a written request for the court to handle the matter informally, which may include an appropriate recommendation to the court for consideration; or

(iii) make a written request that the court dismiss the proceedings.

(b) Child protection proceedings.

(1) No action to be taken. The court may order that no action be taken if such is in the best interest of the child and in the interest of justice.

(2) Informal adjustment process to be made. The court may order the ~~Department of Human Services, Division of Family and Children's Services~~ child welfare agency to conduct an informal adjustment process pursuant to sections 43-21-401 through 43-21-407 of the Mississippi Code. No informal adjustment process may commence except upon an order of the court. Every informal adjustment process shall include:

(i) the giving of counsel and advice to the child and the child's parent, guardian, or custodian;

(ii) referrals to public and private agencies which may provide benefits, guidance or services to the child or the child's parent, guardian or custodian; and

(iii) temporary placement of the child or supervision by the ~~Department of Human Services, Division of Family and Children's Services~~ child welfare agency with the consent of the child and the child's parent, guardian or custodian, subject to review by the court.

If the child and the child's parent, guardian or custodian agree to participate in an informal adjustment process, the defense of a failure to provide a speedy trial is waived and a petition may be filed if the informal adjustment process is unsuccessfully terminated under section 43-21-407 of the Mississippi Code. If authorized by the court, an informal adjustment process may be commenced after the filing of a petition.

(3) Monitor the child, family and other children in the same environment. The court may order the ~~Department of Human Services, Division of Family and Children's Services~~ child welfare agency to monitor the child, family and other children in the same environment.

(4) The parent(s) to be warned or counseled informally. The court may order the parent(s) to be warned or counseled informally in accordance with the policies of the ~~Department of Human Services, Division of Family and Children's Services~~ child welfare agency.

(5) Referral to the youth court prosecutor for consideration of initiating formal proceedings. The court may refer the matter to the youth court prosecutor for consideration of initiating formal proceedings, whereupon the youth court prosecutor must:

(i) file a petition;

(ii) make a written request for the court to handle the matter informally, which may include an appropriate recommendation to the court for consideration; or

(iii) make a written request that the court dismiss the proceedings.

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Rule 9(a)(5).

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

Rule 9(b)(2).

An instance where an informal adjustment process might be appropriate in child protection proceedings, even after the filing of the petition, is where the parent is temporarily unable to care for the child (e.g., inpatient drug and alcohol treatment), but a suitable relative is willing to do so for the short-term period. In any event, an informal adjustment process does not circumvent the authority of the Department of Human Services child welfare agency to remove the child from the home or any placement if there is a reasonable concern for the child's safety or welfare.

Rule 9(b)(2)(iii).

The Department of Human Services, Division of Family and Children's Services child welfare agency should conduct a background check and home study prior to making a temporary placement of a child within its custody.

RULE 11:

Amend Rule 11 of the Uniform Rules of Youth Court Practice to read:

RULE 11 TEMPORARY CUSTODY ORDERS / CUSTODY ORDERS

(a) Delinquency and child in need of supervision proceedings.

(1) When a custody order may be issued. The youth court judge or referee, a chancellor sitting as a youth court judge, or the judge's designee, and no other judge of another court, may issue an order to take into temporary custody or custody a child within the original exclusive jurisdiction of the youth court, for a period not to exceed forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays, if the court finds and the temporary custody order or custody order recites that:

- (i) there is probable cause the child is within the jurisdiction of the youth court; and
- (ii) there is probable cause that custody is necessary.

Custody shall be deemed necessary: (1) when a child is endangered in danger of a significant risk of harm or any person would be endangered in danger of a significant risk of harm by the child; or to insure the child's attendance in court at such time as required; or when a parent, guardian or custodian is not available to provide for the care and supervision of the child; and (2) there is no reasonable alternative to custody. A finding of probable cause under this rule is subject to any limitations set forth in section 43-21-301 of the Mississippi Code.

Unless there is substantial compliance with these procedures, the court shall order the child to be released to the custody of the child's parent, guardian, or custodian. Any order placing a child into custody shall comply with the requirements provided in section 43-21-301 of the Mississippi Code.

(2) Order requirements. The temporary custody order or custody order may be written or oral, but, if oral, reduced to writing within forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays. The written order shall:

- (i) specify the name and address of the child, or, if unknown, designate the child by any name or description by which the same can be identified with reasonable certainty;
- (ii) specify the age of the child, or, if unknown, that the child is believed to be of an age subject to the jurisdiction of the youth court;
- (iii) state that the child be brought immediately before the youth court or be taken to a place designated by the order to be held pending review of the order;
- (iv) state the date issued and the youth court by which the order is issued; and
- (v) be signed by the youth court judge or referee, or the judge's designee, with the title of his/her office.

(3) Custody requirements. The court shall comply with the following custodial requirements:

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

(iii) The custody of any child taken into custody shall comply with the detention requirements of section 43-21-315 of the Mississippi Code.

(4) Additional orders. After a child is ordered into custody, the court may:

- (i) arrange for the custody of the child with any private institution or agency caring for children;
- (ii) commit the child to the Department of Mental Health pursuant to section 41-21-61 et seq.; or
- (iii) order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of the child.

(b) Child protection proceedings.

(1) When a custody order may be issued. The youth court judge or referee, or the judge's designee, or a chancellor when hearing, pursuant to section 93-11-65 of the Mississippi Code, an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action, and no other judge of another court, may issue an order to take into custody a child within the exclusive original jurisdiction of the youth court, for a period not to exceed forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays, if the court finds and the custody order recites that:

- (i) there is probable cause the child is within the jurisdiction of the court; and
- (ii) there is probable cause that custody is necessary.

Custody shall be deemed necessary: (1) when a child is endangered in danger of a significant risk of harm or any person would be endangered in danger of a significant risk of harm by the child; or to insure the child's attendance in court at such time as required; or when a parent, guardian or custodian is not available to provide for the care and supervision of the child; and (2) there is no reasonable alternative to custody. A finding of probable cause under this rule is subject to any limitations set forth in section 43-21-301 of the Mississippi Code.

Unless there is substantial compliance with these procedures, the court shall order the child to be released to the custody of the child's parent, guardian, or custodian. Any order placing a child into custody shall comply with the requirements provided in section 43-21-301 of the Mississippi Code.

(2) Order requirements. The temporary custody order or custody order may be written or oral, but, if oral, reduced to writing within forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays. The written order shall:

- (i) specify the name and address of the child, or, if unknown, designate the child by any name or description by which the same can be identified with reasonable certainty;
- (ii) specify the age of the child, or, if unknown, that the child is believed to be of an age subject to the jurisdiction of the youth court;

(iii) state that the effect of the continuation of the child's residing within the child's own home would be contrary to the welfare of the child, that the placement of the child in foster care or relative care is in the best interest of the child;

(iv) state and specify, unless the reasonable efforts requirement is bypassed under section 43-21-603(7)(c) of the Mississippi Code, that:

(a) reasonable efforts have been made to maintain the child within the child's own home, but that the circumstances warrant the child's removal; and there is no reasonable alternative to custody; and reasonable efforts be made toward the reunification of the child with the child's family; or

(b) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within the child's own home; there is no reasonable alternative to custody; and reasonable efforts be made towards the reunification of the child with the child's family;

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

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

(vii) be signed by the youth court judge or referee, the judge's designee, or chancellor, with the title of his/her office.

No child in the custody of the Department of Human Services, Division of Family and Children's Services-child welfare agency shall be placed in a foster care setting that has not been licensed or approved as meeting the Department of Human Services, Division of Family and Children's Services-child welfare agency licensure standards, except that a child may be placed with a relative if there is: (1) an emergency process, as developed by the Department of Human Services, Division of Family and Children's Services-child welfare agency in conjunction with the Council on Accreditation, that enables, after an initial screening of the relative's home in accordance with Mississippi's Settlement Agreement and Reform Plan, the child to be placed with the relative as soon as the child enters placement, and (2) a full licensing process, which shall be completed no later than ninety (90) calendar days after the child has entered placement according to the child welfare agency's policies. The Department of Human Services, Division of Family and Children's Services-child welfare agency may waive non-safety licensing requirements for relative foster placements in individual cases pursuant to federal regulations. The child welfare agency is a party to the case whenever it is serving as the legal and/or physical custodian of the child under the Mississippi Youth Court Law.

(3) Reasonable efforts, judicial determination required. Within sixty (60) days from the date of the child being removed from the child's home pursuant to the court's temporary custody order or custody order, the court shall conduct a hearing to determine whether the Department of Human Services, Division of Family and Children's Services has made reasonable efforts to prevent the removal of the child from the child's home or, pursuant to section 43-21-603(7) of the Mississippi Code, whether reasonable efforts were not required to prevent the removal.

(i) **If reasonable efforts are made, but removal remains in the best interest of the child.** If the court determines that the Department of Human Services, Division of Family and Children's Services has made reasonable efforts to prevent the removal of the child from the child's home but that removal remains in the best interest of the child, the court shall adopt a permanency plan and a concurrent plan and order that the Department of Human Services, Division of Family and Children's Services make reasonable efforts to timely finalize the permanency plan and concurrent plan for the child. Thereafter, until the permanency plan or concurrent plan is achieved, the court shall conduct a permanency hearing and permanency review hearings pursuant to these rules.

(ii) **If reasonable efforts are not required for removal of the child.** If the court determines that, pursuant to section 43-21-603(7) of the Mississippi Code, reasonable efforts were not required to prevent the removal of the child from the child's home, it shall adopt a permanency plan and concurrent plan and order that the Department of Human Services, Division of Family and Children's Services make reasonable efforts to timely finalize the adopted permanency plan and concurrent plan for the child. Thereafter, until the permanency plan or concurrent permanency plan is achieved, the court shall conduct a permanency hearing and permanency review hearings pursuant to these rules.

(3) Required judicial determinations. When a child is ordered to be taken into custody or temporary custody pursuant to this rule, the court shall make and explicitly document any reasonable efforts and contrary to the welfare determinations required of the federal foster care maintenance payments program. *See* 45 C.F.R. § 1356.21.

(4) Additional orders. After a child is ordered into custody, the court may:

- (i) arrange for the custody of the child with any private institution or agency caring for children;
- (ii) commit the child to the Department of Mental Health pursuant to section 41-21-61 et seq.; or
- (iii) order the Department of Human Services-child welfare agency or any other public agency to provide for the custody, care and maintenance of the child; or
- (iv) waive foster care training for an appropriate relative placement pursuant to section 43-15-13(6)(b) of the Mississippi Code.

Comments & Procedures *The Mississippi Council of Youth Court Judges' Advisory Notes*

Rule 11(a), -(b).

These provisions comport with the statutory procedures. See Miss. Code Ann. §§ 43-21-301, -307, -315 (202008). See also In re E.K., 249 So. 3d 377, 388 (Miss. 2018) ("[The mother's] marijuana usage does not negate the requirement of a causal connection between the drug usage and the neglect. This is a familiar concept under the Youth Court

Act in other contexts. For instance, a positive drug test for marijuana usage is insufficient on its own to establish probable cause for the issuance of a custody order.”).

Rule 11(a)(1).

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

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

Rule 11(a)(2).

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

Rule 11(b)(2).

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

The foster child relative licensing process consists of: (1) an emergency process and (2) a full licensing process. The emergency process requires, in accordance with Mississippi Department of Human Services policies, that background checks and Central Registry checks be completed on all persons residing in the home who are fourteen (14) years of age or older and the completion of an emergency placement safety checklist of the home.

The full licensing process requires, in accordance with Mississippi Department of Human Services policies, that the relative completes, within 90 calendar days after the child has been placed in the home, the full home study, and all other licensure requirements. See Mississippi Division of Family and Children's Services, Policy § F, at 33-35 (Rev. 2013); see also Olivia Y., 351 F. Supp. 2d 543 (S.D. Miss. 2004) (regarding the placement of children in DCFS custody with available relatives):

Emergency Placement Safety Checklist.

The Emergency Placement Safety Checklist requires the family protection specialist or caseworker to:

- conduct a local law enforcement background check;*
- conduct a MACWIS background check;*
- conduct a gun safety check (all weapons shall be safely stored away);*
- check that all utilities are working;*
- check that there is access to an operable telephone;*
- check that there is clear access to exits;*
- check that hazardous substances are safeguarded;*
- check that premises are free of rodents and insects;*
- check that the refrigerator, stove and oven are operable;*
- check that there is a functional sewage system; and*
- check that the interior plumbing has running warm and cold water.*

For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "reasonable efforts" determination must be made no later than 60 days from the date the child is removed from the home. See 42 U.S.C. §§ 672(a)(2)(A), -671(a)(15) (2008), 45 C.F.R. § 1356.21(b)(1) (2008).

For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "contrary to the welfare" determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home. See 42 U.S.C. § 672(a)(2)(A) (2008), 45 C.F.R. § 1356.21(c) (2008).

Rule 11(b)(3).

U.R.Y.C.P. 7 (Federal Laws and Regulations), which provides in part:

(b) Federal regulations requiring compliance. These rules require compliance with federal regulations which impact funding for cases within the jurisdiction of the youth court, including:

...
(3) 45 C.F.R. §§ 1355, -1356 (2008).

Rule 11(a)(4), -(b)(4).

These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-315(4) (2008).

Federal Requirements

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to custody orders include:

Removal and foster care placement requirements.

42 U.S.C. § 672(a)(2)(A); 671(a)(15) (2008) (requiring “contrary to the welfare of the child” and “reasonable efforts” determinations as set forth therein for eligibility of title IV-E foster care maintenance payments).

Reasonable efforts determination.

45 C.F.R. § 1356.21 (2008) provides in part:

(b) Reasonable efforts determination. . . .

(1) Judicial determination of reasonable efforts to prevent a child’s removal from the home.

(i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

. . .

(3) Circumstances in which reasonable efforts are not required to prevent a child’s removal from home or to reunify the child and family. Reasonable efforts to prevent a child’s removal from home or to reunify the child and family are not required if the title IV–E agency obtains a judicial determination that such efforts are not required because:

(i) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State, or for a Tribal title IV–E agency, Tribal law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) A court of competent jurisdiction has determined that the parent has been convicted of:

(A) Murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(B) Voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or

(D) A felony assault that results in serious bodily injury to the child or another child of the parent; or,

(iii) The parental rights of the parent with respect to a sibling have been terminated involuntarily.

