

Youth Court Practice

Current through 2015

Frequently Asked Questions

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Construction and Purpose

§ 43-21-103

The Youth Court Law “shall be liberally construed to the end that each child coming within the jurisdiction of the youth court shall become a responsible, accountable and productive citizen, and that each such child shall receive such care, guidance and control, preferably in such child's own home as is conducive toward that end and is in the state's and the child's best interest. It is the public policy of this state that the parents of each child shall be primarily responsible for the care, support, education and welfare of such children; however, when it is necessary that a child be removed from the control of such child's parents, the youth court shall secure proper care for such child.”

Youth Court Law Definitions

§ 43-21-1050

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

- (a) **"Youth court"** means the Youth Court Division.
- (b) **"Judge"** means the judge of the Youth Court Division.
- (c) **"Designee"** means any person that the judge appoints to perform a duty which this chapter requires to be done by the judge or his designee. The judge may not appoint a person who is involved in law enforcement to be his designee.
- (d) **"Child"** and **"youth"** are synonymous, and each means a person who has not reached his eighteenth birthday. A child who has not reached his eighteenth birthday and is on active duty for a branch of the armed services or is married is not considered a "child" or "youth" for the purposes of this chapter.
- (e) **"Parent"** means the father or mother to whom the child has been born, or the father or mother by whom the child has been legally adopted.
- (f) **"Guardian"** means a court-appointed guardian of the person of a child.
- (g) **"Custodian"** means any person having the present care or custody of a child whether such person be a parent or otherwise.
- (h) **"Legal custodian"** means a court-appointed custodian of the child.
- (i) **"Delinquent child"** means a child who has reached his tenth birthday and who has committed a delinquent act.
- (j) **"Delinquent act"** is any act, which if committed by an adult, is designated as a crime under state or federal law, or municipal or county ordinance other than offenses punishable by life imprisonment or death. A delinquent act includes escape from lawful detention and violations of the Uniform Controlled Substances Law and violent behavior.
- (k) **"Child in need of supervision"** means a child who has reached his seventh birthday and is in need of treatment or rehabilitation because the child:
 - (i) Is habitually disobedient of reasonable and lawful commands of his parent, guardian or custodian and is ungovernable; or
 - (ii) While being required to attend school, willfully and habitually violates the rules thereof or willfully and habitually absents himself therefrom; or
 - (iii) Runs away from home without good cause; or
 - (iv) Has committed a delinquent act or acts.
- (l) **"Neglected child"** means a child:

- (i) Whose parent, guardian or custodian or any person responsible for his care or support, neglects or refuses, when able so to do, to provide for him proper and necessary care or support, or education as required by law, or medical, surgical, or other care necessary for his well-being; however, a parent who withholds medical treatment from any child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for that reason alone, be considered to be neglectful under any provision of this chapter; or
 - (ii) Who is otherwise without proper care, custody, supervision or support; or
 - (iii) Who, for any reason, lacks the special care made necessary for him by reason of his mental condition, whether the mental condition is having mental illness or having an intellectual disability; or
 - (iv) Who, for any reason, lacks the care necessary for his health, morals or well-being.
- (m) "**Abused child**" means a child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused, upon the child, sexual abuse, sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment. However, physical discipline, including spanking, performed on a child by a parent, guardian or custodian in a reasonable manner shall not be deemed abuse under this section.
 - (n) "**Sexual abuse**" means obscene or pornographic photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened.
 - (o) "A child in need of special care" means a child with any mental or physical illness that cannot be treated with the dispositional alternatives ordinarily available to the youth court.
 - (p) A "**dependent child**" means any child who is not a child in need of supervision, a delinquent child, an abused child or a neglected child, and which child has been voluntarily placed in the custody of the Department of Human Services by his parent, guardian or custodian.
 - (q) "**Custody**" means the physical possession of the child by any person.
 - (r) "**Legal custody**" means the legal status created by a court order which gives the legal custodian the responsibilities of physical possession of the child and the duty to provide him with food, shelter, education and reasonable medical care, all subject to residual rights and responsibilities of the parent or guardian of the person.
 - (s) "**Detention**" means the care of children in physically restrictive facilities.
 - (t) "**Shelter**" means care of children in physically nonrestrictive facilities.
 - (u) "**Records involving children**" means any of the following from which the child can be identified:
 - (i) All youth court records as defined in Section 43-21-251;
 - (ii) All social records as defined in Section 43-21-253;
 - (iii) All law enforcement records as defined in Section 43-21-255;
 - (iv) All agency records as defined in Section 43-21-257; and
 - (v) All other documents maintained by any representative of the state, county, municipality or other public agency insofar as they relate to the apprehension, custody, adjudication or disposition of a child who is the subject of a youth court cause.
 - (v) "**Any person responsible for care or support**" means the person who is providing for the child at a given time. This term shall include, but is not limited to, stepparents, foster parents, relatives, nonlicensed baby-sitters or other similar persons responsible for a child and staff of residential care facilities and group homes that are licensed by the Department of Human Services.
 - (w) The singular includes the plural, the plural the singular and the masculine the feminine when consistent with the intent of this chapter.
 - (x) "**Out-of-home**" setting means the temporary supervision or care of children by the staff of licensed day care centers, the staff of public, private and state schools, the staff of juvenile detention facilities, the staff of unlicensed residential care facilities and group homes and the staff of, or individuals representing, churches, civic or social organizations.
 - (y) "**Durable legal custody**" means the legal status created by a court order which gives the durable legal custodian the responsibilities of physical possession of the child and the duty to provide him with care,

nurture, welfare, food, shelter, education and reasonable medical care. All these duties as enumerated are subject to the residual rights and responsibilities of the natural parent(s) or guardian(s) of the child or children.

- (z) "**Status offense**" means conduct subject to adjudication by the youth court that would not be a crime if committed by an adult.
- (aa) "**Financially able**" means a parent or child who is ineligible for a court-appointed attorney.

Additional Youth Court Law Definitions

URYCP 4

The following definitions are contained in URYCP 4 but not contained in the Mississippi Code:

- (a) "**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;
- (b) "**Child protection proceedings**" means a proceeding concerning a child reported abused, neglected or dependent;
- (c) "**Complaint**" means a report of abuse or neglect pursuant to section 43-21-353 of the Mississippi Code;
- (d) "**Concurrent plan**" means a permanency plan that runs concurrent with another permanency plan;
- (e) "**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;
- (f) "**Delinquency proceeding**" means a court proceeding concerning a child charged with a delinquent act;
- (g) "**Disposition hearing**" means a hearing to determine the appropriate disposition for an adjudicated child;
- (h) "**Educational neglect**" means neglect in providing the child with an education as required by law;
- (i) "**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.");
- (j) "**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;
- (j) "**Permanency hearing**" means a hearing conducted pursuant to Rule 29 of these rules;
- (k) "**Permanency plan**" means a judicial plan to achieve, in compliance with federal requirements, a permanent living arrangement for a child taken into protective custody;
- (l) "**Permanency review hearing**" means a hearing conducted pursuant to Rule 31 of these rules;
- (m) "**Placement**" means placing the child in the care and custody of an appropriate person or organization;
- (n) "**Report**" means a report to intake of a matter within the jurisdiction of the youth court;
- (o) "**Social history**" means a history of significant events and relationships throughout the child's life;
- (p) "**Summons**" means notice issued as required by these rules;
- (q) "**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;
- (r) "**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);
- (s) "**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);
- (t) "**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;
- (u) "**Youth court clerk**" means the clerk of the court exercising jurisdiction of the matter.

Who is the Judge?

§ 43-21-107, § 43-21-111, § 43-21-113

If the county did not have a county court on 7/1/1979 and then prior to 1/1/2007 the municipal authorities created a youth court division of the municipal court, the youth court judge is a municipal youth court judge (only the city of Pearl).

If the county has a county court, the youth court judge is a county court judge (except for Pearl).

If the county does not have a county court, the judge is a chancery judge unless the chancery judge appoints another judge (called a referee).

If a referee is appointed by the chancery judge, when the referee enters an order, it should be mailed to all parties and their counsel. A rehearing shall only be granted if a written motion is made for a rehearing (or on court's own motion) within 3 days after notice of the referee's order. Any rehearing shall be upon the record of the hearing before the referee, but additional evidence may be admitted in the discretion of the judge. A motion for a rehearing shall not act as a supersedeas unless the judge orders.

A special judge may be appointed by the judge if he certifies that he/she will be absent or is ill.

If a recusal is granted, the supreme court appoints a special judge.

Who is the Prosecutor?

§ 43-21-117

If the youth court is a municipal youth court, the prosecutor shall be the municipal prosecutor, otherwise the prosecutor shall be the county prosecutor unless the judge has appointed another prosecutor or an additional prosecutor.

When should a Guardian ad Litem be appointed?

§ 43-21-121(1) & URYCP 13

1. When a child has no parent, guardian or custodian;
2. When the youth 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 youth court finds appointment of a guardian ad litem to be in the best interest of the child.

At what point should a Guardian ad Litem be appointed?

§ 43-21-121(2) & URYCP 13

When custody is ordered or at the first judicial hearing regarding the case, whichever occurs first.

What are the duties of a Guardian ad Litem?

§ 43-21-121(3) & URYCP 13 & *S.G. v. D.C*

1. Protect the interest of a child for whom he/she has been appointed guardian ad litem.
2. Investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest.
3. Be a competent person who has no adverse interest to the minor.
4. Be adequately instructed on the proper performance of his/her duties.

What are the qualifications for a Guardian ad Litem?

§ 43-21-121(4) & URYCP 13 & MRCP 17

1. Be either a suitable attorney or a suitable layman. If the court appoints a layman as GAL, the court shall also appoint an attorney to represent the child. (*In Chancery, MRCP 17 requires attorney GAL if appt necessary*)
2. Must have received child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment.

