

# UNIFORM RULES OF YOUTH COURT PRACTICE

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## **RULE 1 TITLE**

These rules shall be known as the Uniform Rules of Youth Court Practice and may be cited as U.R.Y.C.P.: e.g., U.R.Y.C.P. 1.

## **RULE 2 SCOPE OF RULES**

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

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

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

### ***Comments & Procedures***

#### *Rule 2(a)(1).*

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

#### *Rule 2(a)(2).*

Chancery court may hear an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action. *See* Miss. Code Ann. § 99-11-65(4) (2008). All proceedings on the abuse and neglect charge shall be conducted in accordance with these rules.

#### *Rule 2(a)(3).*

For procedures pertaining to section 43-21-111 of the Mississippi Code refer to the appendix of these rules.

#### *Rule 2(a)(4).*

"Designee" means any person that the judge appoints to perform a duty which the Mississippi Youth Court Law requires to be done by the judge or the judge's designee. The judge may not

appoint a person who is involved in law enforcement to be a designee. *See* Miss. Code Ann. § 43-21-105(c) (2008). A designee, when acting in a judicial capacity, is subject to these rules. *See, e.g.,* Miss. Code Ann. §§ 43-21-301, -307, -311, and -451 (2008). Designees appointed by the youth court judge are subject to the Code of Judicial Conduct. *See* Miss. Code Ann. § 43-21-201(5) (2008).

### **RULE 3 CONSTRUCTION OF RULES**

(a) These rules are intended to provide a just, reasonably prompt, and efficient determination of every action within the jurisdiction of the youth court.

(b) These rules shall not be construed to extend or limit the jurisdiction of the courts of Mississippi.

(c) These rules shall be interpreted and applied in keeping with the philosophy expressed in section 43-21-103 of the Mississippi Code.

#### ***Comments & Procedures***

##### *Rule 3(a).*

Rule 3(a) limits the scope of these rules to every action within the jurisdiction of the youth court. Actions not within the jurisdiction of the youth court include:

(1) any offense, unless there is a transfer to youth court pursuant to section 43-21-159 of the Mississippi Code, committed by a child 13 years or older which is:

(a) punishable under state or federal law by life imprisonment or death. *See* Miss. Code Ann. §§ 43-21-105(j), -151(a) (2008); *Holly v. State*, 671 So. 2d 32 (Miss. 1996); *Winters v. State*, 473 So. 2d 452 (Miss. 1985). *Cf. Williams v. State*, 459 So. 2d 777, 779 (Miss. 1984) (holding that once jurisdiction is acquired by the circuit court, it is not lost by accepting a plea to a lesser-included offense or conviction for a lesser-included offense);

(b) a felony and involves the use of a deadly weapon, the carrying of which concealed is prohibited by section 97-37-1, or a shotgun or a rifle. *See* Miss. Code Ann. § 43-21-151(b) (2008);

(c) committed on or after the child's eighteenth birthday. *See* Miss. Code Ann. § 43-21-151(2) (2008);

(d) committed on or after the child's seventeenth birthday where such would be a felony if committed by an adult. *See* Miss. Code Ann. § 43-21-151(2) (2008);

(e) committed after the circuit court has had original jurisdiction and the child was convicted by the circuit court. *See* Miss. Code Ann. § 43-21-157 (2008);

(f) transferred by the youth court to a criminal court. *See* Miss. Code Ann. § 43-21-157 (2008);

(g) a hunting or fishing violation, a state or federal traffic violation, a violation under the Mississippi Implied Consent Law, a violation of a municipal ordinance or county resolution, or a violation of section 67-3-70 of the Mississippi Code. *See* Miss. Code Ann. § 43-21-159 (2008); *White v. Walker*, 950 F.2d 972 (5<sup>th</sup> Cir. 1991);

(2) adoption proceedings. *See* Miss. Code Ann. § 93-17-3 (2008); *In re Beggiani*, 519 So. 2d 1208 (Miss. 1988);

(3) paternity actions. *See* Miss. Code Ann. 93-9-15 (2008); *Davis v. Washington*, 453 So. 2d 712

(Miss. 1984);

(4) cases involving exclusively child support, contempt, and modification issues. *See Dep't of Human Servs. v. Blount*, 913 So. 2d 326 (Miss. Ct. App. 2005).

