

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

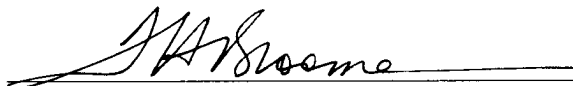
IN THE MATTER OF:
AMENDMENTS TO THE MISSISSIPPI UNIFORM RULES OF YOUTH COURT
PRACTICE

MISC. NO. 89-R-99033-SC7

PETITION TO AMEND
THE MISSISSIPPI UNIFORM RULES OF YOUTH COURT PRACTICE

COMES NOW Judge Thomas H. Broome, Chair of the Mississippi Council of Youth Court Judges, who petitions the Mississippi Supreme Court to approve amendments of the Mississippi Uniform Rules of Youth Court Practice as set forth in Exhibit A, which is attached hereto, in order to provide conformity with recent legislative changes, to clarify procedures in the existing rules, and to correct any errata.

Submitted this the 15th day of February 2018.

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

FILED

FEB 15 2018

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

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MOTION#

2018

680

EXHIBIT A OF PETITION MISC. NO. _____.

The Chair of 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.

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

Rule 2(a)(1).

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.

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 any Mississippi department, 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.

(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.

(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.

(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.

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 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).

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

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.

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 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.

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

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 drug court. The court may order the child to be referred to the youth court drug court pursuant to the guidelines developed by the State 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.

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

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 or any person would be endangered 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. 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 or any person would be endangered 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. 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; 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~~ child welfare agency 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~~ child welfare agency 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~~ child welfare agency 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~~ child welfare agency 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.

(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 (2008).

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(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.

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.

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.

Upon appointment of a guardian ad litem, the court shall 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 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) (2008).

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.").

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 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, if any; to the child's Court-Appointed Special Advocate (CASA) volunteer, 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.
- (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 or any person would be endangered 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.

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, if any; to the child's Court-Appointed Special Advocate (CASA) volunteer, 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.
- (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.

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

Rule 16(a), -(b).

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

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.

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

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 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 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 Littell, 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)(2017).

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. 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.

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

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 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). 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).*

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 -1133 (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.

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

Rule 30.

Rights of foster parents.

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

The Department of Human Services shall extend the following rights to foster care parents:

(a) A clear understanding of their role 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.*
 - (iii) Direct interviews between the family protection worker or specialist and the child, previously discussed and understood by the foster parents;**
- (e) The opportunity to develop confidence in making day-to-day decisions in regard to the child;*
- (f) The opportunity to learn and grow in their vocation through planned foster parent education;*
- (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.*

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.

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

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 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).

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 ~~-11133~~ (200817).

~~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.

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

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.

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

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); . . .