...

(k) Removal from the home of a specified relative.

(1) For the purposes of meeting the requirements of section 472(a)(1) of the Act, a removal from the home must occur pursuant to:

(i) A voluntary placement agreement entered into by a parent or guardian which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or

(ii) A judicial order for a physical or constructive removal of the child from a parent or specified relative.

(2) A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the title IV-E agency.

(3) A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.

Judicial determination of reasonable efforts to finalize a permanency plan:

45 C.F.R. § 1356.21 (2008) provides in part:

(b) Reasonable efforts. . . .

(2) Judicial determination of reasonable efforts to finalize a permanency plan.

(i) The State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

(ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the schedule prescribed in paragraph (b)(2)(i) of this section, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

Contrary to the welfare determination.

45 C.F.R. § 1356.21 (2008) provides in part:

(c) Contrary to the welfare determination. Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.

Documentation of judicial determination.

45 C.F.R. § 1356.21 provides in part:

(d) Documentation of judicial determinations. The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

(1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations except for a Tribal title IV-E agency for the first 12 months that agency's title IV-E plan is in effect as provided for in section 479B(c)(1)(C)(ii)(I) of the Act.

(3) Court orders that reference State or Tribal law to substantiate judicial determinations are not acceptable, even if such law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

Concurrent planning.

45 C.F.R. § 1356.21 (2008) provides in part:

(b) Reasonable efforts. . . .

(4) Concurrent planning. Reasonable efforts to finalize an alternative permanency plan may be made concurrently with reasonable efforts to reunify the child and family.

Detention of juveniles.

42 U.S.C. § 5633 (2008); 28 C.F.R. 31.301 (2008) (setting forth requirements for placing juveniles in secure juvenile detention).

RULE 13:

Amend Rule 13 of the Uniform Rules of Youth Court Practice to read:

RULE 13 APPOINTMENT OF GUARDIAN AD LITEM

(a) Appointment of guardian ad litem. The court shall appoint a guardian ad litem for the child when custody is ordered or at the first judicial hearing regarding the case, whichever occurs first,

- (1) when a child has no parent, guardian or custodian;
- (2) when the court cannot acquire personal jurisdiction over a parent, a guardian or a custodian;
- (3) when the parent is a minor or a person of unsound mind;
- (4) when the parent is indifferent to the interest of the child or if the interests of the child and the parent, considered in the context of the cause, appear to conflict;
- (5) in every case involving an abused or neglected child which results in a judicial proceeding; or
- (6) in any other instance where the court finds appointment of a guardian ad litem to be in the best interest of the child.

When appointing ~~Upon appointment of~~ a guardian ad litem, the court shall:

- issue a written order of appointment that adequately instructs the guardian ad litem on the proper performance of duties in protecting the best interests of the child;
- issue a written order of assignment that grants the guardian ad litem authority to review all relevant documents concerning the child; to have access to MYCIDS regarding the case pursuant to applicable rules and policies of the Mississippi Supreme Court and the Mississippi Administrative Office of Courts; and to interview all parties and witnesses involved in proceedings concerning the child for whom the guardian ad litem is appointed; and
- continue any pending proceedings for a reasonable time to allow the guardian ad litem to become familiar with the matter, consult with counsel and prepare for the cause.

(b) Qualifications of guardian ad litem. The court shall only appoint as guardian ad litem a competent person who has no adverse interest to the minor and who has received, in accordance with section 43-21-121(4) of the Mississippi Code, the requisite child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment.

(c) Duties of guardian ad litem. The guardian ad litem, in addition to all other duties required by law, shall:

(1) protect the interest of a child for whom he/she has been appointed guardian ad litem; and

(2) investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest.

The court shall insure that guardians ad litem perform their duties properly and in the best interest of their wards.

When conducting an investigation under this rule, the guardian ad litem shall inform the child, if of a suitable age, and the parent(s), guardian(s), or custodian(s) that the role of the guardian ad litem is to act as an arm of the court in protecting the interest of the child, and not as the parties' attorney, and that any statements made to the guardian ad litem affecting the health, safety, or welfare of the child will be reported to the court.

(d) Reasonable fees. The guardian ad litem shall be paid a fee in the performance of duties pursuant to section 43-21-121(6) of the Mississippi Code. The court may order financially able parents to pay for the reasonable fees of the guardian ad litem, or a portion thereof, pursuant to section 43-21-619 of the Mississippi Code.

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

(f) Appointment of an attorney if conflict exists. If there is a conflict between the child's preferences and the guardian ad litem's recommendation, the court shall retain the guardian ad litem to represent the best interest of the child and appoint an attorney to represent the child's preferences. The court shall then continue the proceedings for a reasonable time to allow the newly appointed attorney to prepare for the cause.

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

Comments & Procedures *The Mississippi Council of Youth Court Judges' Advisory Notes*

Rule 13(a).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-121(1), (4), (5) (2020~~08~~).

The appointment of a guardian ad litem pursuant to this rule is a mandatory obligation. See Miss. Code Ann. § 43-21-121(1), -(2) (2008); In re R.D., 658 So. 2d 1378, 1385

(Miss. 1995) (“Whether requested or not, judges have the obligation to appoint a guardian ad litem to represent every minor alleged to be abused or neglected as the statute requires.”).

Youth courts have complete discretion when instructing guardians ad litem on the court’s expectations in the performance of duties in protecting the best interests of the child. The following sample instructions should suffice in most cases:

“INSTRUCTIONS FOR GUARDIANS AD LITEM IN CHILD PROTECTION PROCEEDINGS

SCOPE: You have been appointed by this court to protect the child’s best interests under the Mississippi Youth Court Law. Competent, diligent, confidential, and professionally ethical conduct is essential and expected for protecting the health, safety, and welfare of the child and for achieving a successful permanency outcome.

ARM OF THE COURT: As an arm of the court, you may not serve in the dual role of advisor to the court and lawyer for the child. Instead, you shall zealously, competently, and without bias, investigate, make recommendations, and enter reports as instructed by this court in holding paramount the child’s best interest. In performing these duties, you shall comply with all federal and state laws, whether substantive or procedural, applicable to the appointment. You must inform the court of any adverse interest to the child that might reasonably be perceived as prejudicial to the appointment. In zealously protecting the child’s best interest, you should make recommendations only after providing this court with all material information which weighs on the issue to be decided by this court including information which does not support the recommendation. Ballard v. Ballard, 255 So. 3d 126, 133 (Miss. 2017); McDonald v. McDonald, 39 So. 3d 868, 883 (Miss. 2010) (citing S.G. v. D.C., 13 So. 3d 269, 282 (Miss. 2009).

DISCLOSURE OF ROLE TO PARENTS, GUARDIANS, AND CUSTODIANS: When conducting an investigation, you shall inform the child, if of a suitable age, and the parent(s), guardian(s), or custodian(s) that the role of the guardian ad litem is to act as an arm of the court in protecting the interest of the child, and not as the parties’ attorney, and that any statements made to you affecting the health, safety, or welfare of the child will be reported to the court.

CONFIDENTIALITY: You may only disclose confidential records or information acquired in the course of official duties as allowed by the Mississippi Rules of Court, the Mississippi Code, or a court order.

PERFORMANCE OF DUTIES: In protecting the best interests of the child, you shall faithfully, impartially, and diligently serve this court in the performance of duties, which includes:

- Complying with all applicable provisions of the Mississippi Rules of Court, the Mississippi Code, and other laws governing mandatory training and education and the performance of duties.
- Upholding the integrity and independence of the judiciary by observing professional, courteous, and impartial standards of conduct in the performance of duties.
- Avoiding impropriety or the appearance of impropriety in all activities.
- Not being swayed by partisan interests, public clamor, or the fear of criticism in the performance of duties.
- Not providing legal advice to the parents, the child, or other interested persons in the case.
- Not engaging in unlawful ex parte communications.
- Not making comments that could adversely affect the right to a fair trial or hearing.
- Conducting investigations, making recommendations, and entering reports for the protection of the child's best interests in a complete, diligent, prompt, fair, and efficient manner at every stage of the proceedings.
- Being fully prepared to testify at hearings on matters pertaining to the child's health, safety, and welfare.
- Keeping confidential all information acquired in the performance of duties except as otherwise provided by law or a court order in protecting the child's best interests.
- Disclosing to the court any actual or apparent conflict of interest arising from any relationship, activity, or circumstance that might reasonably be perceived as requiring disqualification.
- Advising the court if there is disagreement between the child preferences and the guardian ad litem's recommendation so that the court may promptly resolve the concern.
- Utilizing governmental resources, property, and funds in the performance of duties in accordance with statutory and regulatory procedures.
- Adhering to the mandatory reporting requirements set forth in section 43-21-353 of the Mississippi Code, and as otherwise required by law, if there is reasonable cause to suspect that a child is a neglected child or an abused child.

ENFORCEMENT PROCEDURES AND SANCTIONS: This court having jurisdiction of the proceedings for which you have been appointed to serve as guardian ad litem may enforce these instructions whenever reasonably necessary in carrying out the purpose of the Mississippi Youth Court Law by contempt of court pursuant to Section 43-21-153 of the Mississippi Code, sanctions, or other appropriate disciplinary actions."

Rule 13(b).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-121(3), -(4) (2008).

The Mississippi Judicial College presently requires six (6) hours of child protection and guardian ad litem training through an educational program approved by the Director of the Mississippi Judicial College for any appointment within 365 days thereof.

Rule 13(c).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-121(3) (2008).

The guardian ad litem has the responsibility to fully protect the interests of the child. See In re D.K.L., 652 So. 2d 184, 191 (Miss. 1995). Such requires being prepared to testify as to the present health, education, estate and general welfare of the child, which, of necessity, requires interviewing the minor children, their current custodians, and prospective parents, if any. See M.J.S.H.S. v. Yalobusha County Dep't of Human Servs., 782 So. 2d 737, 741 (Miss. 2001). Additionally, the guardian ad litem must submit a written report to the court during the hearing, or testify and thereby become available for cross-examination by the natural parent. See D.J.L. v. Bolivar County Dep't of Human Servs., 824 So. 2d 617, 623 (Miss. 2002). The court should include in its findings of facts and conclusions of law a summary of the guardian ad litem's recommendations, whether it agrees or disagrees with the guardian ad litem, and why. In re L.D.M., 848 So. 2d 181, 183 (Miss. 2003); S.N.C. v. J.R.D., 755 So. 2d 1077, 1082 (Miss. 2000).

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

Rule 13(d).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-121(6) (2008). It also allows the court, pursuant to section 43-21-619 of the Mississippi Code, to order financially able parents to pay for the reasonable fees awarded the guardian ad litem or a portion thereof. Such is consistent with the philosophy expressed in section 43-21-103 of the Mississippi Code. Parental accountability is a key element in achieving a child's productive citizenry.

Factors to be weighed when considering the proper amount of guardian ad litem fees to be awarded include: (1) the relative ability of the parties; (2) the skill and standing of the attorney employed; (3) the nature of the case and novelty and difficulty of the questions at issue; (4) the degree of responsibility involved in the management of the case; (5) the time and labor required; (6) the usual and customary charge in the community; and (7) preclusion of other employment by the attorney due to the acceptance of the case. See In re L.D.M., 872 So. 2d 655, 657 (Miss. 2004).

Rule 13(e).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-121(7) (2008).

Rule 13(f).

This provision addresses the situation where the child opposes the recommendation of the guardian ad litem who is also an attorney. Since a guardian ad litem may not simultaneously represent the best interest of the child and advocate the child's preferences, the court must appoint an attorney to represent the child's preferences while retaining the appointed guardian ad litem to represent the best interest of the child.

Rule 13(g).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-201(1) (2008).

RULE 15:

Amend Rule 15 of the Uniform Rules of Youth Court Practice to read:

RULE 15. PREHEARING PROCEDURES

(a) Discovery.

(1) Request for discovery. The child or other party to an adjudicatory hearing, or any proceeding thereafter, may make a written request for discovery to any other party consistent with the United States Constitution and the Mississippi Constitution and to the extent that such does not require the disclosure of confidential or privileged information prohibited from disclosure pursuant to Rule 5 of these rules or otherwise by law. A written request for discovery shall be made, if possible, no later than seven (7) days preceding the date set for the adjudicatory hearing or other applicable proceeding. The child or other party making a written request for discovery shall promptly provide reciprocal discovery to the party upon whom the discovery request was made. Recipients of discovery who disclose or encourage the disclosure of any records involving children or the contents thereof, except as authorized under the Mississippi Youth Court Law, shall be subject to the sanctions set forth in section 43-21-267 of the Mississippi Code. No request for discovery shall be made until after a petition has been filed.

(i) By the parent, guardian, or custodian of the child. 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, in a timely manner, any record, report or investigation, other than a forensic interview conducted by a child advocacy center in an abuse and neglect investigation,

relevant to a matter to be heard by a youth court, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life, safety or well-being of such person. Any requests for discovery of a forensic interview conducted by a child advocacy center in an abuse and neglect investigation shall be pursuant to Rule 15(a)(2)(ii) of this rule.

(ii) By the attorney for the parent, guardian, or custodian. Upon request, the attorney for the parent, guardian or custodian of the child shall be provided, in a timely manner, a copy of any record, report or investigation, other than a forensic interview conducted by a child advocacy center in an abuse and neglect investigation, relevant to a matter to be heard by a youth court, but the identity of the reporter must be redacted and the name of any other person must also be redacted if the person or agency making the information available finds that disclosure of the information would be likely to endanger the life, safety or well-being of such person. A record provided to the attorney under this rules provision must remain in the attorney's control and the attorney may not provide copies or access to another person or entity without prior consent of a court with appropriate jurisdiction, except that a parent, guardian, or custodian that the attorney represents shall have the right to inspect any record, report or investigation relevant to a matter to be heard by a youth court to the extent allowed under Rule 15(a)(1)(i) of this rule. Any requests for discovery of a forensic interview conducted by a child advocacy center in an abuse and neglect investigation shall be pursuant to Rule 15(a)(2)(ii) of this rule.