*Rule 3(b).*

This provision reaffirms that nothing in these rules shall be construed as extending or limiting the jurisdiction of any state court. Thus, any previous appellate rulings on jurisdictional matters are unaffected by these rules. *See, e.g., Helmert v. Biffany*, 842 So. 2d 1287 (Miss. 2003); *K.M.K. v. S.L.M.*, 775 So. 2d 115 (Miss. 2000); *Thomas v. Byars*, 947 So. 2d 375 (Miss. Ct. App. 2007).

*Rule 3(c).*

For procedures pertaining to section 43-21-103 of the Mississippi Code refer to the appendix of these rules.

## **RULE 4 DEFINITIONS**

All words and phrases shall have the meaning ascribed in the Mississippi Youth Court Law or, if the context clearly requires otherwise, the appropriate sections of the Mississippi Code applicable to the particular issue before the court, provided such are not inconsistent with these rules.

### ***Comments & Procedures***

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

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

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

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

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

“Child in need of supervision” has the same meaning as in section 43-21-105(k) of the Mississippi Code; “Child protection proceedings” means a proceeding concerning a child reported abused, neglected or dependent;

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

“Concurrent plan” means a permanency plan that runs concurrent with another permanency plan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Party” means the child, the child’s parent(s), the child’s guardian or custodian, and any other person whom the court deems necessary to designate a party;

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

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

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

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

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

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

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

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

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

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

“Social history” means a history of significant events and relationships throughout the child’s life;

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

“Summons” means notice issued as required by these rules;

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

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

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

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

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

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

“Youth court clerk” means the clerk of the court exercising jurisdiction of the matter.

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

## **RULE 5 CONFIDENTIALITY OF RECORDS AND PROCEEDINGS**

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

**(1) Confidential records.** Records involving children, as defined under section 43-21-105 of the Mississippi Code, shall not be disclosed except as authorized by Mississippi’s Youth Court Law or as otherwise provided by law.

**(2) Disclosure of records involving children by court order.** The court may order the disclosure of records involving children pursuant to section 43-21-261(1) of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of section 43-21-261(2) of the Mississippi Code.

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

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

### **(b) Child protection proceedings.**

**(1) Confidential records.** Records involving children, as defined under section 43-21-105 of the Mississippi Code, shall not be disclosed except as authorized by Mississippi’s Youth Court Law or as otherwise provided by law.

**(2) Disclosure of records involving children by court order.** The court may order the disclosure of records involving children pursuant to section 43-21-261(1) of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of section 43-21-261(2) of the Mississippi Code.

**(3) Disclosure of records involving children not requiring a court order.** Certain records involving children may be disclosed without an order of the court pursuant to section 43-21-

261(1) through (18) of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of section 43-21-261(2) of the Mississippi Code.

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

### *Comments & Procedures*

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

Records involving children shall be kept confidential except as authorized by Mississippi's Youth Court Law or as otherwise provided by law. *See* Miss. Code Ann. § 43-21-259 (2008). This confidentiality requirement is conducive to the protective and rehabilitative purposes of the court. *See, e.g., Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 107 (1979) (Rehnquist, J., concurring) ("The prohibition of publication of a juvenile's name is designed to protect the young person from the stigma of his misconduct and is rooted in the principle that a court concerned with juvenile affairs serves as a rehabilitative and protective agency of the State."). It is not, however, absolute. *See Windham v. State*, 800 So. 2d 1257, 1260 (Miss. Ct. App. 2001) ("[Section 43-21-261] itself provides that the confidentiality requirement may be overridden by a determination that disclosure would advance the child's best interests or the public safety.").

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

For procedures pertaining to section 43-21-261 of the Mississippi Code refer to the appendix of these rules.

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

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

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

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

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

## **RULE 6 SUBPOENA DUCES TECUM**

**(a) Procedures for issuing a subpoena duces tecum.** Every subpoena duces tecum for records

involving children, as such records are defined under section 43-21-105 of the Mississippi Code, and which originates from any issuing court shall be in compliance with the following procedures:

- (1) the party shall make an application to the court specifying which records are sought;
- (2) the court shall issue a subpoena duces tecum to the youth court for these records;
- (3) the youth court, unless a hearing is conducted pursuant to Rule 6(b) of these rules, shall transfer copies of the records to the court;
- (4) the court shall conduct an in camera inspection of the records, in accordance with the procedures set forth in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), to determine which records should be disclosed to the party;
- (5) the court shall, at all times, protect the confidentiality of the records to the extent required of the youth court under Mississippi's Youth Court Law.