What if the Guardian ad Litem has just been appointed and needs more time?

§ 43-21-121(5) & URYCP 13

The judge shall continue any pending proceedings for a reasonable time to allow the guardian ad litem to familiarize himself with the matter, consult with counsel and prepare his participation in the cause.

What is the procedure for the payment of the fees of a Guardian ad Litem?

§ 43-21-121(6) & URYCP 13

1. Guardian ad litem submits, to the court, an accounting of the time spent in performance of his/her duties.
2. Court orders the payment of a reasonable fee out of the county general fund.

Can anyone assist the Guardian ad Litem?

§ 43-21-121(7) & URYCP 13

The court may appoint a volunteer trained layperson (i.e. CASA) to assist children.

What jurisdiction and powers does the Youth Court have?

§ 43-21-151 and § 43-21-153

The youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child except in the following circumstances: (a) Any act attempted or committed by a child, which if committed by an adult would be punishable under state or federal law by life imprisonment or death, will be in the original jurisdiction of the circuit court; (b) Any act attempted or committed by a child with the use of a deadly weapon, the carrying of which concealed is prohibited by Section 97-37-1, or a shotgun or a rifle, which would be a felony if committed by an adult, will be in the original jurisdiction of the circuit court; and (c) When a charge of abuse of a child first arises in the course of a custody action between the parents of the child already pending in the chancery court and no notice of such abuse was provided prior to such chancery proceedings, the chancery court may proceed with the investigation, hearing and determination of such abuse charge as a part of its hearing and determination of the custody issue as between the parents, notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse charge shall be confidential in the same manner as provided in youth court proceedings.

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

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

No child who has not reached his thirteenth birthday shall be held criminally responsible or criminally prosecuted for a misdemeanor or felony; however, the parent, guardian or custodian of such child may be civilly liable for any criminal acts of such child. No child under the jurisdiction of the youth court shall be held criminally responsible or criminally prosecuted by any court for any act designated as a delinquent act, unless jurisdiction is transferred to another court under Section 43-21-157.

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

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

Nothing in this section shall prevent the circuit court from assuming jurisdiction over a youth who has committed an act of delinquency upon a youth court's ruling that a transfer is appropriate pursuant to Section 43-21-157.

The youth court shall have full power and authority to issue all writs and processes including injunctions necessary to the exercise of jurisdiction and to carrying out the purpose of this chapter.

Any person who wilfully violates, neglects or refuses to obey, perform or comply with any order of the youth court shall be in contempt of court and punished by a fine not to exceed five hundred dollars (\$ 500.00) or by imprisonment in jail not to exceed ninety (90) days, or by both such fine and imprisonment.

What venue is proper?

§ 43-21-155 & URYCP 21

If alleged delinquent child or child in need of supervision, the proceedings shall be commenced in any county where any of the alleged acts are said to have occurred.

If alleged abused child or neglected child, the proceedings shall be commenced in the county where the child's custodian resides or in the county where the child is present when the report is made to the intake unit.

Can youth court transfer jurisdiction to other courts?

§ 43-21-157 & URYCP 23

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

- (1) If a child who has reached his thirteenth birthday is charged by petition to be a delinquent child, the youth court, either on motion of the youth court prosecutor or on the youth court's own motion, after a hearing as hereinafter provided, may, in its discretion, transfer jurisdiction of the alleged offense described in the petition or a lesser included offense to the criminal court which would have trial jurisdiction of such offense if committed by an adult. The child shall be represented by counsel in transfer proceedings.
- (2) A motion to transfer shall be filed on a day prior to the date set for the adjudicatory hearing but not more than ten (10) days after the filing of the petition. The youth court may order a transfer study at any time after the motion to transfer is filed. The transfer study and any other social record which the youth court will consider at the transfer hearing shall be made available to the child's counsel prior to the hearing. Summons shall be served in the same manner as other summons under this chapter with a copy of the motion to transfer and the petition attached thereto.
- (3) The transfer hearing shall be bifurcated. At the transfer hearing, the youth court shall first determine whether probable cause exists to believe that the child committed the alleged offense. For the purpose of the transfer hearing only, the child may, with the assistance of counsel, waive the determination of probable cause.
- (4) Upon such a finding of probable cause, the youth court may transfer jurisdiction of the alleged offense and the youth if the youth court finds by clear and convincing evidence that there are no reasonable prospects of rehabilitation within the juvenile justice system.
- (5) The factors which shall be considered by the youth court in determining the reasonable prospects of rehabilitation within the juvenile justice system are:
 - (a) Whether or not the alleged offense constituted a substantial danger to the public;
 - (b) The seriousness of the alleged offense;
 - (c) Whether or not the transfer is required to protect the community;
 - (d) Whether or not the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
 - (e) Whether the alleged offense was against persons or against property, greater weight being given to the offense against persons, especially if personal injury resulted;
 - (f) The sophistication, maturity and educational background of the child;
 - (g) The child's home situation, emotional condition and life-style;
 - (h) The history of the child, including experience with the juvenile justice system, other courts, probation, commitments to juvenile institutions or other placements;
 - (i) Whether or not the child can be retained in the juvenile justice system long enough for effective treatment or rehabilitation;
 - (j) The dispositional resources available to the juvenile justice system;
 - (k) Dispositional resources available to the adult correctional system for the child if treated as an adult;
 - (l) Whether the alleged offense was committed on school property, public or private, or at any school-sponsored event, and constituted a substantial danger to other students;
 - (m) Any other factors deemed relevant by the youth court; and
 - (n) Nothing in this subsection shall prohibit the transfer of jurisdiction of an alleged offense and a child if that child, at the time of the transfer hearing, previously has not been placed in a juvenile institution.
- (6) If the youth court transfers jurisdiction of the alleged offense to a criminal court, the youth court shall enter a transfer order containing:
 - (a) Facts showing that the youth court had jurisdiction of the cause and of the parties;
 - (b) Facts showing that the child was represented by counsel;
 - (c) Facts showing that the hearing was held in the presence of the child and his counsel;
 - (d) A recital of the findings of probable cause and the facts and reasons underlying the youth court's decision to transfer jurisdiction of the alleged offense;
 - (e) The conditions of custody or release of the child pending criminal court proceedings, including bail or recognizance as the case may justify, as well as a designation of the custodian for the time being; and
 - (f) A designation of the alleged offense transferred and of the court to which the transfer is made and a direction to the clerk to forward for filing in such court a certified copy of the transfer order of the youth court.
- (7) The testimony of the child respondent at a transfer hearing conducted pursuant to this chapter shall not be admissible against the child in any proceeding other than the transfer hearing.

- (8) When jurisdiction of an offense is transferred to the circuit court, or when a youth has committed an act which is in original circuit court jurisdiction pursuant to Section 43-21-151, the jurisdiction of the youth court over the youth for any future offenses is terminated, except that jurisdiction over future offenses is not terminated if the circuit court transfers or remands the transferred case to the youth court or if a child who has been transferred to the circuit court or is in the original jurisdiction of the circuit court is not convicted. However, when jurisdiction of an offense is transferred to the circuit court pursuant to this section or when an offense committed by a youth is in original circuit court jurisdiction pursuant to Section 43-21-151, the circuit court shall thereafter assume and retain jurisdiction of any felony offenses committed by such youth without any additional transfer proceedings. Any misdemeanor offenses committed by youth who are in circuit court jurisdiction pursuant to this section or Section 43-21-151 shall be prosecuted in the court which would have jurisdiction over that offense if committed by an adult without any additional transfer proceedings. The circuit court may review the transfer proceedings on motion of the transferred child. Such review shall be on the record of the hearing in the youth court. The circuit court shall remand the offense to the youth court if there is no substantial evidence to support the order of the youth court. The circuit court may also review the conditions of custody or release pending criminal court proceedings.
- (9) When any youth has been the subject of a transfer to circuit court for an offense committed in any county of the state or has committed any act which is in the original jurisdiction of the circuit court pursuant to Section 43-21-151, that transfer or original jurisdiction shall be recognized by all other courts of the state and no subsequent offense committed by such youth in any county of the state shall be in the jurisdiction of the youth court unless transferred to the youth court pursuant to Section 43-21-159(3). Transfers from youth courts of other states shall be recognized by the courts of this state and no youth who has a pending charge or a conviction in the adult court system of any other state shall be in the jurisdiction of the youth courts of this state, but such youths shall be in the jurisdiction of the circuit court for any felony committed in this state or in the jurisdiction of the court of competent jurisdiction for any misdemeanor committed in this state.

Can other courts transfer jurisdiction to the youth court?

§ 43-21-159 & URYCP 23

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

- (1) When a person appears before a court other than the youth court, and it is determined that the person is a child under jurisdiction of the youth court, such court shall, unless the jurisdiction of the offense has been transferred to such court as provided in this chapter, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted, immediately dismiss the proceeding without prejudice and forward all documents pertaining to the cause to the youth court; and all entries in permanent records shall be expunged. The youth court shall have the power to order and supervise the expunction or the destruction of such records in accordance with Section 43-21-265. Upon petition therefor, the youth court shall expunge the record of any case within its jurisdiction in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case.
- In cases where the child is charged with a hunting or fishing violation or a traffic violation, whether it be any state or federal law, a violation of the Mississippi Implied Consent Law, or municipal ordinance or county resolution, or where the child is charged with a violation of Section 67-3-70, the appropriate criminal court shall proceed to dispose of the same in the same manner as for other adult offenders and it shall not be necessary to transfer the case to the youth court of the county. However, unless the cause has been transferred, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted, the youth court shall have power on its own motion to remove jurisdiction from any criminal court of any offense including a hunting or fishing violation, a traffic violation, a violation of the Mississippi Implied Consent Law, or a violation of Section 67-3-70, committed by a child in a matter under the jurisdiction of the youth court and proceed therewith in accordance with the provisions of this chapter.
- (2) After conviction and sentence of any child by any other court having original jurisdiction on a misdemeanor charge, and within the time allowed for an appeal of such conviction and sentence, the youth court of the county shall have the full power to stay the execution of the sentence and to release the child on good behavior or on other order as the youth court may see fit to make unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted. When a child is

convicted of a misdemeanor and is committed to, incarcerated in or imprisoned in a jail or other place of detention by a criminal court having proper jurisdiction of such charge, such court shall notify the youth court judge or the judge's designee of the conviction and sentence prior to the commencement of such incarceration. The youth court shall have the power to order and supervise the destruction of any records involving children maintained by the criminal court in accordance with Section 43-21-265. However, the youth court shall have the power to set aside a judgment of any other court rendered in any matter over which the youth court has exclusive original jurisdiction, to expunge or destroy the records thereof in accordance with Section 43-21-265, and to order a refund of fines and costs.