(iii) By the child. Upon request, the child who is the subject of a youth court cause, or the child's attorney, shall have the right to inspect and copy, in a timely manner, any record, report or investigation, other than a forensic interview conducted by a child advocacy center in an abuse and neglect investigation, which is filed with the youth court or which is to be considered by the youth court at a hearing. Any requests for discovery of a forensic interview conducted by a child advocacy center in an abuse and neglect investigation shall be pursuant to Rule 15(a)(2)(ii) of this rule.

(2) Application for a discovery order.

(i) Motion for compliance. If a request for discovery is refused or not produced in a timely manner, then application may be made to the court for a written order granting the discovery. ~~Motions for discovery~~ Any motion for compliance shall certify that a request for discovery has been made and either refused or not produced in a timely manner. An order granting discovery may make such discovery reciprocal for all parties to the proceeding, including the party

requesting discovery. The court may deny, in whole or part, or otherwise limit or set conditions for discovery, upon its own motion, or upon a showing by a party upon whom a request for discovery is made that granting discovery may:

- jeopardize the safety of a party, witness, or confidential informant,
- result in the production of perjured testimony or evidence,
- endanger the existence of physical evidence,
- violate a privileged communication,
- disclose confidential information, or
- impede the criminal prosecution of a minor as an adult or of an adult charged with an offense arising from the same transaction or occurrence.

An application for a discovery order shall be made, if possible, no later than seven (7) days preceding the date set for the adjudicatory hearing or other applicable proceeding. Any hearing on an application for a discovery order a motion for compliance shall be conducted in a timely manner and in a way that protects the best interests of the child and the interest of justice.

(ii) Motion for discovery of a forensic interview. The following persons may make a request for discovery of a forensic interview conducted by a child advocacy center in an abuse and neglect investigation to the extent allowed under section 43-21-261 of the Mississippi Code and these rules:

- 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; and
- the child who is the subject of a youth court cause or the child's attorney.

Upon the filing of such motion, the youth court shall conduct a timely hearing on the motion. Notice of the hearing shall be given to:

- the movant;
- the youth court prosecutor;
- the director of the child advocacy center that conducted the interview; and
- all parties in the youth court proceedings from which the records originated who would be significantly affected by their disclosure.

Attendance by the director of the child advocacy center that conducted the interview, and all parties in the youth court proceedings from which the records originated who would be significantly affected by their disclosure, is optional. The court may proceed with the hearing on the motion in their absence.

The court may deny, in whole or part, or otherwise limit or set conditions for the disclosure of the forensic interview, as deemed necessary for protecting the best

interests of the child and the interest of justice. When granting a motion for discovery of a forensic interview, the court shall issue a written order that:

- specifies the person(s) to whom the records may be disclosed, the extent of the records which may be disclosed, and any terms or conditions on inspecting, copying, or viewing the records;
- specifies the reasons for any ordered redactions of the requested records;
and
- advises the person(s) receiving such records that failure to protect the confidentiality of the records as required by the Mississippi Youth Court Law, these rules, or the court's order shall be punishable by contempt of court and/or other sanctions authorized by law.

(3) Depositions. Depositions may only be taken as authorized by the court.

(4) Failure to comply. If at any time prior to a the adjudicatory hearing, or other applicable proceeding, it is brought to the attention of the court that a person has failed to comply with a this discovery rule or an order issued pursuant thereto to this rule, the court may grant a continuance, prohibit the person from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances. In no event shall a continuance be granted pursuant to this rules provision if the child or other party has failed to make an application to the court for a discovery order.

(b) Notice of alibi or insanity defense.

(1) Time. No later than seven (7) days before the date of the adjudication hearing, the child or the child's attorney must file a written notice with the court and prosecuting attorney of the intent to rely on a defense of alibi or insanity. The notice shall include a list of names and addresses of defense witnesses.

(2) Notice of rebuttal witnesses. Within seven (7) days after the receipt of notice, but no later than two (2) days before the adjudication hearing date, the prosecutor shall provide written notice to the court and defense of an intent to offer rebuttal to the above listed defenses. The notice shall include names and addresses of rebuttal witnesses.

(3) Furnishing notification of additional witnesses. If, prior to or during the adjudication hearing, a party learns of an additional witness whose identity, if known, should have been included in the information previously furnished, the party shall promptly notify the other party or the party's attorney of the name and address of such additional witness.

(4) Sanctions. Upon the failure of either party to comply with the requirements of this rule, the court may use such sanctions as it deems just and proper under the circumstances, including: granting a continuance; limiting further discovery of the party failing to comply; finding the attorney failing to comply in contempt; or excluding the testimony of the undisclosed witness. In no event shall the court limit the right of the defendant to testify in his/her own behalf. For good cause shown, the court may grant an exception to any of the requirements of this rules provision.

(c) Motion practice.

The following provisions shall apply to all written motions in proceedings subject to these rules.

(1) Filing. The original of each motion, and all affidavits and other supporting evidentiary documents, shall be filed in a timely manner within five (5) days of the applicable ~~judicial~~ hearing with the clerk of the youth court in the county where the action is docketed. The moving party at the same time shall serve a copy of the motion(s) upon each of the parties, with proof of service being upon certificate of the person executing the same, and mail a copy thereof to the youth court judge or referee at the judge's or referee's mailing address. Responses and supporting evidentiary documents shall be filed in the same manner.

(2) Memoranda and briefs. Accompanying memoranda or briefs in support of motions are encouraged but not required. Where the movant has served a memorandum or brief, respondent may serve a reply within five (5) days after service of the movant's memorandum or brief. A rebuttal memorandum or brief may be served within five (5) days of service of the reply memorandum. No memorandum or brief required or permitted herein shall be filed with the clerk. Memoranda or briefs shall not exceed twenty-five (25) pages in length.

(d) Prehearing conference.

At any time after the filing of the petition, the court may, on its own motion or the motion of any party, direct the attorneys for the parties to appear before it for a prehearing conference to consider and determine:

- (1) the simplification of issues;
- (2) the necessity or desirability of amendments to the petition;
- (3) the amount of time necessary to complete any discovery issues or concerns;
- (4) whether the child intends to raise an alibi or insanity defense;
- (5) the limitation of the number of expert witnesses;

- (6) the exchange of reports of expert witnesses expected to be called by each party, but only to the extent that such does not require the disclosure of confidential or privileged information prohibited from disclosure pursuant to Rule 5 of these rules or otherwise by law;
- (7) the possibility of obtaining admissions of facts and of documents and other exhibits which will avoid unnecessary proof;
- (8) the imposition of sanctions as authorized by these rules;
- (9) such other matters as may aid in the disposition of the action.

The court may enter an order reciting the action taken at the conference, the amendments allowed to the petition, and the agreements made by the parties as to any other matters considered, and limiting issues for the hearing to those not disposed of by admissions or agreements of counsel; and such order shall control the subsequent course of the proceedings, unless modified at the hearing to prevent manifest injustice.

(e) Access to Mississippi Youth Court Information Delivery System (MYCIDS). The child or other party under the jurisdiction of the youth court, or the attorney of record for the child or other party, shall have access to MYCIDS regarding the case pursuant to applicable rules and policies of the Mississippi Supreme Court and the Mississippi Administrative Office of Courts. If the child or other party under the jurisdiction of the youth court, or the attorney of record for the child or other party, is denied access to a document or information in MYCIDS, then a written motion for disclosure of the document or information may be made to the court pursuant to the motion practice procedures set forth in Rule 15(c) of this rule.

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Rule 15(a).

Sanctions.

§ 43-21-267 provides:

(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.

Rule 15(a)(2)(ii).

Notice to the director of the child advocacy center that conducted the interview, and to all parties in the youth court proceedings from which the records originated who would be significantly affected by their disclosure, is to allow such persons an opportunity to

object to the disclosure of the forensic interview, in whole or in part, or to request that the court limit or set conditions on its disclosure, for reasons in the best interests of the child or the interest of justice.

RULE 16:

Amend Rule 16 of the Uniform Rules of Youth Court Practice to read:

RULE 16 DETENTION HEARINGS / SHELTER HEARINGS

(a) Delinquency and child in need of supervision proceedings.

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

- (1) A written report, complaint, or petition has been filed.
- (2) Reasonable oral or written notice of the time, place and purpose of the hearing has been given to the child; to the child's parent, guardian or custodian; to the child's guardian ad litem appointed by the youth court pursuant to Rule 13 of these rules to protect the child's best interests, if any; to the child's Court-Appointed Special Advocate (CASA) volunteer appointed pursuant to section 43-21-121 of the Mississippi Code, if any; and to the child's counsel. If the parent, guardian or custodian cannot be found, the youth court may hold the hearing in the absence of the child's parent, guardian or custodian.
- (3) All parties present are afforded the opportunity to present evidence and cross-examine witnesses produced by others. The youth court may, in its discretion, limit the extent but not the right or presentation of evidence and cross-examination of witnesses. The youth court may receive any testimony and other evidence relevant to the necessity for the continued custody of the child without regard to the formal rules of evidence, including hearsay and opinion evidence. All testimony shall be made under oath and may be in narrative form. A complete record of all evidence shall be taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.
- (4) At the conclusion of the detention hearing, the court finds and the detention order recites that:
 - (i) there is probable cause the child is within the jurisdiction of the court; and
 - (ii) there is probable cause that custody is necessary.

Custody shall be deemed necessary: (1) when a child is endangered in danger of a significant risk of harm or any person would be endangered in danger of a significant risk of harm by the child; or to insure the child's attendance in court at such time as required; or when a parent, guardian or custodian is not available to provide for the care and supervision of the child; and (2) there is no reasonable alternative to custody. A finding of probable cause under this rule is subject to any limitations set forth in section 43-21-301 of the Mississippi Code.

Unless there is substantial compliance with these procedures, the court shall order the child to be released to the custody of the child's parent, guardian, or custodian. Any order placing a child into custody shall comply with the requirements provided in section 43-21-301 of the Mississippi Code.

(5) The court orders custody of the child and ~~that a petition be filed if one has not been filed~~, if a petition has not been filed, refers the matter to the youth court prosecutor for consideration of initiating formal proceedings.

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

(b) Child protection proceedings.

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

- (1) A written report, complaint, or petition has been filed.
- (2) Reasonable oral or written notice of the time, place and purpose of the hearing has been given to the child; to the child's parent, guardian or custodian; to the child's guardian ad litem appointed by the youth court pursuant to Rule 13 of these rules to protect the child's best interests, if any; to the child's Court-Appointed Special Advocate (CASA) volunteer appointed pursuant to section 43-21-121 of the Mississippi Code, if any; and to the child's counsel. If the parent, guardian or custodian cannot be found, the youth court may hold the hearing in the absence of the child's parent, guardian or custodian.
- (3) All parties present are afforded the opportunity to present evidence and cross-examine witnesses produced by others. The youth court may, in its discretion, limit the extent but not the right or presentation of evidence and cross-examination of witnesses. The youth court may receive any testimony and other evidence relevant to the necessity for the continued custody of the child without regard to the formal rules of evidence, including hearsay and opinion evidence. All testimony shall be made under oath and may be in narrative form. A complete record of all evidence shall be taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.
- (4) At the conclusion of the shelter hearing, the court finds and the shelter order recites that:
 - (i) there is probable cause the child is within the jurisdiction of the court;
 - (ii) there is probable cause that custody is necessary as described in Rule 16(a)(4)(ii) of these rules; and
 - (iii) the effect of the continuation of the child's residing within the child's own home would be contrary to the welfare of the child; the placement of the child in foster care is in the best interest of the child; and, unless the reasonable efforts requirement is bypassed under section 43-21-603(7)(c) of the Mississippi Code: (1) reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his

removal and there is no reasonable alternative to custody; or (2) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and there is no reasonable alternative to custody. The court shall order that reasonable efforts be made towards the reunification of the child with the child's family if it finds and the shelter order recites that the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within the child's own home, and there is no reasonable alternative to custody. Unless there is substantial compliance with these procedures, the court shall order the child to be released to the custody of the child's parent, guardian, or custodian. Any order placing a child into custody shall comply with the requirements provided in section 43-21-301 of the Mississippi Code.

(5) The court orders custody of the child and that a petition be filed if one has not been filed, if a petition has not been filed, refers the matter to the youth court prosecutor for consideration of initiating formal proceedings.

The child's guardian ad litem, and parent, guardian or custodian, and child may waive in writing the time of the shelter hearing or the shelter hearing itself. The child's consent is not required if the child has not reached ten (10) years of age.

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Rule 16(a), -(b).

These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-309 (2008) §§ 43-21-203, -309 (2020).

Section 43-21-309 of the Mississippi Code requires that "[r]easonable oral or written notice of the time, place and purpose of the hearing" be given to any appointed guardian ad litem or Court-Appointed Special Advocate (CASA) volunteer in the case. But, since neither of them are a party to the action, the youth court may proceed with the detention or shelter hearing in their absence.

Rule 16(a)(4)(ii), -(b)(4)(ii).

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

Rule 16(b)(4)(iii).

For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the “reasonable efforts” determination must be made no later than 60 days from the date the child is removed from the home. See 42 U.S.C. §§ 672(a)(2)(A), -671(a)(15) (2008); 45 C.F.R. § 1356.21(b)(1) (2008).

For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the “contrary to the welfare” determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home. See 42 U.S.C. § 672(a)(2)(A) (2008); 45 C.F.R. § 1356.21(c) (2008).

Federal Requirements

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to detention/shelter hearings include:

Reasonable efforts determination.

45 C.F.R. § 1356.21 (2008) provides in part:

(b) Reasonable efforts determination. . . .

(1) Judicial determination of reasonable efforts to prevent a child’s removal from the home.

(i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

Contrary to the welfare determination.

45 C.F.R. § 1356.21 (2008) provides in part:

(c) Contrary to the welfare determination. Under section 472(a)(1) of the Act, a child’s removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first

court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.

RULE 19:

Amend Rule 19 of the Uniform Rules of Youth Court Practice to read:

RULE 19 PROPER FACILITIES

(a) Designating detention or shelter facilities.