**(b) Hearing on access to confidential files.** The youth court may require a hearing to determine whether the court or parties have a legitimate interest to be allowed access to the confidential files. In determining whether a person has a legitimate interest, the youth court shall consider the nature of the proceedings, the welfare and safety of the public, and the interest of the child.

### *Comments & Procedures*

#### *Rule 6.*

The child's right of confidentiality of youth records is a qualified privilege, not an absolute one. See *Daniels v. Wal-Mart Stores, Inc.*, 634 So.2d 88, 93 (Miss. 1993). Mississippi has adopted the procedures advanced in *Ritchie* when there is a request for disclosure of confidential youth court records. See *In re J.E.*, 726 So. 2d 547, 553 (Miss. 1998). These procedures require the trial judge to: (1) conduct an in camera review of the requested records and (2) release any information contained therein material to the fairness of the trial. Such is an ongoing duty. See *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987).

## **RULE 7 FEDERAL LAWS AND REGULATIONS**

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

- (1) Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109 (1974) (codified as amended in scattered sections of 18 and 42 U.S.C.);
- (2) Juvenile Justice and Delinquency Amendments of 1988, Pub. L. No. 100-690, 102 Stat. 4434 (1988) (codified as amended in scattered sections of 42 U.S.C.);
- (3) Juvenile Justice and Delinquency Prevention Act of 2002, Pub. L. No. 107-273, 116 Stat. 1869 (2002) (codified as amended in scattered sections of 42 U.S.C.);
- (4) Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997) (codified as amended in scattered sections of 42 U.S.C.);
- (5) Title IV-E of the Social Security Act. 42 U.S.C. §§ 670-79(b) (2008).

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

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

### *Comments & Procedures*

#### *Rule 7.*

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

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

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

#### *Rule 7(a)(4).*

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

#### *Rule 7(a)(5).*

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

## **RULE 8 INTAKE**

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

- (1) that the youth court take no action;
- (2) that an informal adjustment process be made;
- (3) that the child be warned or counseled informally; or
- (4) that a petition be filed.

The youth court shall then, without a hearing, order the appropriate action to be taken. If the intake screening process discloses that a child needs emergency medical treatment, the judge may order the necessary treatment.

**(b) Child protection proceedings.** Whenever an intake screening process has been conducted pursuant to section 43-21-357(1) of the Mississippi Code and it appears that the child is an abused or neglected child, the youth court intake unit shall recommend to the court:

- (1) that the youth court take no action;
- (2) that an informal adjustment process be made;
- (3) that the Department of Human Services, Division of Family and Children's Services, or other appointed intake unit, monitor the child, family and other children in the same environment;
- (4) that the parents be warned or counseled informally; or
- (5) that a petition be filed.

The youth court shall then, without a hearing, order the appropriate action to be taken. If the intake screening process discloses that a child needs emergency medical treatment, the judge may order the necessary treatment.

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

- (1) that the chancery court take no action;
- (2) that an informal adjustment process be made;
- (3) that the Department of Human Services, Division of Family and Children's Services, or other appointed intake unit, monitor the child, family and other children in the same environment;
- (4) that the parents be warned or counseled informally; or
- (5) that a petition be filed.

The chancery court shall then, without a hearing, order the appropriate action to be taken or transfer the case and recommendation to youth court. If the intake screening process discloses that a child needs emergency medical treatment, the chancellor may order the necessary treatment.

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

### *Comments & Procedures*

#### *Rule 8(a).*

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

#### *Rule 8(b).*

When the intake unit receives a report of an abused or neglected child it must immediately

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

*Rule 8(c).*

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

*Rule 8(a), -(b), -(c).*

*Uniform Youth Court Case Identification and Docket Numbering System.*

Upon the intake officer recommending that a petition be filed, and the court ordering that a petition be filed, the prosecutor must file the petition or request the court to dismiss the proceedings or to handle the cause informally. The Mississippi Supreme Court has adopted a Uniform Youth Court Case Identification and Docket Numbering System to be implemented by intake in assigning an identification and docket number for every matter coming before the youth courts of the State of Mississippi. *See* Amended Special Order No. 46 (Miss. Dec. 12, 1997). For procedures pertaining to this system refer to the appendix of these rules.

*Uniform Youth Court Case Tracking System and Form.*

The Mississippi Supreme Court has adopted a Uniform Youth Court Case Tracking System and Form to be implemented by intake as a data collection procedure for every matter coming before the youth courts of the State of Mississippi. *See* Special Order No. 47 (Miss. Dec. 16, 1996). For procedures pertaining to this system refer to the appendix of these rules.