- (3) Nothing in subsection (1) or (2) shall apply to a youth who has a pending charge or a conviction for any crime over which circuit court has original jurisdiction.
- (4) In any case wherein the defendant is a child as defined in this chapter and of which the circuit court has original jurisdiction, the circuit judge, upon a finding that it would be in the best interest of such child and in the interest of justice, may at any stage of the proceedings prior to the attachment of jeopardy transfer such proceedings to the youth court for further proceedings unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted or has previously been convicted of a crime which was in original circuit court jurisdiction, and the youth court shall, upon acquiring jurisdiction, proceed as provided in this chapter for the adjudication and disposition of delinquent child proceeding proceedings. If the case is not transferred to the youth court and the youth is convicted of a crime by any circuit court, the trial judge shall sentence the youth as though such youth was an adult. The circuit court shall not have the authority to commit such child to the custody of the Department of Youth Services for placement in a state-supported training school.
- (5) In no event shall a court sentence an offender over the age of eighteen (18) to the custody of the Division of Youth Services for placement in a state-supported training school.
- (6) When a child's driver's license is suspended by the youth court for any reason, the clerk of the youth court shall report the suspension, without a court order under Section 43-21-261, to the Commissioner of Public Safety in the same manner as such suspensions are reported in cases involving adults.
- (7) No offense involving the use or possession of a firearm by a child who has reached his fifteenth birthday and which, if committed by an adult would be a felony, shall be transferred to the youth court.

Will an attorney be appointed for the parties?

§ 43-21-201 & URYCP 14

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

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

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

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

An attorney shall enter his appearance on behalf of a party in the proceeding by filing a written notice of appearance with the youth court, by filing a pleading, notice or motion signed by counsel or by appearing in open

court and advising the youth court that he is representing a party. After counsel has entered his appearance, he shall be served with copies of all subsequent pleadings, motions and notices required to be served on the party he represents. An attorney who has entered his appearance shall not be permitted to withdraw from the case until a timely appeal if any has been decided, except by leave of the court then exercising jurisdiction of the cause after notice of his intended withdrawal is served by him on the party he represents.

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

How are the proceedings conducted?

§ 43-21-203

All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults.

Hearings in all cases involving children shall be conducted without a jury and may be recessed from time to time.

All hearings shall be conducted under such rules of evidence and rules of court as may comply with applicable constitutional standards.

No proceeding by the youth court in cases involving children shall be a criminal proceeding but shall be entirely of a civil nature.

The general public shall be excluded from the hearing, and only those persons shall be admitted who are found by the youth court to have a direct interest in the cause or work of the youth court. Any person found by the youth court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel.

In all hearings, except detention and shelter hearings, a complete record of all evidence shall be taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

The youth court may exclude the attendance of a child from a hearing in neglect and abuse cases with consent of the child's counsel. The youth court may exclude the attendance of a child from any portion of a disposition hearing that would be injurious to the best interest of the child in delinquency and children in need of supervision cases with consent of the child's counsel.

All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence:

- (a) to subpoena, confront and examine the person who prepared or furnished data for the report; and
- (b) to introduce evidence controverting the contents of the report.

Except as provided by Section 43-21-561(5) or as otherwise provided by this chapter, the disposition of a child's cause or any evidence given in the youth court in any proceedings concerning the child shall not be admissible against the child in any case or proceeding in any court other than a youth court.

Are court costs and fees assessed?

§ 43-21-205

No court costs shall be charged against any party to a petition, and no salaried officer of the state, county or any municipality, nor any youth court counselor, nor any witness other than an expert witness shall be entitled to receive any fee for any service rendered to the youth court or for attendance in the youth court in any proceedings under this chapter.

See § 43-21-615 and § 43-21-619. (Later in these questions).

How are law enforcement records handled?

§ 43-21-255 & URYCP 5-6

All records involving children made and retained by law enforcement officers and agencies or by the youth court prosecutor and the contents thereof shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

A child in the jurisdiction of the youth court and who has been taken into custody for an act, which if committed by an adult would be considered a felony or offenses involving possession or use of a dangerous weapon or any firearm, may be photographed or fingerprinted or both.

Any law enforcement record involving children who have been taken into custody for an act, which if committed by an adult would be considered a felony and/or offenses involving possession or use of a dangerous weapon including photographs and fingerprints, may be released to a law enforcement agency supported by public

funds, youth court officials and appropriate school officials without a court order under Section 43-21-261. Law enforcement records shall be released to youth court officials and to appropriate school officials upon written request. Except as provided in subsection (4) of this section, any law enforcement agency releasing such records of children in the jurisdiction of the youth court shall immediately report the release and location of the records to the youth court. The law enforcement agencies, youth court officials and school officials receiving such records are prohibited from using the photographs and fingerprints for any purpose other than for criminal law enforcement and juvenile law enforcement. Each law enforcement officer or employee, each youth court official or employee and each school official or employee receiving the records shall submit to the sender a signed statement acknowledging his or her duty to maintain the confidentiality of the records. In no instance shall the fact that such records of children in the jurisdiction of the youth court exist be conveyed to any private individual, firm, association or corporation or to any public or quasi-public agency the duties of which do not include criminal law enforcement or juvenile law enforcement.

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

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

How are DHS records handled?

§ 43-21-257 & URYCP 5-6

Unless otherwise provided in this section, any record involving children, including valid and invalid complaints, and the contents thereof maintained by the Department of Human Services, or any other state agency, shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

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

The Department of Human Services shall maintain a state central registry on neglect and abuse cases containing (a) the name, address and age of each child, (b) the nature of the harm reported, (c) the name and address of the person responsible for the care of the child, and (d) the name and address of the substantiated perpetrator of the harm reported. "Substantiated perpetrator" shall be defined as an individual who has committed an act(s) of sexual abuse or physical abuse that would otherwise be deemed as a felony or any child neglect that would be deemed as a threat to life, as determined upon investigation by the Office of Family and Children's Services. "Substantiation" for the purposes of the Mississippi Department of Human Services Central Registry shall require a criminal conviction or an adjudication by a youth court judge or court of competent jurisdiction, ordering that the name of the perpetrator be listed on the central registry, pending due process. The Department of Human Services shall adopt such rules and administrative procedures, especially those procedures to afford due process to individuals who have been named as substantiated perpetrators before the release of their name from the central registry, as may be necessary to carry out this subsection. The central registry shall be confidential and shall not be open to public inspection. Any person who discloses or encourages the disclosure of any record involving children from the central registry without following the rules and administrative procedures of the department shall be subject to the penalty in Section 43-21-267. The Department of Human Services and its employees are exempt from any civil liability as a result of any action taken pursuant to the compilation and/or release of information on the central registry under this section and any other applicable section of the code, unless determined that an employee has willfully and maliciously violated the rules and administrative procedures of the department, pertaining to the central registry or any section of this code. If an employee is determined to have willfully and maliciously performed such a violation, said employee shall not be exempt from civil liability in this regard.

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

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

How are other records handled?

§ 43-21-259 & URYCP 5-6

All other records involving children and the contents thereof shall be kept confidential and shall not be disclosed except as provided in section 43-21-261.

How can records be disclosed?

§ 43-21-259 & URYCP 5-6

Except as otherwise provided in this section, records involving children shall not be disclosed, other than to necessary staff of the youth court, except pursuant to an order of the youth court specifying the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Such court orders for disclosure shall be limited to those instances in which the youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety or the functioning of the youth court and then only to the following persons:

- (a) The judge of another youth court or member of another youth court staff;
- (b) The court of the parties in a child custody or adoption cause in another court;
- (c) A judge of any other court or members of another court staff;
- (d) Representatives of a public or private agency providing supervision or having custody of the child under order of the youth court;
- (e) Any person engaged in a bona fide research purpose, provided that no information identifying the subject of the records shall be made available to the researcher unless it is absolutely essential to the research purpose and the judge gives prior written approval, and the child, through his or her representative, gives permission to release the information;
- (f) The Mississippi Department of Employment Security, or its duly authorized representatives, for the purpose of a child's enrollment into the Job Corps Training Program as authorized by Title IV of the Comprehensive Employment Training Act of 1973 (29 USCS Section 923 et seq.). However, no records, reports, investigations or information derived therefrom pertaining to child abuse or neglect shall be disclosed;
- (g) To any person pursuant to a finding by a judge of the youth court of compelling circumstances affecting the health, safety or well-being of a child and that such disclosure is in the best interests of the child or an adult who was formerly the subject of a youth court delinquency proceeding.

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

Any records involving children which are disclosed under an order of the youth court or pursuant to the terms of this section and the contents thereof shall be kept confidential by the person or agency to whom the record is disclosed unless otherwise provided in the order. Any further disclosure of any records involving children shall be made only under an order of the youth court as provided in this section.

Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to inspect any record, report or investigation which is to be considered by the youth court at a hearing, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person.

Upon request, the child who is the subject of a youth court cause shall have the right to have his counsel

inspect and copy any record, report or investigation which is filed with the youth court or which is to be considered by the youth court at a hearing.