The youth court shall, by general order or rule of court, designate the available detention or shelter facilities to which children shall be delivered when taken into custody. Copies of the order or rule shall be made available to the Department of Human Services or the child welfare agency, as appropriate, and all law enforcement agencies within the territorial jurisdiction of the youth court.

(b) Detention prohibitions.

Except as otherwise provided in the Mississippi Youth Court Law, unless jurisdiction is transferred, no child shall be placed in any adult jail or place of detention of adults by any person or court. This rules provision shall not be construed to apply to commitments to the training school under section 43-21-605(1)(g)(iii) of the Mississippi Code.

(c) Detention of children charged with certain misdemeanor offenses.

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

(d) Arranging for the custody, care and maintenance of a child ordered into custody.

After a child is ordered into custody, the court may:

- (i) arrange for the custody of the child with any private institution or agency caring for children;
- (ii) commit the child to the Department of Mental Health pursuant to Section 41-21-61 et seq.; or
- (iii) order the Department of Human Services, the child welfare agency, or any other public agency to provide for the custody, care and maintenance of the child.

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Rule 19(a).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-315(1) (2008). Federal law prohibits placing juveniles alleged to be dependent, neglected, or abused in secure juvenile detention. See 42 U.S.C. § 5633(a)(11)(B) (2008). Unless there is a valid court order, a child in need of supervision (other than an out-of-state runaway pending return to the child's home state) shall not be held in secure juvenile detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial appearance.

Four core protections requiring State compliance.

The JJDP Act, through the 2002 reauthorization, establishes four core protections with which

participating States and territories must comply to receive grants under the JJDP Act:

-Deinstitutionalization of status offenders (DSO).

-Separation of juveniles from adults in institutions (separation).

-Removal of juveniles from adult jails and lockups (jail removal).

-Reduction of disproportionate minority contact (DMC), where it exists.

Meeting the core protections is essential to creating a fair, consistent, and effective juvenile justice system that advances the important goals of the JJDP Act. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, GUIDANCE MANUAL FOR MONITORING FACILITIES UNDER THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 2002 1 (SEPTEMBER 2003).

Rule 19(b).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-315(2) (2008); accord 42 U.S.C. §§ 5603, -5633 (2008); 28 C.F.R. § 31.303(e)(3)(i)(C) (2008).

Rule 19(c).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-315(3) (2008).

Rule 19(d).

This provision is congruent with Mississippi's constitutional mandates. See Miss. Const. art. IV, § 86 ("It shall be the duty of the legislature to provide by law for the treatment and care of the insane; and the legislature may provide for the care of the indigent sick in the hospitals in the state."); In re B.C.M., 744 So. 2d 299, 303 (Miss. 1999) ("The Constitution requires that the State assume responsibility for [the child], and reasonable statutory interpretation requires the director to provide temporary housing, treatment and care, which should become permanent when adequate "services and facilities are available" in the facility. The only role of the trial judge regarding this minor was to determine whether the minor needed the treatment and care provided by the state facility,

and if so, to order [the child's] commitment.”); see also Miss. Code Ann. § 43-21-315(4) (2008).

Federal Requirements

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to proper facilities include:

Secure detention facility means.

42 U.S.C. § 5603 (2008) provides in part:

(12) the term “secure detention facility” means any public or private residential facility which—

- (A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and*
- (B) is used for the temporary placement of any juvenile who is accused of having committed an offense, any nonoffender, or of any other individual accused of having committed a criminal offense; . . .*

Secure correction facility means.

42 U.S.C. § 5603 (2008) provides in part:

(13) the term “secure correctional facility” means any public or private residential facility which—

- (A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and*
- (B) is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense or any other individual convicted of a criminal offense; . . .*

Contact with adult inmates prohibited.

42 U.S.C. § 5633 (2008) provides in part:

[A State plan to receive formula grants shall] . . .

(12) provide that--

- (A) juveniles alleged to be or found to be delinquent or juveniles within the purview of paragraph (11) will not be detained or confined in any institution in which they have contact with adult inmates; and*
- (B) there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in collocated facilities, have been trained and certified to work with juveniles; . . .*

Contact means.

*42 U.S.C. § 5603 (2008) provides in part:
(25) the term “contact” means the degree of interaction allowed between juvenile offenders in a secure custody status and incarcerated adults under section 31.303(d)(1)(i) of title 28, Code of Federal Regulations, as in effect on December 10, 1996; . . .*

Collated facilities means.

*42 U.S.C. § 5603 (2008) provides in part:
(28) the term “collocated facilities” means facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds; . . .*

*Criteria for juvenile facilities if collated with an adult jail or lockup.
See 28 C.F.R. § 31.303(e)(3)(i)(C) (2008) (setting forth four criteria to be met to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup).*

Status offenders who violate a valid court order excluded from prohibition of secure detention.

*42 U.S.C. § 5633 (2008) provides in part:
[A State plan to receive formula grants] . . .
(11) shall, in accordance with rules issued by the Administrator, provide that—
(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding— . . .
(ii) juveniles who are charged with or who have committed a violation of a valid court order;
shall not be placed in secure detention facilities or secure correctional facilities; . . .*

Alleged dependent, neglected, or abused children shall not be placed in secure detention.

*42 U.S.C. § 5633 (2008) provides in part:
[A State plan to receive formula grants] . . .
(11) shall, in accordance with rules issued by the Administrator, provide that— . . .
(B) juveniles--
(i) who are not charged with any offense; and
(ii) who are--
(I) aliens; or
(II) alleged to be dependent, neglected, or abused;
shall not be placed in secure detention facilities or secure correctional facilities; . . .*

Six hour jail or lockup limitation.

*42 U.S.C. § 5633 (2008) provides in part:
[A State plan to receive formula grants shall] . . .
(13) provide that no juvenile will be detained or confined in any jail or lockup for adults except—*

(A) juveniles who are accused of nonstatus offenses and who are detained in such jail or lockup for a period not to exceed 6 hours--

(i) for processing or release;

(ii) while awaiting transfer to a juvenile facility; or

(iii) in which period such juveniles make a court appearance;

and only if such juveniles do not have contact with adult inmates and only if there is in effect in the State a policy that requires individuals who work with both such juveniles and adult inmates in collocated facilities have been trained and certified to work with juveniles; . . .

Forty-eight hour jail or lockup limitation if awaiting initial court appearance.

See 42 U.S.C. § 5633 (2008) provides in part:

[A State plan to receive formula grants shall] . . .

(13) provide that no juvenile will be detained or confined in any jail or lockup for adults except-- . . .

(B) juveniles who are accused of nonstatus offenses, who are awaiting an initial court appearance that will occur within 48 hours after being taken into custody (excluding Saturdays, Sundays, and legal holidays), and who are detained in a jail or lockup--

(i) in which--

(I) such juveniles do not have contact with adult inmates; and

(II) there is in effect in the State a policy that requires individuals who work with both such juveniles and adults inmates in collocated facilities have been trained and certified to work with juveniles; and

(ii) that--

(I) is located outside a metropolitan statistical area (as defined by the Office of Management and Budget) and has no existing acceptable alternative placement available;

(II) is located where conditions of distance to be traveled or the lack of highway, road, or transportation do not allow for court appearances within 48 hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed an additional 48 hours) delay is excusable; or

(III) is located where conditions of safety exist (such as severe adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonable safe travel; . . .

RULE 21:

Amend Rule 21 of the Uniform Rules of Youth Court Practice to read:

RULE 21 PROPER VENUE

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

(b) Child protection proceedings. If a child is alleged to be an abused or neglected child, the proceedings shall be commenced in the county where the child's custodian resides or in the county where the child is present when the report is made to the intake unit. After adjudication the youth court may transfer the case at any stage of the proceeding for disposition to the county where the child resides or to a county where a youth court has previously acquired jurisdiction if that is in the best interest of the child.

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Rule 21(a).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-155(1) (2008).

Rule 21(b).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-155(2) (2020~~08~~).

RULE 22:

Amend Rule 22 of the Uniform Rules of Youth Court Practice to read:

RULE 22 SUMMONS

(a) Adjudication hearings.

(1) Persons summoned. When a petition has been filed and the date of hearing has been set by the youth court, the judge or the judge's designee shall order the clerk of the youth court to issue a summons to the following to appear personally at such hearing: the child named in the petition; the person or persons who have custody or control of the child; the parent or guardian of the child if such parent or guardian does not have custody of the child; and any other person whom the court deems necessary. The clerk does not need to issue summons to:

- (i) any person who has already been served with process or who has already appeared in court proceedings in the cause; and

(ii) who has received sufficient notice of the time, date, place and purpose of the adjudication hearing.

(2) Form. The form of the summons shall be pursuant to section 43-21-503 of the Mississippi Code, except as otherwise directed by the court in accordance with constitutional standards when personal service cannot be accomplished.

Additionally, the following notice shall be placed in capital letters at the bottom of the summons:

A PARENT, GUARDIAN, OR CUSTODIAN OF A CHILD SHALL BE A PARTY TO THIS CASE PURSUANT TO THE MISSISSIPPI YOUTH COURT LAW. A PERSON MADE A PARTY TO THIS CASE MAY BE REQUIRED: TO PAY FOR THE SUPPORT OF THE CHILD PLACED IN CUSTODY OF ANY PERSON OR AGENCY INCLUDING ANY NECESSARY MEDICAL TREATMENT PURSUANT TO SECTION 43-21-615 OR SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO PAY FOR COURT ORDERED MEDICAL AND OTHER EXAMINATIONS AND TREATMENT OF A CHILD, FOR REASONABLE ATTORNEY'S FEES AND COURT COSTS, AND FOR OTHER EXPENSES FOUND NECESSARY OR APPROPRIATE IN THE BEST INTEREST OF THE CHILD PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO PAY DAMAGES OR RESTITUTION AND TO PARTICIPATE IN A COUNSELING PROGRAM OR OTHER SUITABLE FAMILY TREATMENT PROGRAM PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO RECEIVE COUNSELING AND PARENTING CLASSES PURSUANT TO SECTION 43-21-605 OF THE MISSISSIPPI CODE; TO DO OR OMIT TO DO ANY ACT DEEMED REASONABLE AND NECESSARY FOR THE WELFARE OF THE CHILD PURSUANT TO SECTION 43-21-617 OF THE MISSISSIPPI CODE.

(3) Manner of service.

(i) Who may serve summons. Service of summons shall be made by a sheriff, deputy sheriff, or any other person appointed by the youth court judge. Any person appointed to serve summons shall, for such purpose, be an officer of the youth court.

(ii) Notice of time, date, and place. Notice of the time, date, place and purpose of any hearing other than adjudicatory and transfer hearings shall be given to all parties in person in court or by mail, or in any other manner as the youth court may direct.

(iii) If parent, guardian, or custodian exercising parental responsibilities resides and can be located within the state. Service of summons shall be made personally by delivery of a copy of the summons with a copy of the petition in a sealed envelope attached to the summons. A child may be served in the same manner as an adult. Service of the summons and petition, motions, notices and all other papers upon a child who has not reached his fourteenth birthday shall be effectuated by making service upon the child's parent, guardian or custodian and guardian ad litem, if any.

(iv) If parent, guardian, or custodian exercising parental responsibilities does not reside or cannot be located within the state. If the parent, guardian, or custodian exercising parental responsibilities does not reside within the state or cannot be located after diligent search and inquiry, as evidenced by an affidavit submitted to the court by the youth court prosecutor on the efforts made to accomplish personal service, the clerk shall issue summons to the guardian ad litem. If the name and post office address of the parent or guardian who does not reside within the state or cannot be located therein can be ascertained, the clerk shall mail by "certified mail" ten (10) days before the date set for the hearing a copy of the summons with a copy of the petition attached to the summons to such parent or guardian. The clerk shall note the fact of such mailing upon the court docket. Ten (10) days after the summons has been mailed, the court may take jurisdiction as if summons had been personally served as herein provided:

then, upon motion of the youth court prosecutor, the youth court may order service of process by publication consistent with Rule 81 of the Mississippi Rules of Civil Procedure for termination of parental rights actions and/or by email, social media, or any other method of electronic communication pursuant to Rule 22(a)(3)(v) of this rule.

(v) Service of process by electronic communication. Upon motion of the youth court prosecutor, a youth court may order service of process by email, social media, or any other method of electronic communication, maintained by the parent, guardian, or custodian, and hosted on any communication platform designed to transmit information electronically, if the court determines that the proposed service is reasonably calculated to apprise the parent, guardian, or custodian of the opportunity to be heard after considering the following:

- whether attempted personal service of the parent, guardian, or custodian under this rule has been unsuccessful or is otherwise impracticable;
- whether the account is operated solely by the parent, guardian, or custodian or in conjunction with others;
- whether the parent, guardian, or custodian has made substantial prior use of the account;

- whether the proposed communication of service would be sufficiently conspicuous, considering the prior use of the account by the parent, guardian, or custodian and the operation of the platform;
- whether the parent, guardian, or custodian had accessed or used the account in connection with the underlying dispute; and
- whether the parent's, guardian's, or custodian's receipt of the summons is verifiable.

If the court grants the motion for service of process by electronic communication, then service shall be deemed complete on the 10th day after the transmission of the summons to that account as evidenced by an attached copy of the transmission in the return.

(4) Time. Summons shall be served not less than three (3) days before the date set for the adjudicatory hearing of proceedings concerning the child, excluding Saturdays, Sundays, and statutory state holidays.

(5) Waiver of summons by a party other than the child. Service of summons on a party other than the child may be waived by that party by written stipulation or by voluntary appearance at the hearing. In the case of written stipulation or voluntary appearance, the youth court may, in its discretion, proceed to a hearing regardless of the date set for the hearing if all other parties are properly before the youth court. At the time of the waiver, a copy of the petition shall be given to the party.

(6) Waiver of three (3) days' time before hearing by a child served with process. If a child is served with process, the child may waive the three (3) days' time before the hearing, and the youth court may, in its discretion, proceed to a hearing regardless of the date set for the hearing if all other parties are properly before the youth court and the youth court finds all of the following: the child fully understands his/her rights and fully understands the potential consequences of the hearing; the child voluntarily, intelligently, and knowingly waives his rights to three (3) days' time before the hearing; the child is effectively represented by counsel; and the child has had in fact sufficient time to prepare.