*Rule 8(d).*

For procedures pertaining to sections 43-21-115 and 43-21-123 of the Mississippi Code refer to the appendix of these rules.

## **RULE 9 COURT ORDERS UPON INTAKE RECOMMENDATIONS**

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

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

**(2) Informal adjustment process to be made.** The court may order the Department of Human Services, Division of Youth Services, or other appointed intake unit, to conduct an informal

adjustment process pursuant to sections 43-21-401 through 43-21-407 of the Mississippi Code. No informal adjustment process may commence except upon an order of the court. Every informal adjustment process shall include:

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

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

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

**(4) A petition be filed.** The court may order that a petition be filed.

**(b) Child protection proceedings.**

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

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

- (i) the giving of counsel and advice to the child and the child's parent, guardian, or custodian;
- (ii) referrals to public and private agencies which may provide benefits, guidance or services to the child or the child's parent, guardian or custodian; and
- (iii) temporary placement of the child or supervision by the Department of Human Services, Division of Family and Children's Services with the consent of the child and the child's parent, guardian or custodian, subject to review by the court.

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

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

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

**(5) A petition to be filed.** The court may order a petition to be filed.

*Rule 9(a)(2), -(b)(2).*

For procedures pertaining to sections 43-21-401 through 43-21-407 of the Mississippi Code refer to the appendix of these rules.

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

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

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

*Rule 9(a)(4), -(b)(5).*

Procedures for filing a petition are set out in Rule 20 of these rules.

## **RULE 10 VALID COURT ORDER**

### **(a) Valid court order for a child in need of supervision who has committed a status offense.**

A child in need of supervision who has committed a status offense shall not be held in secure juvenile detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial appearance, with the exception of a child who is an out-of-state runaway pending return to the child's home state, unless:

**(1)** the court has issued a valid court order which contains:

(i) an advisement of rights, including:

the right to have the petition served on the child in a reasonable time before the hearing;

the right to a hearing on the petition before the court;

the right to an explanation of the nature and consequences of the proceedings;

the right to remain silent;

the right to legal counsel and, if indigent, the right to appointed legal counsel;

the right to present and confront witnesses;

the right to a transcript of the proceedings; and

the right to appeal; and

(ii) a warning that a violation of the valid court order is contempt of court and may result in the child being ordered to a secure juvenile detention facility;

**(2)** reasonable oral or written notice of the time, place and purpose of the contempt hearing for the violation of the valid court order is given to the child, the child's parent, guardian or custodian, the child's guardian ad litem, if any, and the child's counsel.

Notice shall be satisfied if the following notice is placed in capital letters at the bottom of the valid court order and is acknowledged on the record by the child, the child's parent, guardian or custodian, the child's guardian ad litem, if any, and the child's counsel:

A VIOLATION OF THIS VALID COURT ORDER IS CONTEMPT OF COURT AND MAY RESULT IN YOU BEING ORDERED TO SECURE JUVENILE DETENTION. IF A REPORT OR COMPLAINT OF A VIOLATION OF THIS VALID COURT ORDER IS RECEIVED BY THIS COURT, YOU ARE HEREBY COMMANDED TO APPEAR BEFORE THIS COURT WITHIN 72 HOURS OF YOUR ORIGINAL SECURE JUVENILE DETENTION PERTAINING TO THE VIOLATION OF THE VALID COURT ORDER, EXCLUDING SATURDAYS, SUNDAYS, AND STATUTORY STATE HOLIDAYS FOR A CONTEMPT HEARING ON THE VIOLATION OF THE VALID COURT ORDER. YOU HAVE A RIGHT TO BE REPRESENTED BY AN ATTORNEY. YOU ARE REQUESTED TO IMMEDIATELY NOTIFY THIS COURT OF THE NAME OF YOUR ATTORNEY. IF INDIGENT, YOU HAVE THE RIGHT TO HAVE AN ATTORNEY APPOINTED FREE OF CHARGE, AND YOU SHOULD IMMEDIATELY APPLY TO THIS COURT FOR SUCH APPOINTED COUNSEL. YOU HAVE A RIGHT TO SUBPOENA WITNESSES IN YOUR BEHALF. THIS NOTICE SHALL BE LEGAL AND SUFFICIENT NOTICE TO YOU, YOUR PARENT(S), GUARDIAN, OR CUSTODIAN, YOUR GUARDIAN AD LITEM, IF ANY, AND YOUR COUNSEL WITH RESPECT TO SUCH HEARING;

but in any event, if the child's parent, guardian or custodian cannot be found, the court may hold the hearing in the absence of the child's parent, guardian or custodian;