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

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

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

Records involving children shall be disclosed to the Division of Victim Compensation of the Office of the Attorney General upon the division's request without order of the youth court for purposes of determination of eligibility for victim compensation benefits.

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

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

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

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

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

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

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

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

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

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

The Administrative Office of Courts may, in its discretion, disclose to the Department of Public Safety any or all of the information involving children contained in the office's youth court data management system known as Mississippi Youth Court Information Delivery System or "MYCIDS."

In every case where an abuse or neglect allegation has been made, the confidentiality provisions of this section

shall not apply to prohibit access to a child's records by any state regulatory agency, any state or local prosecutorial agency or law enforcement agency; however, no identifying information concerning the child in question may be released to the public by such agency except as otherwise provided herein.

In every case where there is any indication or suggestion of either abuse or neglect and a child's physical condition is medically labeled as medically "serious" or "critical" or a child dies, the confidentiality provisions of this section shall not apply. In cases of child deaths, the following information may be released by the Mississippi Department of Human Services: (a) child's name; (b) address or location; (c) verification from the Department of Human Services of case status (no case or involvement, case exists, open or active case, case closed); (d) if a case exists, the type of report or case (physical abuse, neglect, etc.), date of intake(s) and investigation(s), and case disposition (substantiated or unsubstantiated). Notwithstanding the aforesaid, the confidentiality provisions of this section shall continue if there is a pending or planned investigation by any local, state or federal governmental agency or institution.

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

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

Can records be sealed or destroyed and are there penalties for improper disclosure?

§ 43-21-259, § 43-21-261, § 43-21-263

The youth court may order the sealing of records involving children:

- (a) if the child who was the subject of the cause has attained twenty (20) years of age;
- (b) if the youth court dismisses the cause; or
- (c) if the youth court sets aside an adjudication in the cause.

The youth court may, at any time, upon its own motion or upon application of a party to a youth court cause, order the sealing or unsealing of the records involving children.

The youth court, in its discretion, may order the destruction of any records involving children except medical or mental health examinations as defined in section 43-21-253. This order shall be directed to all persons maintaining the records, shall order their physical destruction by an appropriate means specified by the youth court and shall require the persons to file with the youth court a written report of compliance with the order. No records, however, may be destroyed without the approval of the director of the department of archives and history.

Any person who shall disclose or encourage the disclosure of any records involving children or the contents thereof without the proper authorization under this chapter shall be guilty of a misdemeanor and punished, upon conviction, by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail of not more than one (1) year or by both such fine and imprisonment.

Nothing herein shall prevent the youth court from finding in civil contempt, as provided in section 43-21-153, any person who shall disclose any records involving children or the contents thereof without the proper authorization under this chapter.

When is custody deemed necessary?

§ 43-21-301 & URYCP 11-12

1. When a child is endangered or any person would be endangered by the child; or
2. To insure the child's attendance in court at such time as required; or
3. When a parent, guardian or custodian is not available to provide for the care and supervision of the child.

What is the procedure for taking a child into custody for allegations of abuse or neglect?

§ 43-21-301 & URYCP 11-12

1. Law enforcement officer or DHS requests a custody order from the judge.
2. Judge issues a custody order for no longer than forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays if it appears that there is probable cause to believe that:
 - (a) The child is within the jurisdiction of the court; and

- (b) Custody is necessary; and
 - (c) There is no reasonable alternative to custody.
3. Custody order may be written or oral, but, if oral, reduced to writing as soon as practicable.
 4. The written order shall:
 - (a) Specify the name and address of the child, or, if unknown, designate him or her by any name or description by which he or she can be identified with reasonable certainty;
 - (b) Specify the age of the child, or, if unknown, that he or she is believed to be of an age subject to the jurisdiction of the youth court;
 - (c) State that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interests of the child, and ... state that (i) reasonable efforts have been made to maintain the child within his or her own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or (ii) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody. If the court makes a finding in accordance with (ii), the court shall order that reasonable efforts be made towards the reunification of the child with his or her family.
 - (d) State that the child shall be brought immediately before the youth court or be taken to a place designated by the order to be held pending review of the order;
 - (e) State the date issued and the youth court by which the order is issued; and
 - (f) Be signed by the judge or his designee with the title of his office.

What is the procedure for taking a child into custody for allegations of delinquency?

§ 43-21-301 & URYCP 11-12

Same procedure as for allegation of abuse or neglect (*listed above*) plus:

1. The taking of a child into custody shall not be considered an arrest except for evidentiary purposes.
2. No child who has been accused or adjudicated of any offense that would not be a crime if committed by an adult shall be placed in an adult jail or lockup. An accused status offender shall not be held in secure detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial court appearance, excluding Saturdays, Sundays and statutory state holidays, except under the following circumstances: a status offender may be held in secure detention for violating a valid court order pursuant to the criteria as established by the federal Juvenile Justice and Delinquency Prevention Act of 2002, and any subsequent amendments thereto, and out-of-state runaways may be detained pending return to their home state.
3. 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.

What is the procedure for taking a child into custody without a custody order for allegations of abuse or neglect?

§ 43-21-303 & URYCP 11-12

1. Law enforcement officer or DHS may take a child into custody if:
 - (a) there is probable cause to believe that the child is in immediate danger of personal harm; and
 - (b) such law enforcement officer or DHS has probable cause to believe that immediate custody is necessary; and
 - (c) such law enforcement officer or DHS can find no reasonable alternative to custody.
2. The person taking the child into custody shall
 - (a) immediately notify the judge; and
 - (b) make continuing reasonable efforts to notify the child's parent, guardian or custodian and invite the parent, guardian or custodian to be present during any questioning.
3. A child taken into custody shall not be held in custody for a period longer than reasonably necessary, but not to exceed twenty-four (24) hours unless the judge authorizes temporary custody.

What is the procedure for taking a child into custody without a custody order for allegations of delinquency?

§ 43-21-303 & URYCP 11-12

1. Law enforcement officer may take a child into custody if:
 - (a) grounds exist for the arrest of an adult in identical circumstances; and
 - (b) such law enforcement officer has probable cause to believe that custody is necessary; and
 - (c) such law enforcement officer can find no reasonable alternative to custody.
2. The person taking the child into custody shall
 - (a) immediately notify the judge; and
 - (b) make continuing reasonable efforts to notify the child's parent, guardian or custodian and invite the parent, guardian or custodian to be present during any questioning.
3. A child taken into custody shall not be held in custody for a period longer than reasonably necessary, but not to exceed twenty-four (24) hours unless the judge authorizes temporary custody.

What is temporary custody?

§ 43-21-307 & URYCP 11-12

The judge may authorize the temporary custody of a child taken into custody for a period of not longer than forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays if the judge or his designee finds:

- (a) The child is within the jurisdiction of the court; and
- (b) Custody is necessary; and
- (c) There is no reasonable alternative to custody.

What is a shelter hearing?

§ 43-21-309 & URYCP 16

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

- (a) A written complaint or petition has been filed; and
- (b) A court order has been entered for continued custody following a review of that custody at a shelter hearing.

Reasonable oral or written notice of the time, place and purpose of the hearing shall be given to the child; to his or her parent, guardian or custodian; to his or her guardian ad litem, if any; and to his or her counsel. If the parent, guardian or custodian cannot be found, the youth court may hold the hearing in the absence of the child's parent, guardian or custodian.

At the shelter hearing, all parties present shall have the right to present evidence and cross-examine witnesses produced by others. The youth court may, in its discretion, limit the extent but not the right or presentation of evidence and cross-examination of witnesses. The youth court may receive any testimony and other evidence relevant to the necessity for the continued custody of the child without regard to the formal rules of evidence, including hearsay and opinion evidence. All testimony shall be made under oath and may be in narrative form.

At the conclusion of the shelter hearing, the youth court shall order that the child be released to the custody of the child's parent, guardian or custodian unless the youth court finds and the shelter hearing order recites that:

- (a) There is probable cause that the youth court has jurisdiction;
- (b) Custody is necessary;
- (c) There is no reasonable alternative to custody; and
- (d) The effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interest of the child; and
 - (i) Reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal; or
 - (ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home and reasonable efforts shall be made towards the reunification of the child with his or her family.

The child's guardian ad litem, and parent, guardian or custodian, and child may waive in writing the time of the shelter hearing or the shelter hearing itself. If the child has not reached his tenth birthday, the child's consent shall not be required.

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

What is a detention hearing?

§ 43-21-309 & URYCP 16

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

- (a) A written complaint or petition has been filed; and
- (b) A court order has been entered for continued custody following a review of that custody at a detention hearing in delinquency and child in need of supervision cases.

Reasonable oral or written notice of the time, place and purpose of the hearing shall be given to the child; to his or her parent, guardian or custodian; to his or her guardian ad litem, if any; and to his or her counsel. If the parent, guardian or custodian cannot be found, the youth court may hold the hearing in the absence of the child's parent, guardian or custodian.

At the detention hearing, all parties present shall have the right to present evidence and cross-examine witnesses produced by others. The youth court may, in its discretion, limit the extent but not the right or presentation of evidence and cross-examination of witnesses. The youth court may receive any testimony and other evidence relevant to the necessity for the continued custody of the child without regard to the formal rules of evidence, including hearsay and opinion evidence. All testimony shall be made under oath and may be in narrative form.

At the conclusion of the detention hearing, the youth court shall order that the child be released to the custody of the child's parent, guardian or custodian unless the youth court finds and the detention hearing order recites that:

- (a) There is probable cause that the youth court has jurisdiction; and
- (b) Custody is necessary.

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

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

What are the rights of a child in custody for delinquency proceedings?