(7) Enforcement. Any person summoned who fails to appear without reasonable cause may be proceeded against for contempt of court. In case the summons cannot be served or the parties served with summons fail to obey the same, or in any case when it shall be made to appear to the youth court that the service of summons will be ineffectual or the welfare of a child requires that the child be brought forthwith into the custody of the youth court, a warrant or custody order may be issued against the parent, parents, guardian or custodian or against the child.

(b) Disposition hearings. Service of summons for disposition hearings shall be made pursuant to Rule 22(a) of these rules. The clerk does not need to issue summons to:

- (i) any person who has already been served with process or who has already appeared in court proceedings in the cause; and
- (ii) who has received sufficient notice of the time, date, place and purpose of the disposition hearing.

(c) Modification of disposition hearings. Service of summons for modification of disposition hearings shall be made pursuant to Rule 22(a) of these rules. The clerk does not need to issue summons to:

- (i) any person who has already been served with process or who has already appeared in court proceedings in the cause; and
- (ii) who has received sufficient notice of the time, date, place and purpose of the modification hearing.

(d) Permanency hearings. Service of summons for permanency hearings shall be made pursuant to Rule 29(b) of these rules.

(e) Permanency review hearings. Service of summons for permanency review hearings shall be made pursuant to Rule 31(b) of these rules.

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Rule 22(a)(1).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-501 (2008).

Persons who should always be present at the adjudication hearing in abuse and neglect cases include: "judge or judicial officer; parents whose rights have not been terminated, including putative fathers; relatives with legal standing or other custodial adults; assigned caseworker; agency attorney; attorney for parents (separate attorney if conflict warrants); legal advocate for the child and/or GAL/CASA; court reporter or suitable technology; and security personnel." NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 52 (1995). Other persons whose presence may be needed at the permanency hearing include: "age-appropriate children; extended family members; adoptive parents; judicial case management staff; service providers; other witnesses." Id.

Rule 22(a)(2).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-503 (2008).

Rule 22(a)(3).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-505 (2008).

Miss. Code Ann. § 43-21-505 provides: "Service of summons must conform to the Uniform Rules of Youth Court Practice."

Due process requires that the child and the parents or guardian receive notice. See Application of Gault, 387 U.S. 1, 33-34 (1967) ("[Due process of law] does not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet."); In re Littell, 232 So.2d 733, 735 (Miss. 1970) ("Due process requires only that reasonable notice be given."); Hopkins v. Youth Court, 227 So. 2d 282, 284 (Miss. 1969) ("The youth court is without jurisdiction unless the parents or guardian if available, be summoned as required by statute.").

Rule 22(a)(3)(iv).

The court makes a determination based on the information contained in the affidavit, and any additional testimony given, on whether a diligent search and inquiry had been made to accomplish personal service. For guidance in this decision, a court may want to consider whether the "diligent search and inquiry" was consistent with MDCPS policies for locating a family member.

See e.g.:

"A diligent search to locate the family includes, but is not limited to:

1. Contacting all known previous addresses of the child's parents;
2. Calling all previous telephone numbers listed in the case file;
3. Sending letters to General Delivery in a town or city where the Worker believes the parent to be residing but has no specific address;
4. Contacting the County Clerk in charge of motor vehicle registration;
5. Requesting a law enforcement records check;
6. Contacting the State Department of Labor;
7. Contacting the Department of Corrections;
8. Contacting the state hospitals;
9. Contacting all known relatives, friends, and previous employers;
10. Checking the telephone directory;
11. Contacting utility and telephone companies;
12. Contacting child support enforcement;
13. Requesting a diligent search through Trans Union;
14. Accessing the location services through the post office; and
15. Utilizing social media."

Mississippi Department of Child Protection Services, Investigations Policy & Procedures 24-25 (2019).

Rule 22(a)(4), -(5), -(6).

These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-507 (2008).

A child cannot waive due process required by law. See *In re Edwards*, 298 So. 2d 703, 704 (Miss. 1974) (“The notice to the parents may be waived by them, but not process on the minor.”).

Rule 22(a)(7).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-509 (2008).

Rule 22(b), -(c).

These provisions comport with the statutory procedures. See Miss. Code Ann. §§ 43-21-501 to -507 (2008).

Persons who should always be present at the disposition hearing of a child adjudicated abused or neglected include: “judge or judicial officer; parents whose rights have not been terminated, including putative fathers; relatives with legal standing or other custodial adults; assigned caseworker; agency attorney; attorney for parents (separate attorney if conflict warrants); legal advocate for the child and/or GAL/CASA; court reporter or suitable technology; and security personnel.” NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 63 (1995). Other persons whose presence may be needed at the disposition hearing include: “age-appropriate children; extended family members; adoptive parents; judicial case management staff; service providers; adult or juvenile probation or parole officer; other witnesses.” *Id.*

RULE 24:

Amend Rule 24 of the Uniform Rules of Youth Court Practice to read:

Rule 24 ADJUDICATION HEARINGS

(a) Delinquency and child in need of supervision proceedings.

(1) Time of hearing.

(i) If child is not in detention. Unless the hearing is continued upon a showing of good cause or the person who is a subject to the cause has admitted the allegations

of the petition, an adjudicatory hearing shall be held within ninety (90) days after the filing of the petition to determine whether there is legally sufficient evidence to find that the child is a delinquent child or a child in need of supervision. If the adjudicatory hearing is not held within the ninety (90) days, the petition shall be dismissed with prejudice.

(ii) If child is in detention. If the child is in detention, the hearing shall be held as soon as possible but not later than twenty-one (21) days after the child is first detained by the court unless the hearing be postponed: upon motion of the child; where process cannot be completed; or upon a judicial finding that a material witness is not presently available. If the adjudicatory hearing is not held or postponed for the aforesaid reasons, the child may be released from detention.

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

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

(4) Conduct of hearing. All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults. Adjudication hearings shall be conducted:

- (i) without a jury and may be recessed from time to time;
- (ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;
- (iii) by excluding the general public and admitting only those persons found by the court to have a direct interest in the cause or work of the court; and
- (iv) with a complete record of all evidence taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

Any person found by the court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel.

(5) Verifying information and explaining procedures and rights. At the beginning of each adjudicatory hearing, the court shall: verify the name, age and residence of the child who is the subject of the cause and ascertain the relationship of the parties, each to the other; ascertain whether all necessary parties are present and identify all persons participating in the hearing; ascertain whether the notice requirements have been complied with and, if not, whether the affected parties intelligently waived compliance of the notice requirements in accordance with section 43-21-507 of the Mississippi Code; explain to the parties the purpose of the hearing and the possible dispositional alternatives thereof; and explain to the parties:

- (i) the right to counsel;
- (ii) the right to remain silent;
- (iii) the right to subpoena witnesses;
- (iv) the right to confront and cross-examine witnesses; and
- (v) the right to appeal, including the right to a transcript of the proceedings.

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

The court should then ascertain whether the parties before the court are represented by counsel. If the party wishes to retain counsel, the court shall continue the hearing for a reasonable time to allow the party to obtain and consult with counsel of the party's own choosing. If an indigent child does not have counsel, the court shall appoint counsel to represent the child and shall continue the hearing for a reasonable time to allow the child to consult with the appointed counsel.

(6) Evidence. In arriving at its adjudicatory decision, the court shall consider only evidence which has been formally admitted at the adjudicatory hearing. The following evidentiary procedures apply to these hearings:

- (i) All testimony shall be under oath and may be in narrative form.
- (ii) The court shall admit any evidence that would be admissible in a criminal proceeding.
- (iii) An out-of-court admission or confession by the child, even if otherwise admissible, shall be insufficient to support an adjudication that the child is a delinquent child unless the admission or confession is corroborated in whole or in part by other competent evidence.
- (iv) Members of the youth court staff may appear as witnesses except that no admission or confession made to a member of the youth court staff may be testified to at a youth court hearing.
- (v) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence to subpoena, confront

and examine the person who prepared or furnished data for the report and to introduce evidence controverting the contents of the report.

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

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

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

(b) Child protection proceedings.

(1) Time of hearing.

(i) If child is not in shelter. Unless continued upon a showing of good cause or the person who is a subject to the cause has admitted the allegations of the petition, the adjudicatory hearing of a child who is not in shelter shall be held within ninety (90) days after the filing of the petition to determine whether there is legally sufficient evidence to find that the child is a neglected or an abused child. If the adjudicatory hearing is not held within the ninety (90) days, the petition shall be dismissed with prejudice.

(ii) If child is in shelter. The adjudicatory hearing of a child who is in shelter shall be held as soon as possible but not later than thirty (30) days after the child is first taken into custody unless the hearing is postponed: upon motion of the child; where process cannot be completed; or upon a judicial finding that a material witness is not presently available. If the adjudicatory hearing is not held or postponed for the aforesaid reasons, the child may be released from shelter.

(2) Where parties do not contest the allegations in the petition. At any time after the petition has been filed, all parties to the cause may appear before the judge and voluntarily choose not to contest the allegations in the petition. In such instances, the court may adjudicate the child as a neglected child or an abused child or a sexually abused child or a dependent child, as applicable, if there is a sufficient factual basis to

sustain the charge(s) and the court has verified the information and explained the rights and procedures required pursuant to Rule 24(b)(4) of this rule.

(3) Conduct of hearing. All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults. Adjudication hearings shall be conducted:

- (i) without a jury and may be recessed from time to time;
- (ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;
- (iii) by excluding the general public and admitting only those persons found by the court to have a direct interest in the cause or work of the court; and
- (iv) with a complete record of all evidence taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

Any person found by the youth court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel, which shall include the foster parent(s) and the residential child caring agency providing care for the child. The court may exclude the attendance of a child from an adjudication hearing in neglect and abuse cases with consent of the child's guardian ad litem or legal counsel.

(4) Verifying information and explaining procedures and rights. At the beginning of each adjudicatory hearing, the court shall: verify the name, age and residence of the child who is the subject of the cause and ascertain the relationship of the parties, each to the other; ascertain whether all necessary parties are present and identify all persons participating in the hearing; ascertain whether the notice requirements have been complied with and, if not, whether the affected parties intelligently waived compliance of the notice requirements in accordance with section 43-21-507 of the Mississippi Code; explain to the parties the purpose of the hearing and the possible dispositional alternatives thereof; and explain to the parties:

- (i) the right to counsel;
- (ii) the right to remain silent;
- (iii) the right to subpoena witnesses;
- (iv) the right to confront and cross-examine witnesses; and
- (v) the right to appeal, including the right to a transcript of the proceedings.

The court should then ascertain whether the parties before the court are represented by counsel. If ~~the~~ a party wishes to retain counsel, the court shall continue the hearing for a reasonable time to allow the party to obtain and consult with counsel of the party's own choosing. If an indigent child does not have counsel, the court ~~shall~~ should appoint counsel to represent the child whenever the appointed guardian ad litem for the child is

not an attorney, and then shall continue the hearing for a reasonable time to allow the child to consult with the appointed counsel.

(5) Evidence. In arriving at its adjudicatory decision, the court shall consider only evidence which has been formally admitted at the adjudicatory hearing. The following evidentiary procedures apply to these hearings:

- (i) All testimony shall be under oath and may be in narrative form.
- (ii) The court shall admit any evidence that would be admissible in a civil proceeding.
- (iii) Members of the youth court staff may appear as witnesses except that no admission or confession made to a member of the youth court staff may be testified to at a youth court hearing.
- (iv) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence to subpoena, confront and examine the person who prepared or furnished data for the report and to introduce evidence controverting the contents of the report.

(6) Opportunity to present closing argument. At the conclusion of the evidence, the court shall give the parties an opportunity to present closing argument.

(7) Standard of proof. If the court finds from a preponderance of the evidence that the child is a neglected child or an abused child, the youth court shall enter an order adjudicating the child to be a neglected child or an abused child.

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

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Rule 24(a)(1),-(b)(1).

These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-551 (2008).

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

43-21-551 provides that a hearing may be continued upon a showing of good cause.”).

Rule 24(a)(2),-(b)(2).

These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-553 (2008).

Rule 24(a)(3).

These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-555 (2008).

Rule 24(a)(4),-(b)(3).

These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-203 (2008).

All cases involving children must be heard separately from the trial of cases involving adults. This is consistent with the confidential and rehabilitative nature of youth court proceedings. An effective method to assure compliance is for the court to schedule its adult cases and youth court proceedings on separate days.

In child protection proceedings, the foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the adjudication hearing. See also Miss. Code Ann. 43-15-13(11) (providing rights to be extended to foster parents). If a party invokes Rule 615 of the Mississippi Rules of Evidence, the court should take the testimony of the foster parent(s) and the representative of the residential child caring agency prior to taking the testimony of other witnesses.

Rule 24(a)(4)(i),-(b)(3)(i).

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

Rule 24(a)(4)(ii),-(b)(3)(ii).

Adjudication hearings are conducted under the rules of evidence and rules of court as may comply with constitutional standards. See M.R.E. 101 (“These rules govern proceedings in the courts of the State of Mississippi to the extent and with the exceptions stated in rule 1101.”). See generally *Application of Gault*, 387 U.S. 1 (1967); *Patterson v. Hopkins*, 350 F. Supp. 676, 683 (N.D. Miss. 1972) (“*Gault* decided that, although the Fourteenth Amendment does not require that the hearing at this stage conform with all the requirements of a criminal trial or even of the usual administrative proceeding, the Due process Clause does require application during the adjudicatory hearing of “the essentials of due process and fair treatment.””).

Rule 24(a)(5),-(b)(4).

These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-557 (2008).

At the beginning of each adjudicatory hearing, the court is required to verify certain information and to explain certain procedures and rights. See In re J.N., 915 So. 2d 1076, 1079-80 (Miss. Ct. App. 2005) (“A child in youth court proceedings is entitled to certain due process rights that cannot be ignored. At the beginning of an adjudicatory hearing, the youth court must explain to the parties the purpose of the hearing, the possible disposition alternatives, the right to counsel, the right to remain silent, the right to subpoena witnesses, the right to cross-examine witnesses testifying against him, and the right to appeal.”).

