

By: Senator(s) Simmons (12th)

To: Judiciary, Division B

SENATE BILL NO. 2135

1 AN ACT TO AMEND SECTIONS 43-21-151, 43-21-157 AND 43-21-159,
2 MISSISSIPPI CODE OF 1972, TO DEFINE THE CIRCUMSTANCES UNDER WHICH
3 A CHILD MAY BE TRIED FOR A CRIMINAL OFFENSE IN CIRCUIT COURT; AND
4 FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** Section 43-21-151, Mississippi Code of 1972, is
7 amended as follows:

8 43-21-151. (1) The youth court shall have exclusive
9 original jurisdiction in all proceedings concerning a delinquent
10 child, a child in need of supervision, a neglected child, an
11 abused child or a dependent child except in the following
12 circumstances:

13 (a) Any act attempted or committed by a child who has
14 reached his fifteenth birthday, which if committed by an adult
15 would be punishable under state or federal law by life
16 imprisonment or death and which causes death or serious bodily
17 injury to another, will be in the original jurisdiction of the
18 circuit court;



19 (b) Any act attempted or committed by a child who has
20 reached his fifteenth birthday with the use of a deadly weapon,
21 the carrying of which concealed is prohibited by Section 97-37-1,
22 or a shotgun or a rifle, which would be a felony if committed by
23 an adult and which causes death or serious bodily injury to
24 another, will be in the original jurisdiction of the circuit
25 court; and

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

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

40 (2) Jurisdiction of the child in the cause shall attach at
41 the time of the offense and shall continue thereafter for that
42 offense until the child's twentieth birthday, unless sooner
43 terminated by order of the youth court. The youth court shall not



44 have jurisdiction over offenses committed by a child on or after
45 his eighteenth birthday.

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

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

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

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

65 **SECTION 2.** Section 43-21-157, Mississippi Code of 1972, is
66 amended as follows:

67 43-21-157. (1) If a child who has reached his thirteenth
68 birthday is charged by petition to be a delinquent child by reason



69 of an alleged offense that caused bodily injury to another, the
70 youth court, * * * ~~either~~ on motion of the youth court
71 prosecutor, * * * ~~or on the youth court's own motion~~ after a
72 hearing as hereinafter provided, may, in its discretion, transfer
73 jurisdiction of the alleged offense described in the petition or a
74 lesser included offense that resulted in bodily injury to the
75 criminal court which would have trial jurisdiction of such offense
76 if committed by an adult. The child shall be represented by
77 counsel in transfer proceedings.

78 (2) A motion to transfer shall be filed on a day prior to
79 the date set for the adjudicatory hearing but not more than ten
80 (10) days after the filing of the petition. The youth court may
81 order a transfer study at any time after the motion to transfer is
82 filed. The transfer study and any other social record which the
83 youth court will consider at the transfer hearing shall be made
84 available to the child's counsel prior to the hearing. Summons
85 shall be served in the same manner as other summons under this
86 chapter with a copy of the motion to transfer and the petition
87 attached thereto.

88 (3) The transfer hearing shall be bifurcated. At the
89 transfer hearing, the youth court shall first determine whether
90 probable cause exists to believe that the child committed the
91 alleged offense. For the purpose of the transfer hearing only,
92 the child may, with the assistance of counsel, waive the
93 determination of probable cause.



94 (4) Upon such a finding of probable cause, the youth court
95 may transfer jurisdiction of the alleged offense and the youth if
96 the youth court finds by clear and convincing evidence that there
97 are no reasonable prospects of rehabilitation within the juvenile
98 justice system.