§ 43-21-311 & URYCP 17

When a child is taken into custody, he shall immediately be informed of:

- (a) The reason for his custody;
- (b) The time within which review of the custody shall be held;
- (c) His rights during custody including his right to counsel;
- (d) All rules and regulations of the place at which he is held;
- (e) The time and place of the detention hearing when the time and place is set; and
- (f) The conditions of his custody which shall be in compliance with the detention requirements provided in Section 43-21-301(6).

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

When a child is taken into custody, the child may immediately telephone his parent, guardian or custodian; his counsel; and personnel of the youth court. Thereafter, he shall be allowed to telephone his counsel or any personnel of the youth court at reasonable intervals. Unless the judge or his designee finds that it is against the best interest of the child, he may telephone his parent, guardian or custodian at reasonable intervals.

When a child is taken into custody, the child may be visited by his counsel and authorized personnel of the youth court at any time. Unless the judge or his designee finds it to be against the best interest of the child, he may be visited by his parent, guardian or custodian during visiting hours which shall be regularly scheduled at least three (3) days per week. The youth court may establish rules permitting visits by other persons.

Except for the child's counsel, guardian ad litem and authorized personnel of the youth court, no person shall interview or interrogate a child held in a detention or shelter facility unless approval therefor has first been obtained from the judge or his designee. When a child in a detention or shelter facility is represented by counsel or has a guardian ad litem, no person may interview or interrogate the child concerning the violation of a state or federal law, or municipal or county ordinance by the child unless in the presence of his counsel or guardian ad litem or with their consent.

What is the procedure to seek to have a child released from custody after the initial detention hearing or shelter hearing?

§ 43-21-313 & URYCP 18

A child held in custody under order of the youth court shall be released upon a finding that a change of circumstances makes continued custody unnecessary.

A written request for the release of the child from custody, setting forth the changed circumstances, may be filed by the child; by the child's parent, guardian or custodian; by the child's counsel; or by the child's guardian ad litem, if any.

Based upon the facts stated in the request, the judge may direct that a hearing be held at a date, time and place as fixed by the youth court. Reasonable notice of the hearing shall be given to the child; his parent, guardian or custodian; his counsel; and his guardian ad litem, if any, prior to the hearing. At the hearing, upon receiving evidence, the youth court may grant or deny the request.

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

What happens when a child is placed in a detention center?

§ 43-21-321

All juveniles shall undergo a health screening within one (1) hour of admission to any juvenile detention center, or as soon thereafter as reasonably possible.

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

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

The directors of all of the juvenile detention centers shall amend or develop written procedures for admission of juveniles who are new to the system.

If a student's detention will cause him or her to miss one or more days of school the detention center staff shall notify school district officials where the detainee last attended school by the first school day following the student's placement in the facility.

All juvenile detention centers shall adhere to minimum standards described in § 43-21-321(6).

Is there a duty to inform if child abuse or neglect is suspected?

§ 43-21-353

Any person having reasonable cause to suspect that a child is a neglected child or an abused child, shall cause an oral report to be made immediately by telephone or otherwise and followed as soon thereafter as possible by a report in writing to DHS. **Penalty for failure to comply is up to one year in jail and up to a \$5,000 fine.**

DHS shall immediately make a referral to the youth court intake unit.

Where appropriate, DHS shall make a referral to the youth court prosecutor.

Upon receiving a report that a child has been sexually abused, or burned, tortured, mutilated or otherwise physically abused in such a manner as to cause serious bodily harm, or upon receiving any report of abuse that would be a felony under state or federal law, DHS shall immediately notify the law enforcement agency in whose jurisdiction the abuse occurred and shall notify the appropriate prosecutor within forty-eight (48) hours, and DHS shall have the duty to provide the law enforcement agency all the names and facts known at the time of the report.

The law enforcement agency and DHS shall investigate the reported abuse immediately and shall file a preliminary report with the appropriate prosecutor's office within twenty-four (24) hours and shall make additional reports as new or additional information or evidence becomes available. DHS shall advise the clerk of the youth court and the youth court prosecutor of all cases of abuse reported to the department within seventy-two (72) hours and shall update such report as information becomes available.

Any report to DHS shall contain the names and addresses of the child and his parents or other persons responsible for his care, if known, the child's age, the nature and extent of the child's injuries, including any evidence

of previous injuries and any other information that might be helpful in establishing the cause of the injury and the identity of the perpetrator.

Reports of abuse and neglect made under this chapter and the identity of the reporter are confidential.

What is the intake procedure?

§ 43-21-357 & URYCP 8

1. After receiving a report, the youth court intake unit shall promptly make a preliminary inquiry to determine whether the interest of the child, other children in the same environment or the public requires the youth court to take further action.
2. The youth court intake unit may request or the youth court may order DHS to make an investigation or report concerning the child and any other children in the same environment, and present the findings thereof to the youth court intake unit.
3. If the youth court intake unit receives a neglect or abuse report, the youth court intake unit shall immediately forward the complaint to DHS to promptly make an investigation or report concerning the child and any other children in the same environment and promptly present the findings thereof to the youth court intake unit. If it appears from the preliminary inquiry that the child or other children in the same environment are within the jurisdiction of the court, the youth court intake unit shall recommend to the youth court:
 - (a) That the youth court take no action;
 - (b) That an informal adjustment be made;
 - (c) That DHS monitor the child, family and other children in the same environment;
 - (d) That the child is warned or counseled informally; or
 - (e) That a petition be filed.
4. After the youth court intake unit makes a recommendation to the youth court, the youth court shall then, without a hearing:
 - (a) Order that no action be taken;
 - (b) Order that an informal adjustment be made;
 - (c) Order that DHS monitor the child, family and other children in the same environment;
 - (d) Order that the child is warned or counseled informally; or
 - (e) Order that a petition be filed.
5. If the preliminary inquiry discloses that a child needs emergency medical treatment, the judge may order the necessary treatment.

What is an informal adjustment?

§ 43-21-401 & URYCP 8

Informal adjustment shall include:

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

Informal adjustment may be commenced after the filing of a petition, if authorized by the court.

If the child and his parent, guardian or custodian agree to participate in an informal adjustment process, the defense of a failure to provide a speedy trial is waived and a petition may be filed if the informal adjustment process is unsuccessfully terminated.

What is the process for an informal adjustment?

§ 43-21-403, § 43-21-405, § 43-21-407, URYCP 8

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

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

If the child and his parent, guardian or custodian appear at the informal adjustment conference without

counsel, the informal adjustment counselor shall, at the commencement of the conference, inform them of their right to counsel, the child's right to appointment of counsel and the right of the child to remain silent. If either the child or his parent, guardian or custodian indicates a desire to be represented by counsel, the informal adjustment counselor shall adjourn the conference to afford an opportunity to secure counsel.

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

- (a) That information has been received concerning the child which appears to establish jurisdiction of the youth court;
- (b) The purpose of the informal adjustment conference;
- (c) That during the informal adjustment process no petition will be filed;
- (d) That the informal adjustment process is voluntary with the child and his parent, guardian or custodian and that they may withdraw from the informal adjustment at any time; and
- (e) The circumstances under which the informal adjustment process can be terminated under Section 43-21-407.

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

- (a) Recommendations for actions or conduct in the interest of the child to correct the conditions of behavior or environment which may exist;
- (b) Continuing conferences and contacts with the child and his parent, guardian or custodian by the informal adjustment counselor or other authorized persons; and
- (c) The child's general behavior, his home and school environment and other factors bearing upon the proposed informal adjustment.

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

The informal adjustment process shall not continue beyond a period of six (6) months from its commencement unless extended by the youth court for an additional period not to exceed six (6) months by court authorization prior to the expiration of the original six-month period. In no event shall the custody or supervision of a child which has been placed with the Department of Public Welfare be continued or extended except upon a written finding by the youth court judge or referee that reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody, and that reasonable efforts will continue to be made towards reunification of the family.

If it appears to the informal adjustment counselor that the child and his parent, guardian or custodian:

- (a) have complied with the terms and conditions of the informal adjustment agreement; and
- (b) have received the maximum benefit from the informal adjustment process, the informal adjustment counselor shall terminate the informal adjustment process and dismiss the child without further proceedings. The informal adjustment counselor shall notify the child and his parent, guardian or custodian in writing of the satisfactory completion of the informal adjustment and report such action to the youth court.

If it appears to the informal adjustment counselor that further efforts at informal adjustment would not be in the best interests of the child or the community, or that the child or his parent, guardian or custodian:

- (a) denies the jurisdiction of the youth court;
- (b) declines to participate in the informal adjustment process;
- (c) expresses a desire that the facts be determined by the youth court;
- (d) fails without reasonable excuse to attend scheduled meetings;
- (e) appears unable or unwilling to benefit from the informal adjustment process, the informal adjustment counselor shall terminate the informal adjustment process. If the informal adjustment process is so terminated, the intake unit shall reinitiate the intake procedure under Section 43-21-357. Even if the informal adjustment process has been so terminated, the intake unit shall not be precluded from reinitiating the informal adjustment process.

Petition for adjudication of abuse or neglect

§ 43-21-455, § 43-21-457, § 43-21-459, URYCP 20

The petition shall set forth plainly and concisely with particularity:

- (a) identification of the child, including his full name, birth date, age, sex and residence;
- (b) identification of the parent, guardian or custodian including the name and residence of the child's parents, the name and residence of the child's legal guardian, if there be one, any person or agency in whose custody the child may be and the child's nearest relative if no parent or guardian be known;
- (c) a statement of the facts, including the facts which bring the child within the jurisdiction of the youth court and which show the child is a neglected child or an abused child;
- (d) a prayer for the type of adjudicatory relief sought; and
- (e) if any of the facts herein required are not known by the petitioner.

Two (2) or more children may be the subject of the same petition if they are siblings and they are alleged to be neglected or abused from a common source of mistreatment or neglect.

The petition may be amended at any time, on order, for good cause shown so long as there is no prejudice to the parties and no party shall be required to file a responsive pleading.