Rule 24(a)(6),-(b)(5).

These provisions comport with the statutory procedures. See Miss. Code Ann. §§ 43-21-203(9)(b),-559 (2008).

M.R.E. 101 provides:

These rules govern proceedings in the courts of the State of Mississippi to the extent and with the exceptions stated in rule 1101.

M.R.E. 1101(b) provides in part:

Rules Inapplicable. Except for the rules pertaining to privileges, these rules do not apply in the following situations:

- (1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a). ...*
- (3) Miscellaneous Proceedings ... probable cause hearings in ... youth court cases; ... disposition hearings; granting or revoking probation; issuance of warrants for arrest, ... and search warrants; and proceedings with respect to release on bail or otherwise.*
- (4) Contempt Proceedings. Contempt proceedings in which the court may act summarily.*

Rule 24(a)(7),-(b)(6).

These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-559(4) (2008).

Rule 24(a)(8),-(b)(7).

These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-561 (2008).

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

evidence. See *E.S. v. State*, 567 So. 2d 848, 850 (Miss. 1990).

Rule 24(a)(9),-(b)(8).

These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-557(4) (2008).

RULE 28:

Amend Rule 28 of the Uniform Rules of Youth Court Practice to read:

Rule 28 MODIFICATION OF DISPOSITION ORDERS / ANNUAL REVIEWS

(a) Delinquency and child in need of supervision proceedings.

(1) Modification of orders. Procedures governing the modification of a disposition order of a delinquent child or a child in need of supervision shall be conducted pursuant to section 43-21-613(1) and (2) of the Mississippi Code. Service of summons for such hearings shall be pursuant to Rule 22(c) of these rules.

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

(b) Child protection proceedings.

(1) Modification of orders. Procedures governing the modification of a disposition order of an abused or neglected child shall be conducted pursuant to section 43-21-613(2) of the Mississippi Code. Service of summons for such hearings shall be pursuant to Rule 22(c) of these rules.

(2) Child protection reviews. Child protection reviews for abused or neglected children shall be conducted pursuant to Rules 29 and 31 of these rules.

(c) Dependent children.

(1) Modification of orders. Procedures governing the modification of a disposition order of a dependent child shall be conducted pursuant to section 43-21-613(2) of the Mississippi Code. Service of summons for such hearings shall be pursuant to Rule 22(c) of these rules.

(2) Child protection reviews. Child protection reviews for dependent children shall be conducted pursuant to Rules 29 and 31 of these rules.

(d) Durable legal custody.

(1) Modifications of orders. Procedures governing the modification of a durable legal custody order of a neglected or abused child shall be conducted pursuant to section 43-21-613(2) of the Mississippi Code. Service of summons for such hearings shall be pursuant to Rule 22(c) of these rules. A durable legal custody order shall not be modified except

upon the court finding:

- (i) a substantial change in circumstances which has adversely affected the child;
- (ii) that the order modifying the durable legal custody order remedies the conditions; and
- (iii) that such modification is in the best interest of the child and the interests of justice.

(2) Permanency review hearings not required. The requirements of section 43-21-613 of the Mississippi Code as to durable legal custody review hearings do not apply. Instead, permanency review hearings are not to be conducted unless explicitly ordered by the court. In such cases, the ~~Department of Human Services~~ child welfare agency shall be released from any oversight or monitoring responsibilities, and relieved of physical and legal custody and supervision of the child.

(e) Durable legal relative guardianship.

(1) Disposition hearings do not apply. The requirements of section 43-21-613 of the Mississippi Code as to disposition review hearings do not apply to a hearing concerning durable legal relative guardianship.

(2) Annual review and certification. The child welfare agency must conduct an administrative annual review and recertification of the durable legal relative guardianship to determine whether it remains in the best interest of the child. If a material change in circumstances occurs adverse to the best interest of the child, the parent, relative guardian, fictive kin guardian, or child welfare agency may petition the court to review the durable legal relative guardianship.

Comments & Procedures *The Mississippi Council of Youth Court Judges' Advisory Notes*

Rule 28(a).

The youth court has continuing jurisdiction to modify the disposition of a delinquent or child in need of supervision as necessary. See In re Litdell, 232 So. 2d 733, 736 (Miss. 1970) ("The youth court's jurisdiction of a youth adjudged to be delinquent is a continuing one, with continuing power to alter the terms of the probation if, in the best interests of the child, the original arrangement proves inadequate or to have been ill advised."). Any modification is to be of equal or greater precedence which the youth court could have originally ordered. See Miss. Code Ann. § 43-21-613(2) (2008).

Rule 28(b).

The youth court has continuing jurisdiction to modify the disposition of an abused or neglected child as necessary. See In re R.D., 658 So. 2d 1378, 1386 (Miss. 1995) ("Section 43-21-613 provides that orders of the youth court determining the disposition of a child who has been adjudicated neglected, for instance, may be modified in the discretion of the youth court thereafter, as necessary."). Modification of a custody order requires a material change in circumstances and that the modification be in the best interest of the child. See In re V.L.W., 751 So. 2d 1033, 1035 (Miss. 1999). Any modification is to be of equal or greater precedence which the youth court could have

originally ordered. See Miss. Code Ann. § 43-21-613(2) (2008).

Rule 28(c).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-613(3)(c) (2008).

Rule 28(d).

This provision comports with the statutory procedures. See Miss. Code Ann. §§ 43-21-609(b), -613(3)(d) (2008).

*Section 43-21-609(b) of the Mississippi Code provides in part: “The requirements of Section 43-21-613 as to disposition review hearings does not apply to those matters in which the court has granted durable legal custody. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities.” Granting of durable legal custody, however, does not preclude the court from conducting a review hearing of its order. See *In re S.A.M.*, 826 So. 2d 1266, 1279 (Miss. 2002) (“[T]he intent of durable legal custody is merely to avoid the required annual dispositional reviews by the youth court and constant oversight and monitoring by DHS, not a complete preclusion of the court’s jurisdiction, DHS’s further involvement or court ordered review hearings as needed.”). Durable legal custody is not allowed as an alternative disposition unless the child has been in the physical custody of the proposed durable custodians for at least one year under the supervision of the Department of Human Services. See *May v. Harrison County Dep’t of Human Servs.*, 883 So. 2d 74, 82 (Miss. 2004). The granting of durable legal custody does not afford the durable legal custodian any greater rights than those of a foster parent. See *Barnett v. Oathout*, 883 So. 2d 563, 1279 (Miss. 2004).*

Rule 28(e).

This provision comports with the statutory procedures. See Miss. Code Ann. §§ 43-21-609(c)(ii), -613(4)(2020).

A durable legal relative guardianship in youth court is not subject to the usual requirements for guardianship of a child. Miss. Code Ann. § 93-20-104(4) provides: “This chapter does not apply to a durable legal relative guardianship to facilitate child placement that may be created by a youth court under Section 43-21-609.”

RULE 29:

Amend Rule 29 of the Uniform Rules of Youth Court Practice to read:

Rule 29 PERMANENCY HEARINGS

(a) Time of hearing following disposition.

(1) When reasonable efforts to maintain child within child's own home are not required. Where the court has found at the disposition hearing that reasonable efforts to maintain the child within the child's own home are not required, it shall conduct a permanency hearing within thirty (30) days of such finding.

(2) When reasonable efforts to maintain child within child's own home are required. Where the court has found at the disposition hearing that reasonable efforts to maintain the child within the child's own home are required, it shall conduct a permanency hearing for any child who has been placed with the Department of Human Services, Division of Family and Children's Services child welfare agency or any other person or public or private agency, other than the child's parent, guardian or custodian, unless a lesser period of time is required under the Mississippi Code, within six (6) months after the earlier of:

- (i) an adjudication that the child has been adjudicated abused or neglected; or
- (ii) the date of the child's removal from the allegedly abusive or neglectful custodian/parent.

The court may extend the period of time to conduct the hearing for an additional six (6) months upon finding extraordinary and compelling reasons for extending the time period in the best interest of the child.

(3) Children placed in foster care on or after July 1, 1998. The court shall conduct a permanency hearing for any child placed in foster care on or after July 1, 1998 within a time period that substantially complies with section 43-15-13(4) of the Mississippi Code.

(b) Summons.

(1) Persons summoned. When the date of the permanency hearing has been set by the youth court, and if necessary to fulfill the notice requirements, the judge or the judge's designee shall order the clerk of the youth court to issue a summons to the following to appear personally at such hearing: the child named in the petition; the person or persons who have custody or control of the child; the parent or guardian of the child if such parent or guardian does not have custody of the child, except in no event shall summons issue to the parent(s) whose parental rights have been terminated; the foster parent(s); the residential child agency providing care for the child; and any other person whom the court deems necessary.

The clerk does not need to issue summons to any person who has already received sufficient notice of the time, date, place, and purpose of the permanency hearing.

(2) Form. The form of the summons shall be pursuant to Rule 22(a)(2) of these rules.

(3) Manner of service. The manner of service shall be pursuant to Rule 22(a)(3) of these rules.

(4) Time. Summons shall be served not less than three (3) days before the date set for the permanency hearing.

(5) Waiver of summons by a party other than the child. Waiver of summons by a party other than the child shall be pursuant to Rule 22(a)(5) of these rules.

(6) Waiver of three (3) days' time before hearing by a child served with process. Waiver of three (3) days' time before the permanency hearing by a child served with process shall be pursuant to Rule 22(a)(6) of these rules.

(7) Enforcement. Enforcement of the summons shall be pursuant to Rule 22(a)(7) of these rules.

(c) Conduct of hearing. In conducting the hearing, the court shall require a written report and may require information or statements from the child's Department of Human Services, Division of Family and Children's Services child welfare agency worker, youth court counselor, if any, parent, guardian or custodian, which includes, but is not limited to, an evaluation of the family's progress and recommendations for modifying the permanency plan and concurrent plan in the best interest of the child. A complete record of all evidence shall be taken by stenographic reporting, by mechanical or electronic device or by some combination thereof. The judge or referee shall, at the permanency hearing, determine the future status of the child, including, but not limited to, whether the child should be:

- (i) returned to the parent(s),
- (ii) placed with suitable relatives,
- (iii) referred for termination of parental rights and placed for adoption,
- (iv) placed for the purpose of establishing durable legal custody, or
- (v) continued in foster care on a permanent or long-term basis because of the child's special needs or circumstances.

If the child is in an out-of-state placement, the hearing shall determine whether the out-of-state placement continues to be appropriate and in the best interest of the child. At the permanency hearing the judge or referee shall determine, and the court order shall recite that reasonable efforts were made by the Department of Human Services, Division of Family and Children's Services child welfare agency to finalize the child's permanency plan and concurrent plan that was in effect on the date of the disposition hearing. The judge or referee may find that reasonable efforts to maintain the child within the child's home shall not be required in accordance with section 43-21-603(7)(c) of the Mississippi Code.

(d) Findings pertaining to termination of parental rights.

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

- (i) the child is being cared for by a relative; and/or
- (ii) the Department of Human Services child welfare agency has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child.

(2) Where the court does not make a finding under Rule 29(d)(1), the Department of Human Services, Division of Family and Children's Services child welfare agency, any interested person as defined under section 93-15-103 of the Mississippi Code, or any agency, institution or person holding custody of the child may commence termination of

parental rights proceedings by filing a petition pursuant to the Mississippi Termination of Parental Rights Law forward a termination of parental rights package to the Mississippi Attorney General's Office for a termination of parental rights petition to be filed pursuant to the "Termination of Rights of Unfit Parents Law" if:

- (i) the child is in the legal custody of the Department of Human Services, Division of Family and Children's Services child welfare agency; and
- (ii) the court ordered permanency plan or concurrent plan is adoption.

(e) Permanency review hearings. Permanency review hearings shall be conducted pursuant to Rule 31 of these rules.

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Rule 29(a)(1).

This provision complies with the federal and state requirements. See 45 U.S.C. § 1355.20 (2008). The foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the disposition hearing. See also Miss. Code Ann. 43-15-13(11) (providing rights to be extended to foster parents).

Foster parents to attend permanency review hearings.

Miss. Code Ann. § 43-15-13(12) provides in part:

The Department of Child Protection Human Services shall require the following responsibilities from participating persons who provide foster care and relative care: . . .

- (i) Attending dispositional review hearings . . . conducted by a court of competent jurisdiction, or providing their recommendations to the court in writing.*

Rule 29(a)(2).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-613(3)(a) (2008).

Miss. Code Ann. § 43-15-13(4) provides:

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, durable legal relative guardianship, or long-term or formalized foster care by a court of competent jurisdiction.

Rule 29(b).

This provision comports with the statutory procedures. See Miss. Code Ann. §§ 43-21-505(5); -613(3)(a) (2008). Foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the permanency hearing. See also Miss. Code Ann. 43-15-13(11) (providing rights to be extended to foster parents).

Persons who should always be present at the permanency hearing include: "judge or judicial officer; age-appropriate children; parents whose rights have not been terminated, including putative fathers; relatives with legal standing or other custodial adults; assigned caseworker; agency attorney; attorney for parents (separate attorney if conflict warrants); legal advocate for the child and/or GAL/CASA; court reporter or suitable technology; and security personnel." NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 85 (1995). Other persons whose presence may be needed at the permanency hearing include: "extended family members; . . . prospective adoptive parents; judicial case management staff; service providers; adult or juvenile probation or parole officers; other witnesses." Id.

Rule 29(c).

This provision comports with the statutory procedures. See Miss. Code Ann. ~~§ 43-21-613(3)(a)(2008)~~ §§ 43-21-203, -613(3)(a)(2019). Reasonable efforts findings are required until the permanency plan or concurrent plan is achieved.

Key decisions to be determined at review hearing.

Key decisions the court should make at the permanency review hearing include:

"whether there is a need for continued placement of a child; whether the court-approved, long-term permanent plan for the child remains the best plan for the child; whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child; whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances; whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs; whether the terms of visitation need to be modified; whether terms of child support need to be set aside or adjusted; whether any additional court orders need to be made to move the case toward

successful completion; [and] what time frame should be followed to achieve reunification or other permanent plan for each child." NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 75 (1995).