99 (5) The factors which shall be considered by the youth court
100 in determining the reasonable prospects of rehabilitation within
101 the juvenile justice system are:

102 (a) Whether or not the alleged offense constituted a
103 substantial danger to the public;

104 (b) The seriousness of the alleged offense;

105 (c) Whether or not the transfer is required to protect
106 the community;

107 (d) Whether or not the alleged offense was committed in
108 an aggressive, violent, premeditated or willful manner;

109 (e) Whether the alleged offense was against persons or
110 against property, greater weight being given to the offense
111 against persons, especially if personal injury resulted;

112 (f) The sophistication, maturity and educational
113 background of the child;

114 (g) The child's home situation, emotional condition and
115 lifestyle;

116 (h) The history of the child, including experience with
117 the juvenile justice system, other courts, probation, commitments
118 to juvenile institutions or other placements;



119 (i) Whether or not the child can be retained in the
120 juvenile justice system long enough for effective treatment or
121 rehabilitation;

122 (j) The dispositional resources available to the
123 juvenile justice system;

124 (k) Dispositional resources available to the adult
125 correctional system for the child if treated as an adult;

126 (l) Whether the alleged offense was committed on school
127 property, public or private, or at any school-sponsored event, and
128 constituted a substantial danger to other students;

129 (m) Any other factors deemed relevant by the youth
130 court; and

131 (n) Nothing in this subsection shall prohibit the
132 transfer of jurisdiction of an alleged offense and a child if that
133 child, at the time of the transfer hearing, previously has not
134 been placed in a juvenile institution.

135 (6) If the youth court transfers jurisdiction of the alleged
136 offense to a criminal court, the youth court shall enter a
137 transfer order containing:

138 (a) Facts showing that the youth court had jurisdiction
139 of the cause and of the parties;

140 (b) Facts showing that the child was represented by
141 counsel;

142 (c) Facts showing that the hearing was held in the
143 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



194 be recognized by the courts of this state and no youth who has a
195 pending charge or a conviction in the adult court system of any
196 other state shall be in the jurisdiction of the youth courts of
197 this state, but such youths shall be in the jurisdiction of the
198 circuit court for any felony committed in this state or in the
199 jurisdiction of the court of competent jurisdiction for any
200 misdemeanor committed in this state.

201 **SECTION 3.** Section 43-21-159, Mississippi Code of 1972, is
202 amended as follows:

203 43-21-159. (1) When a person appears before a court other
204 than the youth court, and it is determined that the person is a
205 child under jurisdiction of the youth court, such court shall,
206 unless the jurisdiction of the offense has been transferred to
207 such court as provided in this chapter, or unless the child has
208 previously been the subject of a transfer from the youth court to
209 the circuit court for trial as an adult and was convicted,
210 immediately dismiss the proceeding without prejudice and forward
211 all documents pertaining to the cause to the youth court; and all
212 entries in permanent records shall be expunged. The youth court
213 shall have the power to order and supervise the expunction or the
214 destruction of such records in accordance with Section 43-21-265.
215 Upon petition therefor, the youth court shall expunge the record
216 of any case within its jurisdiction in which an arrest was made,
217 the person arrested was released and the case was dismissed or the



charges were dropped, there was no disposition of such case, or the person was found not delinquent.

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



243 good behavior or on other order as the youth court may see fit to
244 make unless the child has previously been the subject of a
245 transfer from the youth court to the circuit court for trial as an
246 adult and was convicted. When a child is convicted of a
247 misdemeanor and is committed to, incarcerated in or imprisoned in
248 a jail or other place of detention by a criminal court having
249 proper jurisdiction of such charge, such court shall notify the
250 youth court judge or the judge's designee of the conviction and
251 sentence prior to the commencement of such incarceration. The
252 youth court shall have the power to order and supervise the
253 destruction of any records involving children maintained by the
254 criminal court in accordance with Section 43-21-265. However, the
255 youth court shall have the power to set aside a judgment of any
256 other court rendered in any matter over which the youth court has
257 exclusive original jurisdiction, to expunge or destroy the records
258 thereof in accordance with Section 43-21-265, and to order a
259 refund of fines and costs.

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

263 (4) In any case wherein the defendant is a child as defined
264 in this chapter and of which the circuit court has original
265 jurisdiction, the circuit judge, upon a finding that it would be
266 in the best interest of such child and in the interest of justice,
267 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~~



292 ~~which, if committed by an adult would be a felony, shall be~~
293 ~~transferred to the youth court.~~

294 **SECTION 4.** This act shall take effect and be in force from
295 and after July 1, 2021.