Petition for adjudication of delinquency of child in need of supervision

§ 43-21-455, § 43-21-457, § 43-21-459, URYCP 20

The petition shall set forth plainly and concisely with particularity:

- (a) identification of the child, including his full name, birth date, age, sex and residence;
- (b) identification of the parent, guardian or custodian including the name and residence of the child's parents, the name and residence of the child's legal guardian, if there be one, any person or agency in whose custody the child may be and the child's nearest relative if no parent or guardian be known;
- (c) a statement of the facts, including the facts which bring the child within the jurisdiction of the youth court and which show the child is a delinquent child, a child in need of supervision, a neglected child or an abused child;
- (d) in petitions alleging delinquency, a citation of the statute or ordinance which the child is alleged to have violated. Error in or omission of the citation shall not be grounds for dismissing the petition or for a reversal of the adjudication based thereon if the error or omission did not mislead the child to his prejudice.
- (e) a prayer for the type of adjudicatory relief sought;
- (f) if any of the facts herein required are not known by the petitioner;
- (g) where the child is alleged to be a delinquent child, the petition must recite factual allegations with the same particularity required in a criminal indictment but need not have the technical form of a criminal indictment.

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

The petition may contain a motion to transfer.

The petition may be amended at any time, on order, for good cause shown so long as there is no prejudice to the parties and no party shall be required to file a responsive pleading.

What is the process for serving the summons?

§ 43-21-501 thru § 43-509 & URYCP 22

Summons to be served on:

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

Method of service of summons:

- (a) Personally by delivery of a copy of the summons with a copy of the petition in a sealed envelope attached to the summons;
- (b) Service of the summons and petition, motions, notices and all other papers upon a child who has not reached his fourteenth birthday shall be effectuated by making service upon his parent, guardian or custodian and guardian ad litem, if any;
- (c) If any parent or guardian does not reside within the state or cannot be located therein, the clerk shall issue summons to the guardian ad litem. If the name and post office address of the parent or guardian

who does not reside within the state or cannot be located therein can be ascertained, the clerk shall mail by "certified mail" ten (10) days before the date set for the hearing a copy of the summons with a copy of the petition attached to the summons to such parent or guardian. The clerk shall note the fact of such mailing upon the court docket. Ten (10) days after the summons has been mailed, the youth court may take jurisdiction as if summons had been personally served as herein provided.

- (d) The service of summons shall be made by any person appointed by the youth court judge.
- (e) Unless otherwise provided in this chapter, notice of the time, date, place and purpose of any hearing other than adjudicatory and transfer hearings shall be given to all parties in person in court or by mail, or in any other manner as the youth court may direct.

Time frame for service:

Not less than three (3) days before the date set for the adjudicatory hearing.

Can service on an adult be waived?

A party other than the child may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing and in the case of written stipulation or voluntary appearance, the youth court may, in its discretion, proceed to a hearing regardless of the date set for the hearing if all other parties are properly before the youth court. At the time of the waiver, a copy of the petition shall be given to the party.

Can service on a child be waived?

The child may waive the three (3) days' time before the hearing, and the youth court may, in its discretion, proceed to a hearing regardless of the date set for the hearing if all other parties are properly before the youth court and the youth court finds all of the following:

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

What if someone who is served fails to obey the summons?

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

How is an adjudication hearing scheduled?

§ 43-21-551 & URYCP 24

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

If the child is in detention, the hearing shall be held as soon as possible but not later than twenty-one (21) days after the child is first detained by the youth court unless the hearing be postponed:

- (a) upon motion of the child;
- (b) where process cannot be completed; or
- (c) upon a judicial finding that a material witness is not presently available. If the adjudicatory hearing is not held or postponed for the aforesaid reasons, the child may be released from detention.

If the child is held in shelter, the hearing shall be held as soon as possible but not later than thirty (30) days after the child is first taken into custody unless the hearing is postponed:

- (a) upon motion of the child;

- (b) where process cannot be completed; or
- (c) upon a judicial finding that a material witness is not presently available. If the adjudicatory hearing is not held or postponed for the aforesaid reasons, the child may be released from shelter.

What if the adjudication is uncontested?

§ 43-21-553 & URYCP 24

At any time after the petition has been filed, all parties to the cause may appear before the judge and admit the allegations of the petition. The judge may accept this admission as proof of the allegations if the judge finds that:

- (a) the parties making the admission fully understand their rights and fully understand the potential consequences of their admission to the allegations;
- (b) the parties making the admission voluntarily, intelligently and knowingly admit to all facts necessary to constitute a basis for court action under this chapter;
- (c) the parties making the admission have not in the reported admission to the allegation set forth facts that, if found to be true, constitute a defense to the allegation; and
- (d) the child making the admission is effectively represented by counsel.

Is plea bargaining allowed?

§ 43-21-555

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

What is the procedure for an adjudication hearing?

§ 43-21-557 & URYCP 24

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

- (a) verify the name, age and residence of the child who is the subject of the cause and ascertain the relationship of the parties, each to the other;
- (b) ascertain whether all necessary parties are present and identify all persons participating in the hearing;
- (c) ascertain whether the notice requirements have been complied with and, if not, whether the affected parties intelligently waived compliance in accordance with Section 43-21-507;
- (d) explain to the parties the purpose of the hearing and the possible dispositional alternatives thereof; and
- (e) explain to the parties:
 - (i) the right to counsel;
 - (ii) the right to remain silent;
 - (iii) the right to subpoena witnesses;
 - (iv) the right to cross-examine witnesses testifying against him; and
 - (v) the right to appeal.

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

The youth court may then inquire whether the parties admit or deny the allegations in the petition.

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

What evidence is admissible during an adjudication hearing?

§ 43-21-559

- (1) Only evidence which has been formally admitted at the adjudicatory hearing. All testimony shall be under oath and may be in narrative form. In proceedings to determine whether a child is a delinquent child or a child in need of supervision, the youth court shall admit any evidence that would be admissible in a criminal proceeding. In proceedings to determine whether a child is a neglected child or an abused child, the youth court shall admit any evidence that would be admissible in a civil proceeding.
- (2) An out-of-court admission by the child, even if otherwise admissible, shall be insufficient to support an

adjudication that the child is a delinquent child unless the admission is corroborated in whole or in part by other competent evidence.

- (3) Members of the youth court staff may appear as witnesses except that no member of the youth court staff may testify as to an admission or confession made to him.
- (4) At the conclusion of the evidence, the youth court shall give the parties an opportunity to present oral argument.

What is the burden of proof at an adjudication hearing?

§ 43-21-561

If allegation of delinquency or child in need of supervision, proof required is beyond a reasonable doubt.

If allegation of abuse or neglect, proof required is by a preponderance of the evidence.

Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the adjudication.

No adjudication shall be deemed a conviction. A person in whose interest proceedings have been brought in the youth court may deny, without any penalty, the existence of those proceedings and any adjudication made in those proceedings.

Except for the right of a defendant or prosecutor in criminal proceedings and a respondent or a youth court prosecutor in youth court proceedings to cross-examine a witness, including a defendant or respondent, to show bias or interest, no adjudication shall be used for impeachment purposes in any court.

How is a disposition hearing scheduled?

§ 43-21-601 & URYCP 26-27

When a child has been adjudicated, the youth court shall immediately set a time and place for a disposition hearing which shall be separate, distinct and subsequent to the adjudicatory hearing. The disposition hearing, however, may be held immediately following the adjudicatory hearing unless a continuance is necessary to allow the parties to prepare for their participation in the proceedings.

If the child has been taken into custody, a disposition hearing shall be held within fourteen (14) days after the adjudicatory hearing unless good cause be shown for postponement.

What is the procedure for a disposition hearing?

§ 43-21-603 & URYCP 26-27

- (1) At the beginning of each disposition hearing, the judge shall inform the parties of the purpose of the hearing.
- (2) All testimony shall be under oath unless waived by all parties and may be in narrative form. The court may consider any evidence that is material and relevant to the disposition of the cause, including hearsay and opinion evidence. At the conclusion of the evidence, the youth court shall give the parties an opportunity to present oral argument.
- (3) If the child has been adjudicated a delinquent child, before entering a disposition order, the youth court should consider, among others, the following relevant factors:
 - (a) The nature of the offense;
 - (b) The manner in which the offense was committed;
 - (c) The nature and number of a child's prior adjudicated offenses;
 - (d) The child's need for care and assistance;
 - (e) The child's current medical history, including medication and diagnosis;
 - (f) The child's mental health history, which may include, but not be limited to, the Massachusetts Youth Screening Instrument version 2 (MAYSI-2);
 - (g) Copies of the child's cumulative record from the last school of record, including special education records, if applicable;
 - (h) Recommendation from the school of record based on areas of remediation needed;
 - (i) Disciplinary records from the school of record; and
 - (j) Records of disciplinary actions outside of the school setting.
- (4) If the child has been adjudicated a child in need of supervision, before entering a disposition order, the youth court should consider, among others, the following relevant factors:
 - (a) The nature and history of the child's conduct;
 - (b) The family and home situation; and

- (c) The child's need of care and assistance.
- (5) If the child has been adjudicated a neglected child or an abused child, before entering a disposition order, the youth court shall consider, among others, the following relevant factors:
 - (a) The child's physical and mental conditions;
 - (b) The child's need of assistance;
 - (c) The manner in which the parent, guardian or custodian participated in, tolerated or condoned the abuse, neglect or abandonment of the child;
 - (d) The ability of a child's parent, guardian or custodian to provide proper supervision and care of a child; and
 - (e) Relevant testimony and recommendations, where available, from the foster parent of the child, the grandparents of the child, the guardian ad litem of the child, representatives of any private care agency that has cared for the child, the family protection worker or family protection specialist assigned to the case, and any other relevant testimony pertaining to the case.
- (6) After consideration of all the evidence and the relevant factors, the youth court shall enter a disposition order that shall not recite any of the facts or circumstances upon which the disposition is based, nor shall it recite that a child has been found guilty; but it shall recite that a child is found to be a delinquent child, a child in need of supervision, a neglected child or an abused child.
- (7) If the youth court orders that the custody or supervision of a child who has been adjudicated abused or neglected be placed with the Department of Human Services or any other person or public or private agency, other than the child's parent, guardian or custodian, the youth court shall find and the disposition order shall recite that:
 - (a) (i) Reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or
 - (ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody; and
 - (b) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that the placement of the child in foster care is in the best interests of the child; or
 - (c) Reasonable efforts to maintain the child within his home shall not be required if the court determines that:
 - (i) The parent has subjected the child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse and sexual abuse; or
 - (ii) The parent has been convicted of murder of another child of that parent, voluntary manslaughter of another child of that parent, aided or abetted, attempted, conspired or solicited to commit that murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of that parent; or
 - (iii) The parental rights of the parent to a sibling have been terminated involuntarily; and
 - (iv) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that placement of the child in foster care is in the best interests of the child.