Key elements for showing reasonable efforts.

DFCS The child welfare agency must show that reasonable efforts have been made to maintain the child within the child's own home when recommending continued foster care. Key elements to this showing include: "a description of the efforts made by the agency to reunify the family since the last disposition or review hearing and an explanation why those efforts were not successful; [and,] an explanation why the child cannot presently be protected from the identified problems in the home even if services are provided to the child and family." NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 75 (1995).

See also R.B. v. Winston County Dept. of Child Protection Services, 291 So.3d 1116, 1121 (Miss. Ct. App. 2019), holding that a reasonable efforts finding by a youth court is res judicata and cannot be challenged on the merits in a subsequent termination of parental rights action.

"Upon review, we find that the plain language of section 93-15-115(c) requires 'the court hearing a [TPR] petition[,] ' which in this case was the chancery court, to find (1) that the youth court had previously held a permanency hearing or permanency-review hearing under the Uniform Rules of Youth Court Practice and (2) that the youth court had previously 'found' that CPS had made 'reasonable efforts' to assist the parent in complying with his or her service plan, that the parents failed to substantially comply, and that reunification was not in the child's best interest."

Rule 29(d)(1).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-613(3)(b) (2008).

Rule 29(d)(2).

The Department of Human Services, Division of Family and Children's Services child welfare agency is required to make reasonable efforts to finalize the adopted permanency plan and concurrent plan for the child. This provision is consistent with federal and state laws. See 42 U.S.C. § 675 (2008); 45 C.F.R. § 1356.21 (2008); Miss. Code Ann. §§ 43-15-13, 43-26-1, 93-15-101 to -113 (2008).

Termination of parental rights package.

A termination of parental rights package contains forms and documentation required by the Mississippi Attorney General's Office to proceed with a termination of parental rights

action.

Federal Requirements

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to permanency hearings include:

Foster care maintenance payments program implementation requirements.

45 C.F.R. § 1356.21 (2008) provides in part:

(a) Statutory and regulatory requirements of the Federal foster care program. To implement the foster care maintenance payments program provisions of the title IV-E State plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a State must meet the requirements of this section, 45 CFR 1356.22, 45 CFR 1356.30, and sections 472, 475(1), 475(4), 475(5) and 475(6) of the Act.

Foster care maintenance payments cover.

45 C.F.R. § 1355.20 (2008) provides in part:

(a) Unless otherwise specified, the following terms as they appear in 45 CFR Parts 1355, 1356 and 1357 of this title are defined as follows— . . .

Foster care maintenance payments are payments made on behalf of a child eligible for title IV-E foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for a child's visitation with family, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences.

Foster care means.

45 C.F.R. § 1355.20 (2008) provides in part:

(a) Unless otherwise specified, the following terms as they appear in 45 CFR Parts 1355, 1356 and 1357 of this title are defined as follows— . . .

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are

being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

Date child is considered to have entered foster care means.

45 C.F.R. § 1355.20 (2008) provides in part:

(a) Unless otherwise specified, the following terms as they appear in 45 CFR Parts 1355, 1356 and 1357 of this title are defined as follows— . . .

Date a child is considered to have entered foster care means the earlier of: The date of the first judicial finding that the child has been subjected to child abuse or neglect; or, the date that is 60 calendar days after the date on which the child is removed from the home pursuant to § 1356.21(k). A State may use a date earlier than that required in this paragraph, such as the date the child is physically removed from the home. This definition determines the date used in calculating all time period requirements for the periodic reviews, permanency hearings, and termination of parental rights provision in section 475(5) of the Act and for providing time-limited reunification services described at section 431(a)(7) of the Act. The definition has no relationship to establishing initial title IV-E eligibility.

Permanency hearing means; time requirements.

45 C.F.R. § 1355.20 (2008) provides in part:

(a) Unless otherwise specified, the following terms as they appear in 45 CFR Parts 1355, 1356 and 1357 of this title are defined as follows— . . .

Permanency hearing means:

(1) The hearing required by section 475(5)(C) of the Act to determine the permanency plan for a child in foster care. Within this context, the court (including a Tribal court) or administrative body determines whether and, if applicable, when the child will be:

(i) Returned to the parent;

(ii) Placed for adoption, with the State filing a petition for termination of parental rights;

(iii) Referred for legal guardianship;

(iv) Placed permanently with a fit and willing relative; or

(v) Placed in another planned permanent living arrangement, but only in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to follow one of the four specified options above.

(2) The permanency hearing must be held no later than 12 months after the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part or within 30 days of a judicial determination that reasonable efforts to reunify the child and family are not required. After the initial permanency hearing, subsequent permanency hearings must be held not less frequently than every 12 months during the continuation of foster care. The permanency hearing must be conducted by a family or juvenile court or another court of competent jurisdiction or by an administrative body appointed or approved by the court which is not a part of or under the supervision or direction of the State agency. Paper reviews, ex parte hearings, agreed orders, or other

actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and foster parents or preadoptive parents (if any) are not permanency hearings.

See also 42 U.S.C. §§ 671(a)(15)(E), -675(5)(C) (2008); 45 C.F.R. § 1356.21 (2008).

Permanency hearing determinations.

42 U.S.C. 675 (2008) provides in part:

(5) The term “case review system” means a procedure for assuring that— . . .

(C) with respect to each such child, (i) procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement, in the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options, and, in the case of a child described in subparagraph (A)(ii), the hearing shall determine whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; (ii) procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child’s placement, and to any determination affecting visitation privileges of parents; and (iii) procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child; . . .

Judicial determination of reasonable efforts to prevent a child’s removal from the home.

45 C.F.R. § 1356.21 (2008) provides in part:

(b) Reasonable efforts. . . .

(1) Judicial determination of reasonable efforts to prevent a child’s removal from the home.

(i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

See also 42 U.S.C. § 671(a)(15) (2008) (setting forth reasonable efforts criteria); 45 C.F.R. § 1356.21 (2008) (circumstances not requiring reasonable efforts determination).

Judicial determination of reasonable efforts to finalize a permanency plan.

45 C.F.R. § 1356.21 (2008) provides in part:

(b) Reasonable efforts. . . .

(2) Judicial determination of reasonable efforts to finalize a permanency plan.

(i) The State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

(ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the schedule prescribed in paragraph (b)(2)(i) of this section, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

Contrary to the welfare determination.

45 C.F.R. § 1356.21 (2008) provides in part:

(c) Contrary to the welfare determination. Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.

Documentation of judicial determinations.

45 C.F.R. § 1356.21 (2008) provides in part:

(d) Documentation of judicial determinations. The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

(1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations.

(3) Court orders that reference State law to substantiate judicial determinations are not acceptable, even if State law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

Concurrent planning.

45 C.F.R. § 1356.21 (2008) provides in part:

(b) Reasonable efforts. . . .

(4) Concurrent planning. Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.

Trial home visits.

45 C.F.R. § 1356.21 (2008) provides in part:

(e) Trial home visits. A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

RULE 30:

Amend Rule 30 of the Uniform Rules of Youth Court Practice to read:

RULE 30 FOSTER CARE REVIEW HEARINGS

The foster care review of a child in foster care placement shall be conducted pursuant to section 43-15-13 of the Mississippi Code and as otherwise provided by law.

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Rule 30.

Rights of foster parents.

Miss. Code Ann. § 43-15-13(11) provides:

The Department of Child Protection Human Services shall extend the following rights to persons who provide foster care and relative care parents:

- (a) A clear understanding of their role while providing care as foster parents 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 foster child as team members who have pertinent information based on their day-to-day knowledge of the child in care;
- (d) Support from the family protection worker or the family protection specialist in efforts to do a better day-to-day job in caring for the child and in working to achieve the agency's objectives for the child and the birth family through provision of:
 - (i) Pertinent information about the child and the birth family.
 - (ii) Help in using appropriate resources to meet the child's needs, including counseling or other services for victims of commercial sexual exploitation or human trafficking;
 - (iii) Direct interviews between the family protection worker or specialist and the child, previously discussed and understood by the foster parents;
 - (iv) Information regarding whether the child experienced commercial sexual exploitation or human trafficking;
- (e) The opportunity to develop confidence in making day-to-day decisions in regard to the child;
- (f) The opportunity to learn and grow in their vocation through planned foster parent education in caring for the child;
- (g) The opportunity to be heard regarding agency practices that they may question; and
- (h) Reimbursement for costs of the foster child's care in the form of a board payment based on the age of the foster child as prescribed in Section 43-15-17 unless the relative is exempt from foster care training and chooses to exercise the exemption; and;
- (i) Reimbursement for property damages caused by children in the custody of the Department of Child Protection Services in an amount not to exceed Five Hundred Dollars (\$500.00), as evidenced by written documentation. The Department of Child Protection Services shall not incur liability for any damages as a result of providing this reimbursement.

Federal Requirements

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply

results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to foster care review hearings include:

Reviews no less frequently than once every six months.

42 U.S.C. § 675 (2008) provides in part:

(5) The term “case review system” means a procedure for assuring that— . . .

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the safety of the child the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship, . . .

RULE 31:

Amend Rule 31 of the Uniform Rules of Youth Court Practice to read:

RULE 31 PERMANENCY REVIEW HEARINGS

(a) Time. The court shall conduct permanency review hearings for a child who has been adjudicated abused or neglected, at least annually after each permanency hearing, for as long as the child remains in the custody of the Mississippi Department of Human Services child welfare agency. Such shall include each case where there has been a termination of parental rights and the child is in the custody of the Department of Human Services, Division of Family and Children’s Services child welfare agency, until such time as either:

- (i) the child is adopted; or
- (ii) an appropriate permanency plan is achieved.

(b) Summons.

(1) Persons summoned. When the date of the permanency review hearing has been set by the youth court, and if necessary to fulfill the notice requirements, the judge or the judge’s designee shall order the clerk of the youth court to issue a summons to the following to appear personally at such hearing: the child named in the petition; the person or persons who have custody or control of the child; the parent or guardian of the child if such parent or guardian does not have custody of the child, except in no event shall summons issue to the parent(s) whose parental rights have been terminated; the foster parent(s); the residential child agency providing care for the child; and any other person whom the court deems necessary. The clerk does not need to issue summons to:

- (i) any person who has already been served with process or who has already appeared in

court proceedings in the cause; and

(ii) who has received sufficient notice of the time, date, place and purpose of the permanency review hearing.

(2) Form. The form of the summons shall be pursuant to Rule 22(a)(2) of these rules.

(3) Manner of service. The manner of service shall be pursuant to Rule 22(a)(3) of these rules, except in no event shall summons issue to the parent(s) whose parental rights have been terminated.

(4) Time. Summons shall be served not less than three (3) days before the date set for the permanency review hearing.

(5) Waiver of summons by a party other than the child. Waiver of summons by a party other than the child shall be pursuant to Rule 22(a)(5) of these rules.

(6) Waiver of three (3) days' time before hearing by a child served with process. Waiver of three (3) days' time before the permanency review hearing by a child served with process shall be pursuant to Rule 22(a)(6) of these rules.

(7) Enforcement. Enforcement of the summons shall be pursuant to Rule 22(a)(7) of these rules.

(c) Conduct of hearing. The court shall conduct the permanency review hearing in like manner as required for permanency hearings under Rule 29(c) of these rules. At each such hearing, the court shall determine the adequacy of the child's permanency plan and, as deemed in the best interest of the child, make appropriate modifications thereto.

(d) Findings pertaining to termination of parental rights.

(1) If the permanency plan is termination of parental rights, the court may find that the filing of a termination of parental rights petition is not in the child's best interest if:

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

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

(2) Where the court does not make a finding under Rule 31(d)(1), the Department of Human Services, Division of Family and Children's Services-child welfare agency, any interested person as defined under section 93-15-103 of the Mississippi Code, or any agency, institution or person holding custody of the child may commence termination of parental rights proceedings by filing a petition pursuant to the Mississippi Termination of Parental Rights Law forward a termination of parental rights package to the Mississippi Attorney General's Office for a termination of parental rights petition to be filed pursuant to the "Termination of Rights of Unfit Parents Law" if:

(i) the child is in the legal custody of the Department of Human Services, Division of Family and Children's Services-child welfare agency; and

(ii) the court ordered permanency plan or concurrent plan is adoption.

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Rule 31(a).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-613(3)(a) (2008).

Rule 31(b)(1).

Foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the permanency hearing. See also Miss. Code Ann. § 43-15-13(11) (providing rights to be extended to foster parents).

Foster parents responsibility to attend certain hearings.

Miss. Code Ann. § 43-15-13(12) provides in part:

The Department of Child Protection Human Services shall require the following responsibilities from participating foster parents: . . .

(i) Attending dispositional review hearings and termination of parental rights hearings conducted by a court of competent jurisdiction, or providing their recommendations to the court in writing.

*Persons who should always be present at the permanency hearing include: “judge or judicial officer; age-appropriate children; parents whose rights have not been terminated, including putative fathers; relatives with legal standing or other custodial adults; assigned caseworker; agency attorney; attorney for parents (separate attorney if conflict warrants); legal advocate for the child and/or GAL/CASA; court reporter or suitable technology; and security personnel.” NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 85 (1995). Other persons whose presence may be needed at the permanency hearing include: “extended family members; . . . prospective adoptive parents; judicial case management staff; service providers; adult or juvenile probation or parole officers; other witnesses.” *Id.* These listings should likewise pertain to a permanency review hearing.*

Rule 31(c).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-613(3)(a) (2008). Reasonable efforts findings are required until the permanency plan or concurrent plan is achieved.

Key decisions to be determined at review hearing.

Key decisions the court should make at the permanency review hearing include:

“whether there is a need for continued placement of a child; whether the court-approved, long-term permanent plan for the child remains the best plan for the child; whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child; whether services set forth in the case plan and the responsibilities

of the parties need to be clarified or modified due to the availability of additional information or changed circumstances; whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs; whether the terms of visitation need to be modified; whether terms of child support need to be set aside or adjusted; whether any additional court orders need to be made to move the case toward successful completion; [and] what time frame should be followed to achieve reunification or other permanent plan for each child.” NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 75 (1995).

Key elements for showing reasonable efforts.

DFCS The child welfare agency must show that reasonable efforts have been made to maintain the child within the child’s own home when recommending continued foster care. Key elements to this showing include: “a description of the efforts made by the agency to reunify the family since the last disposition or review hearing and an explanation why those efforts were not successful; [and,] an explanation why the child cannot presently be protected from the identified problems in the home even if services are provided to the child and family.” NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 75 (1995).

See also R.B. v. Winston County Dept. of Child Protection Services, 291 So.3d 1116, 1121 (Miss. Ct. App. 2019), holding that a reasonable efforts finding by a youth court is res judicata and cannot be challenged on the merits in a subsequent termination of parental rights action.

“Upon review, we find that the plain language of section 93-15-115(c) requires ‘the court hearing a [TPR] petition[,]’ which in this case was the chancery court, to find (1) that the youth court had previously held a permanency hearing or permanency-review hearing under the Uniform Rules of Youth Court Practice and (2) that the youth court had previously ‘found’ that CPS had made ‘reasonable efforts’ to assist the parent in complying with his or her service plan, that the parents failed to substantially comply, and that reunification was not in the child’s best interest.”

Rule 31(d)(1).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-613(3)(b) (2008).

Rule 31(d)(2).

The **Department of Human Services, Division of Family and Children’s Services** child welfare agency is required to make reasonable efforts to finalize the adopted permanency plan and concurrent plan for the child. This provision is consistent with federal and state laws. See 42 U.S.C. § 675 (2008); 45 C.F.R. § 1356.21 (2008); Miss. Code Ann. §§

43-15-13, 43-26-1, 93-15-101 to -1133 (200820).

Termination of parental rights package:

A termination of parental rights package contains forms and documentation required by the Mississippi Attorney General's Office to proceed with a termination of parental rights action.

Federal Requirements

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to permanency review hearings include:

Many federal laws and regulations applicable to permanency hearings are also applicable to permanency review hearings. See 42 U.S.C. §§ 671(a)(15), -675 (2008); 45 C.F.R. §§ 1355.20, -1356.21 (2008).

RULE 32:

Amend Rule 32 of the Uniform Rules of Youth Court Practice to read:

RULE 32 CIVIL COMMITMENTS WITHIN THE JURISDICTION OF THE YOUTH COURT

(a) Children who may need mental health services and commitment.

(1) Pre-evaluation screening and treatment. The youth court shall order a pre-evaluation screening and treatment, and a mental examination and a physical evaluation, pursuant to section 41-21-67 of the Mississippi Code, for a child in its custody if:

- (i) the Department of Human Services, the child welfare agency, or other interested person or agency, files with the clerk of the court an affidavit alleging the child to be in need of mental health services; and
- (ii) the youth court finds, based upon the affidavit and any other relevant evidence, that there is probable cause to believe the child is in need of mental health services.

(2) Affidavit alleging child in need of mental health services. The affidavit alleging the child to be in need of mental health services shall be filed in duplicate and include:

- (i) the name and address of the child's nearest relatives, if known;
- (ii) the reason for the affidavit; and
- (iii) a factual description of the child's recent behavior, including a description of the behavior, where it occurred, and over what period of time it occurred.

Each factual allegation shall be stated in behavioral terms, and not contain judgmental or conclusory statements, and be supported by observations of witnesses named in the

affidavit.

(3) Dismissal of affidavit. If the physicians, or the physician and psychologist, appointed to conduct the mental examination and physical evaluation certify that the child is not in need of treatment, the youth court shall dismiss the affidavit.

(4) Ordering a commitment hearing. The youth court shall order a commitment hearing if it finds probable cause, based upon the physicians' and any psychologist's certificate and any other relevant evidence, that the child is in need of inpatient treatment. Such hearing shall be set within seven (7) days of the filing of the certificate unless an extension is requested by the child's attorney. In no event shall the hearing be more than (10) days after the filing of the certificate.

(5) Summons. Within a reasonable period of time before the hearing, the child and the child's attorney shall be provided with notice, which shall include:

- (i) notice of the date, time and place of the hearing;
- (ii) a clear statement of the purpose of the hearing;
- (iii) the possible consequences or outcome of the hearing;
- (iv) the facts which have been alleged in support of the need for commitment;
- (v) the names, addresses and telephone numbers of the examiner(s); and
- (vi) other witnesses expected to testify.

(6) Conduct of the commitment hearing. At the beginning of the commitment hearing, the court shall explain to the child and parties: the right to counsel; the right to remain silent; the right to subpoena witnesses; the right to confront and cross-examine witnesses; and the right to appeal, including the right to a transcript of the proceedings. The hearing shall be conducted:

- (i) without a jury and may be recessed from time to time;
- (ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;
- (iii) by excluding the general public and admitting only those persons found by the court to have a direct interest in the cause or work of the court; and
- (iv) with a complete record of all the evidence taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

The child shall be present at the hearing, unless the judge determines that the child is unable to attend and the reasons for such determination are made a part of the record, and shall not be so under the influence or suffering from the effects of drugs, medication or other treatment so as to be hampered in participating in the proceedings. The court, at the time of the hearing, shall be presented a record of all drugs, medication or other treatment which the child has received pending the hearing, unless the court determines that such a record would be impractical and documents the reasons for that determination.

(7) Commitment order. The youth court shall order the child committed in the least restrictive treatment facility necessary to meet the child's treatment needs if it finds:

- (i) by clear and convincing evidence the child to be in need of mental health services; and,
- (ii) after careful consideration, that there are no suitable alternatives to judicial commitment.

The court shall state the findings of fact and conclusions of law which constitute the basis for the order of commitment. The findings shall include a listing of less restrictive alternatives considered by the court and the reasons that each was found not suitable. Any initial commitment shall not exceed three (3) months.

(b) A child in need of special care who is in need of mental treatment. If the youth court finds at the disposition hearing that a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child is also a child in need of special care, the youth court may, in its discretion, make any appropriate additional disposition designed for the treatment of the disability or infirmity, which may include civil commitment to a state institution providing care for that disability or infirmity. Any commitment, including one to a Department of Mental Health facility, ordered pursuant to this rule shall be in compliance with the requirements for civil commitment as set forth in section 41-21-61 et seq.

(c) Permanency hearings and permanency review hearings not suspended. The court shall conduct permanency hearings and permanency review hearings as required under these rules without regard to whether a child has been referred for mental health services or committed for inpatient treatment.

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Rule 32(a).

This provision comports to the statutory procedures. See Miss. Code Ann. § 41-21-61 to -109 (2008). It is also congruent with Mississippi's constitutional mandates. See Miss. Const. art. IV, § 86 ("It shall be the duty of the legislature to provide by law for the treatment and care of the insane; and the legislature may provide for the care of the indigent sick in the hospitals in the state."); In re B.C.M., 744 So. 2d 299, 303 (Miss. 1999) ("The Constitution requires that the State assume responsibility for [the child], and reasonable statutory interpretation requires the director to provide temporary housing, treatment and care, which should become permanent when adequate "services and facilities are available" in the facility. The only role of the trial judge regarding this minor was to determine whether the minor needed the treatment and care provided by the state facility, and if so, to order [the child's] commitment."); see also Miss. Code Ann. §§ 43-21-315(4), -603(9) (2008).

Rule 32(a)(7).

The standard of proof for civil commitments is by clear and convincing evidence. See Addington v. Texas, 441 U.S. 418, 432-33 (1979) ("To meet due process demands [required in civil commitment proceedings], the standard . . . must be greater than the preponderance-of-the-evidence standard applicable to other categories of civil cases.").

Alternatives to commitment to inpatient care may include, but shall not be limited to: voluntary or court-ordered outpatient commitment for treatment with specific reference to a treatment regimen; day treatment in a hospital; night treatment in a hospital; or placement in the custody of a friend or relative or the provision of home health services. See Miss. Code Ann. § 41-21-73(4) (2008).

Rule 32(b).

This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-611 (2008).

RULE 34:

Amend Rule 34 of the Uniform Rules of Youth Court Practice to read:

RULE 34 INTERSTATE COMPACT FOR PLACEMENT OF CHILDREN

Procedures for the orderly and timely interstate placement of children shall be pursuant to sections 43-18-1 through 43-18-17 of the Mississippi Code.

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Rule 34.

In accordance with Mississippi Department of Human Services the child welfare agency's policies, DFCS the child welfare agency workers must complete the incoming ICPC home study within forty-five (45) days and directly send it to the ICPC unit at the State Office. The ICPC unit will then review the home study and, if needed, request additional information from the county staff, prior to sending it to the requesting state on or before the sixty (60) day deadline.

Federal Requirements

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to the interstate compact for placement of children include:

Procedures for the orderly and timely interstate placement of children.

42 U.S.C. § 671 (2008) provides in part:

[A State plan to receive formula grants shall] . . .

(25) provide that the State shall have in effect procedures for the orderly and timely interstate placement of children; and procedures implemented in accordance with an

interstate compact, if incorporating with the procedures prescribed by paragraph (26), shall be considered to satisfy the requirement of this paragraph;

(26) provides that--

(A)(i) within 60 days after the State receives from another State a request to conduct a study of a home environment for purposes of assessing the safety and suitability of placing a child in the home, the State shall, directly or by contract--

(I) conduct and complete the study; and

(II) return to the other State a report on the results of the study, which shall address the extent to which placement in the home would meet the needs of the child; and

(ii) in the case of a home study begun on or before September 30, 2008, if the State fails to comply with clause (i) within the 60-day period as a result of circumstances beyond the control of the State (such as a failure by a Federal agency to provide the results of a background check, or the failure by any entity to provide completed medical forms, requested by the State at least 45 days before the end of the 60-day period), the State shall have 75 days to comply with clause (i) if the State documents the circumstances involved and certifies that completing the home study is in the best interests of the child; except that

(iii) this subparagraph shall not be construed to require the State to have completed, within the applicable period, the parts of the home study involving the education and training of the prospective foster or adoptive parents;

(B) the State shall treat any report described in subparagraph (A) that is received from another State or an Indian tribe (or from a private agency under contract with another State) as meeting any requirements imposed by the State for the completion of a home study before placing a child in the home, unless, within 14 days after receipt of the report, the State determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child; and

(C) the State shall not impose any restriction on the ability of a State agency administering, or supervising the administration of, a State program operated under a State plan approved under this part to contract with a private agency for the conduct of a home study described in subparagraph (A); . . .

RULE 35:

Amend Rule 35 of the Uniform Rules of Youth Court Practice to read:

RULE 35 INTERVENTION-DRUG COURTS

Drug court procedures shall be pursuant to the guidelines developed by the State Intervention-Drug Court Advisory Committee.

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Rule 35.

Miss. Code Ann. § 9-23-7 provides:

The Administrative Office of Courts shall be responsible for certification and monitoring of local intervention drug courts according to standards promulgated by the State Intervention Drug Courts Advisory Committee.

RULE 37:

Amend Rule 37 of the Uniform Rules of Youth Court Practice to read:

RULE 37. APPEALS FROM FINAL ORDERS OR DECREES

Appeals from final orders or decrees of the court shall be pursuant to the Mississippi Rules of Appellate Procedures.

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Rule 37.

Only the initials of the child shall appear on the record on appeal. See In re R.R.B., 394 So. 2d 907, 908 (Miss. 1981) (“[Section 43-21-651] is mandatory that nowhere on the records of this Court or the appellate records or briefs or other proceedings should the minor’s name appear, only his or her initials.”). In reviewing an adjudication of delinquency, the appellate court will not reverse unless, considering all of the evidence before the youth court in the light most favorable to the State, reasonable persons could not have found beyond a reasonable doubt that the child committed the delinquent act. See In re L.M., 600 So. 2d 967, 969 (Miss. 1992); In re S.B., 566 So. 2d 1276, 1278 (Miss. 1990). In reviewing an adjudication of abuse or neglect, the appellate court will not reverse unless, considering all of the evidence before the youth court in the light most favorable to the State, reasonable persons could not have found by a preponderance of the evidence that the child was abused or neglected. See In re M.R.L., 488 So. 2d 788, 791 (Miss. 1986). The right to appeal in forma pauperis attaches if a fundamental right is at issue. See M.L.B. v. S. L.J., 519 U.S. 102, 107 (1996) (“[J]ust as a State may not block an indigent petty offender’s access to an appeal afforded others, [a State] may not deny [a parent], because of her poverty, appellate review of the sufficiency of the evidence on which the trial court found her unfit to remain a parent.”); cf. In re J.R. T., 749 So. 2d 105, 110 (Miss. 1999) (“The state’s judicial process had not been invoked to sever or alter the parents’ fundamental rights. If there had been a termination of the parental relationship, then substantive and procedural due process would have required that the parents be afforded the right of appellate review.”).

Miss. Code Ann. § 43-21-651(2) provides in part: "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."

An adjudication order is not appealable until the youth court has entered its order of disposition. See Interest of C.R. v. Mississippi Dep't of Child Prot. Servs., 2019 WL 6873730 (Miss. Ct. App. 2019); Interest of J.P.C. v. State, 783 So. 2d 778, 781 (Miss. Ct. App. 2000).

RULE 39:

Add new Rule 39:

RULE 39. INTERACTIVE AUDIOVISUAL DEVICES

(a) General Provisions. When the appearance of a party or counsel is required in youth court, the appearance may be made by the use of interactive audiovisual equipment, including video conferencing equipment. Interactive audiovisual equipment shall at a minimum operate so as to enable the court and all parties to view and converse with each other.

(b) Requirements. In using interactive audiovisual equipment, the following are required:

(1) a full record of the proceedings shall be made as provided in applicable rules;

(2) the court shall conduct the proceeding in a manner that ensures the same due process protections required for in-person proceedings; and

(3) provisions shall be made to allow for confidential communications between the party and the party's attorney of record before and during the proceedings.

(c) Permissible Proceedings. Appearance by interactive audiovisual equipment, including video conferencing, may be permitted in the discretion of the court at any proceeding.