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

- (8) Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the disposition order. If the disposition ordered by the youth court includes placing the child in the custody of a training school, an admission packet shall be prepared for the child that contains the following information:
 - (a) The child's current medical history, including medications and diagnosis;
 - (b) The child's mental health history;
 - (c) Copies of the child's cumulative record from the last school of record, including special education records, if reasonably available;
 - (d) Recommendation from the school of record based on areas of remediation needed;
 - (e) Disciplinary records from the school of record; and
 - (f) Records of disciplinary actions outside of the school setting, if reasonably available.

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

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

What are the dispositional alternatives in delinquency cases?

§ 43-21-605 & URYCP 26

- (1) In delinquency cases, the disposition order may include any of the following alternatives:
- (a) Release the child without further action;
 - (b) Place the child in the custody of the parents, a relative or other persons subject to any conditions and limitations, including restitution, as the youth court may prescribe;
 - (c) Place the child on probation subject to any reasonable and appropriate conditions and limitations, including restitution, as the youth court may prescribe;
 - (d) Order terms of treatment calculated to assist the child and the child's parents or guardian which are within the ability of the parent or guardian to perform;
 - (e) Order terms of supervision which may include participation in a constructive program of service or education or civil fines not in excess of Five Hundred Dollars (\$ 500.00), or restitution not in excess of actual damages caused by the child to be paid out of his own assets or by performance of services acceptable to the victims and approved by the youth court and reasonably capable of performance within one (1) year;
 - (f) Suspend the child's driver's license by taking and keeping it in custody of the court for not more than one (1) year;
 - (g) Give legal custody of the child to any of the following:
 - (i) The Department of Human Services for appropriate placement; or
 - (ii) Any public or private organization, preferably community-based, able to assume the education, care and maintenance of the child, which has been found suitable by the court; or
 - (iii) The Division of Youth Services for placement in the least restrictive environment, except that no child under the age of ten (10) years shall be committed to the state training school. Only a child who has been adjudicated delinquent for a felony or who has been adjudicated delinquent three (3) or more times for a misdemeanor offense may be committed to the training school. For the purposes of this section, a misdemeanor offense does not include contempt of court for a probation violation, unless the probation violation constitutes a charge that would be a crime if committed by an adult. In the event a child is committed to the Oakley Youth Development Center by the court, the child shall be deemed to be committed to the custody of the Department of Human Services which may place the child in the Oakley Youth Development Center or another appropriate facility.

The training school may retain custody of the child until the child's twentieth birthday but for no longer. When the child is committed to the training school, the child shall remain in the legal custody of the training school until the child has made sufficient progress in treatment and rehabilitation and it is in the best interest of the child to release the child. However, the superintendent of the state training school, in consultation with the treatment team, may parole a child at any time he or she may deem it in the best interest and welfare of such child. Ten (10) business days before the parole, the training school shall notify the committing court of the pending release. The youth court may then arrange subsequent placement after a reconvened disposition hearing, except that the youth court may not recommit the child

to the training school or any other secure facility without an adjudication of a new offense or probation or parole violation. The Department of Human Services shall ensure that staffs create transition planning for youth leaving the facilities. Plans shall include providing the youth and his or her parents or guardian with copies of the youth's training school education and health records, information regarding the youth's home community, referrals to mental and counseling services when appropriate, and providing assistance in making initial appointments with community service providers. Before assigning the custody of any child to any private institution or agency, the youth court through its designee shall first inspect the physical facilities to determine that they provide a reasonable standard of health and safety for the child. No child shall be placed in the custody of the state training school for a status offense or for contempt of or revocation of a status offense adjudication unless the child is contemporaneously adjudicated for having committed an act of delinquency that is not a status offense. A disposition order rendered under this subparagraph shall meet the following requirements:

1. The disposition is the least restrictive alternative appropriate to the best interest of the child and the community;
 2. The disposition allows the child to be in reasonable proximity to the family home community of each child given the dispositional alternatives available and the best interest of the child and the state; and
 3. The disposition order provides that the court has considered the medical, educational, vocational, social and psychological guidance, training, social education, counseling, substance abuse treatment and other rehabilitative services required by that child as determined by the court;
- (h) Recommend to the child and the child's parents or guardian that the child attend and participate in the Youth Challenge Program under the Mississippi National Guard, as created in Section 43-27-203, subject to the selection of the child for the program by the National Guard; however, the child must volunteer to participate in the program. The youth court shall not order any child to apply for or attend the program;
- (i) (i) Adjudicate the juvenile to the Statewide Juvenile Work Program if the program is established in the court's jurisdiction. The juvenile and his or her parents or guardians must sign a waiver of liability in order to participate in the work program. The judge will coordinate with the youth services counselors as to placing participants in the work program;
- (ii) The severity of the crime, whether or not the juvenile is a repeat offender or is a felony offender will be taken into consideration by the judge when adjudicating a juvenile to the work program. The juveniles adjudicated to the work program will be supervised by police officers or reserve officers. The term of service will be from twenty-four (24) to one hundred twenty (120) hours of community service. A juvenile will work the hours to which he or she was adjudicated on the weekends during school and weekdays during the summer. Parents are responsible for a juvenile reporting for work. Noncompliance with an order to perform community service will result in a heavier adjudication. A juvenile may be adjudicated to the community service program only two (2) times;
- (iii) The judge shall assess an additional fine on the juvenile which will be used to pay the costs of implementation of the program and to pay for supervision by police officers and reserve officers. The amount of the fine will be based on the number of hours to which the juvenile has been adjudicated;
- (j) Order the child to participate in a youth court work program as provided in Section 43-21-627;
- (k) Order terms of house arrest under the intensive supervision program as created in Sections 47-5-1001 through 47-5-1015. The Department of Human Services shall take bids for the placement of juveniles in the intensive supervision program. The Department of Human Services shall promulgate rules regarding the supervision of juveniles placed in the intensive supervision program. For each county there shall be seventy-five (75) slots created in the intensive supervision program for juveniles. Any youth ordered into the intensive home-based supervision program shall receive comprehensive strength-based needs assessments and individualized treatment plans. Based on the assessment, an individualized treatment plan shall be developed that defines the supervision and programming that is needed by a youth. The treatment plan shall be developed by a multi-disciplinary team that includes the family of the youth whenever possible. The juvenile shall pay Ten Dollars (\$ 10.00) to offset the cost of administering the alcohol and drug test. The juvenile must attend school, alternative school or be in the process of working

toward a general educational development (GED) certificate;

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

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

- (i) The disposition order is the least restrictive alternative appropriate to the best interest of the child and the community;
 - (ii) The disposition order allows the child to be in reasonable proximity to the family home community of each child given the dispositional alternatives available and the best interest of the child and the state; and
 - (iii) The disposition order provides that the court has considered the medical, educational, vocational, social and psychological guidance, training, social education, counseling, substance abuse treatment and other rehabilitative services required by that child as determined by the court;
 - (m) The judge may consider house arrest in an intensive supervision program as a reasonable prospect of rehabilitation within the juvenile justice system. The Department of Human Services shall promulgate rules regarding the supervision of juveniles placed in the intensive supervision program; or
 - (n) Referral to A-team provided system of care services.
- (2) If a disposition order requires that a child miss school due to other placement, the youth court shall notify a child's school while maintaining the confidentiality of the youth court process. If a disposition order requires placement of a child in a juvenile detention facility, the facility shall comply with the educational services and notification requirements of Section 43-21-321.
 - (3) In addition to any of the disposition alternatives authorized under subsection (1) of this section, the disposition order in any case in which the child is adjudicated delinquent for an offense under Section 63-11-30 shall include an order denying the driver's license and driving privileges of the child as required under Section 63-11-30(9).
 - (4) If the youth court places a child in a state-supported training school, the court may order the parents or guardians of the child and other persons living in the child's household to receive counseling and parenting classes for rehabilitative purposes while the child is in the legal custody of the training school. A youth court entering an order under this subsection (4) shall utilize appropriate services offered either at no cost or for a fee calculated on a sliding scale according to income unless the person ordered to participate elects to receive other counseling and classes acceptable to the court at the person's sole expense.
 - (5) Fines levied under this chapter shall be paid into the general fund of the county but, in those counties wherein the youth court is a branch of the municipal government, it shall be paid into the municipal treasury.
 - (6) Any institution or agency to which a child has been committed shall give to the youth court any information concerning the child as the youth court may at any time require.
 - (7) The youth court shall not place a child in another school district who has been expelled from a school district for the commission of a violent act. For the purpose of this subsection, "violent act" means any action which results in death or physical harm to another or an attempt to cause death or physical harm to another.
 - (8) The youth court may require drug testing as part of a disposition order. If a child tests positive, the court may require treatment, counseling and random testing, as it deems appropriate. The costs of such tests shall be paid by the parent, guardian or custodian of the child unless the court specifically finds that the parent, guardian or custodian is unable to pay.
 - (9) The Mississippi Department of Human Services, Division of Youth Services, shall operate and maintain

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

What are the dispositional alternatives in child in need of supervision cases?

§ 43-21-607 & URYCP 27

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

What are the dispositional alternatives in neglect and abuse cases?

§ 43-21-609 & URYCP 27

In neglect and abuse cases, the disposition order may include any of the following alternatives, giving precedence in the following sequence:

- (a) Release the child without further action;
- (b) Place the child in the custody of his parents, a relative or other person subject to any conditions and limitations as the court may prescribe. If the court finds that temporary relative placement, adoption or foster care placement is inappropriate, unavailable or otherwise not in the best interest of the child, durable legal custody may be granted by the court to any person subject to any limitations and conditions the court may prescribe; such durable legal custody will not take effect unless the child or children have been in the physical custody of the proposed durable custodians for at least one (1) year under the supervision of the Department of Human Services. The requirements of Section 43-21-613 as to disposition review hearings does not apply to those matters in which the court has granted durable legal custody. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities;
- (c) Order terms of treatment calculated to assist the child and the child's parent, guardian or custodian which are within the ability of the parent, guardian or custodian to perform;
- (d) Order youth court personnel, the Department of Human Services or child care agencies to assist the child

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

- (e) Give legal custody of the child to any of the following but in no event to any state training school:
 - (i) The Department of Human Services for appropriate placement; or
 - (ii) Any private or public organization, preferably community-based, able to assume the education, care and maintenance of the child, which has been found suitable by the court. Prior to assigning the custody of any child to any private institution or agency, the youth court through its designee shall first inspect the physical facilities to determine that they provide a reasonable standard of health and safety for the child;
- (f) If the court makes a finding that custody is necessary as defined in Section 43-21-301(3)(b), and that the child, in the action pending before the youth court had not previously been taken into custody, the disposition order shall recite that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interests of the child, and unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), the order also must state:
 - (i) That reasonable efforts have been made to maintain the child within his or her own home, but that the circumstances warrant his or her removal, and there is no reasonable alternative to custody; or
 - (ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his or her own home, and there is no reasonable alternative to custody; or
 - (iii) If the court makes a finding in accordance with (ii) of this paragraph, the court shall order that reasonable efforts be made towards the reunification of the child with his or her family.
- (g) If the court had, before the disposition hearing in the action pending before the court, taken the child into custody, the judge or referee shall determine, and the youth court order shall recite that reasonable efforts were made by the Department of Human Services to finalize the child's permanency plan that was in effect on the date of the disposition hearing.

What are the dispositional alternatives for a child in need of special care?

§ 43-21-611 & URYCP 27

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

What is the procedure to modify the ruling of a disposition hearing?

§ 43-21-613 & URYCP 28

- (1) If the youth court finds, after a hearing which complies with the sections governing adjudicatory hearings, that the terms of a delinquency or child in need of supervision disposition order, probation or parole have been violated, the youth court may, in its discretion, revoke the original disposition and make any disposition which it could have originally ordered. The hearing shall be initiated by the filing of a petition that complies with the sections governing petitions in this chapter and that includes a statement of the youth court's original disposition order, probation or parole, the alleged violation of that order, probation or parole, and the facts which show the violation of that order, probation or parole. Summons shall be served in the same manner as summons for an adjudicatory hearing.
- (2) On motion of a child or a child's parent, guardian or custodian, the youth court may, in its discretion, conduct an informal hearing to review the disposition order. If the youth court finds a material change of circumstances relating to the disposition of the child, the youth court may modify the disposition order to any appropriate disposition of equal or greater precedence which the youth court could have originally ordered.
- (3) (a) Unless the youth court's jurisdiction has been terminated, all disposition orders for supervision,

probation or placement of a child with an individual or an agency shall be reviewed by the youth court judge or referee at least annually to determine if continued placement, probation or supervision is in the best interest of the child or the public. For children who have been adjudicated abused or neglected, the youth court shall conduct a permanency hearing within twelve (12) months after the earlier of:

- (i) An adjudication that the child has been abused or neglected; or
 - (ii) The date of the child's removal from the allegedly abusive or neglectful custodian/parent.
- (b) The court may find that the filing of a termination of parental rights petition is not in the child's best interest if:
- (i) The child is being cared for by a relative; and/or
 - (ii) The Department of Human Services has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child.
- (c) The provisions of this subsection shall also apply to review of cases involving a dependent child; however, such reviews shall take place not less frequently than once each one hundred eighty (180) days. A dependent child shall be ordered by the youth court judge or referee to be returned to the custody and home of the child's parent, guardian or custodian unless the judge or referee, upon such review, makes a written finding that the return of the child to the home would be contrary to the child's best interests.
- (d) Reviews are not to be conducted unless explicitly ordered by the youth court concerning those cases in which the court has granted durable legal custody. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities, and relieved of physical and legal custody and supervision of the child.

Who provides cost for conveying child to treatment?

§ 43-21-615

The costs of conveying any child committed to any institution or agency shall be paid by the county or municipality from which the child is committed out of the general treasury of the county or municipality upon approval of the court. No compensation shall be allowed beyond the actual and necessary expenses of the child and the person actually conveying the child. In the case of a female child, the youth court shall designate some suitable woman to accompany her to the institution or agency.

Whenever a child is adjudicated delinquent and committed by the youth court to the custody of any person or agency other than the custody of a state training school, the youth court, after giving the responsible parent or guardian a reasonable opportunity to be heard, may order that the parent or guardian pay, upon such terms or conditions as the youth court may direct, such sum or sums as will cover, in whole or in part, the support of the child including any necessary medical treatment. The parent shall be provided an itemized bill of all costs and shall be given an opportunity to request an adjustment of the costs. If the parent or guardian shall willfully fail or refuse to pay such sum, he may be proceeded against for contempt of court as provided in this chapter.

Can the Youth Court lawfully grant a protective order?

§ 43-21-617

In all cases where the child is found to be a delinquent child, a child in need of supervision, a neglected child or an abused child, the parent, guardian, custodian or any other person who, by any act or acts of wilful commission or omission, if found after notice and a hearing by the youth court to be encouraging, causing or contributing to the neglect or delinquency of such child, may be required by the youth court to do or to omit to do any act or acts that the judge may deem reasonable and necessary for the welfare of the child.

Who pays for treatment, restitution and other costs?

§ 43-21-619

- (1) The youth court may order financially able parents to pay for court ordered medical and other examinations and treatment of a child; for reasonable attorney's fees and court costs; and for other expenses found necessary or appropriate in the best interest of the child as determined by the youth court. The youth court is authorized to enforce payments ordered under this subsection.
- (2) The youth court may order the parents, guardians or custodians who exercise parental custody and control of a child who is under the jurisdiction of the youth court and who has willfully or maliciously caused personal injury or damaged or destroyed property, to pay such damages or restitution through the court to the victim in an amount not to exceed the actual loss and to enforce payment thereof. Restitution ordered by the youth

court under this section shall not preclude recovery of damages by the victim from such child or parent, guardian or custodian or other person who would otherwise be liable. The youth court also may order the parents, guardians or custodians of a child who is under the jurisdiction of the youth court and who willfully or maliciously has caused personal injury or damaged or destroyed property to participate in a counseling program or other suitable family treatment program for the purpose of preventing future occurrences of malicious destruction of property or personal injury.

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

Can the Youth Court lawfully order a child enrolled or re-enrolled in a public school?

§ 43-21-621

- (1) The youth court may, in compliance with the laws governing education of children, order any state-supported public school in its jurisdiction after notice and hearing to enroll or reenroll any compulsory-school-age child in school, and further order appropriate educational services. Provided, however, that the youth court shall not order the enrollment or reenrollment of a student that has been suspended or expelled by a public school pursuant to Section 37-9-71 or 37-7-301 for possession of a weapon on school grounds, for an offense involving a threat to the safety of other persons or for the commission of a violent act. For the purpose of this section "violent act" means any action which results in death or physical harm to another or an attempt to cause death or physical harm to another. The superintendent of the school district to which such child is ordered may, in his discretion, assign such child to the alternative school program of such school established pursuant to Section 37-13-92, Mississippi Code of 1972. The court shall have jurisdiction to enforce school and education laws. Nothing in this section shall be construed to affect the attendance of a child in a legitimate home instruction program.
- (2) The youth court may specify the following conditions of probation related to any juvenile ordered to enroll or reenroll in school: That the juvenile maintain passing grades in up to four (4) courses during each grading period and meet with the court counselor and a representative of the school to make a plan for how to maintain those passing grades.
- (3) If the adjudication of delinquency was for an offense involving a threat to the safety of the juvenile or others and school attendance is a condition of probation, the youth court judge shall make a finding that the principal of the juvenile's school should be notified. If the judge orders that the principal be notified, the youth court counselor shall within five (5) days or before the juvenile begins to attend school, whichever occurs first, notify the principal of the juvenile's school in writing of the nature of the offense and the probation requirements related to school attendance. A principal notified by a juvenile court counselor shall handle the report according to the guidelines and rules adopted by the State Board of Education.

What if a party wishes to appeal?

§ 43-21-651 & URYCP 37

The court to which appeals may be taken from final orders or decrees of the youth court shall be the supreme court of Mississippi. In any case wherein an appeal is desired, written notice of intention to appeal shall be filed with the youth court clerk within ten (10) days after the rendition of the final order or decree to be appealed from, and costs in the youth court and the filing fee in the supreme court shall be paid as is otherwise required by law for appeals to the supreme court. If the appellant shall make affidavit that he is unable to pay such costs and filing fee, he shall have an appeal without prepayment of court costs and filing fee. Only the initials of the child shall appear on the record on appeal.

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