- (3) the court conducts a probable cause hearing within twenty-four (24) hours of the child being ordered to secure juvenile detention, excluding Saturdays, Sundays, and statutory state holidays, for the violation of the valid court order;
- (4) the court conducts an adjudication hearing within seventy-two (72) hours of the original secure juvenile detention for the violation of the valid court order, excluding Saturdays, Sundays, and statutory state holidays; and
- (5) the court conducts a separate and distinct disposition hearing within seventy-two (72) of the original secure juvenile detention for the violation of the valid court order, excluding Saturdays, Sundays, and statutory state holidays, and in which:
  - (i) the Department of Human Services, Division of Youth Services submits to the court a written report that contains: a review of the child's behavior; a determination of the reasons for that behavior; and a determination that all other dispositions other than secure juvenile detention are inappropriate;
  - (ii) the court makes the determination, based upon the written report and other evidence before the court, that all other dispositions other than secure juvenile detention are inappropriate; and
  - (iii) the court specifies in the disposition order: the number of days the child is to be held in secure juvenile detention, that the secure juvenile detention complies with federal and state laws; and that the court may, within its discretion, suspend the secure juvenile detention should a less restrictive alternative become available.

**(b) Valid Court Order Exception Form.** If a child is taken into custody upon an order of the court for a violation of a valid court order, and such custody is prior to the child being adjudicated in contempt for the violation, the court shall complete and sign a Valid Court Order Exception Form and send a copy thereof to the secure juvenile detention facility.

#### *Comments & Procedures*

*Rule 10.*

This rule comports with the statutory procedures. *See* Miss. Code Ann. § 43-21-301(6) (2008). It also satisfies the federal laws and regulations in holding status offenders in secure juvenile detention. Contempt for a violation of a valid court order requires proof beyond a reasonable doubt.

“Valid court order”, in the context of Rule 10 of these rules, is a distinct term that identifies any order holding a status offender in secure juvenile detention. Its usage originated when Congress, in response to the problem of status offenders disobeying court orders, amended the Juvenile Justice Delinquency Prevention Act of 1974 by passing a “valid court order exception.” *See* Claire Shubik & Jessica Kendall, *Rethinking Juvenile Status Offense Laws: Considerations for Congressional Review of the Juvenile Justice and Delinquency Prevention Act*, 45 Fam. Ct. Rev. 384, 388-89 (2007) (discussing the rationale for the passage of the “valid court order exception”). Federal agencies closely scrutinize all valid court orders to ensure compliance with the statutory exception.

*Four core protections requiring State compliance.*

The JJDP Act, through the 2002 reauthorization, establishes four core protections with which participating States and territories must comply to receive grants under the JJDP Act:

- Deinstitutionalization of status offenders (DSO).
- Separation of juveniles from adults in institutions (separation).
- Removal of juveniles from adult jails and lockups (jail removal).
- Reduction of disproportionate minority contact (DMC), where it exists.

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

*Rule 10(a)(2).*

This provision comports with the statutory procedures. *See* Miss. Code Ann. §§ 43-21-309(2), -503 (2008).

*Rule 10(b).*

Within twenty-four (24) hours of the time the child is taken into custody for a violation of a valid court order, if such is prior to the child being adjudicated in contempt for the violation, the appropriate public agency must: be notified that the child is being held in custody; interview the child in person; and submit an assessment on the needs of the child to the court that issued the order. *See* 28 C.F.R. § 31.303 (2008).

*The Valid Court Order Assessment Report.*

The Valid Court Order Assessment Report requires the appropriate public agency worker to: state the name of the juvenile facility in which the child was placed; state the date of the placement; state the name of the person conducting the interview;

describe the circumstances, events, and/or behaviors relevant to the incident;  
describe the immediate needs of the child;  
describe the most appropriate placement alternatives available for the child pending a disposition on the alleged violation; and  
sign and date the assessment report.

### ***Federal Requirements***

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

#### *Valid court order means.*

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

(16) the term “valid court order” means a court order given by a juvenile court judge to a juvenile--

(A) who was brought before the court and made subject to such order; and

(B) who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States; . . .

#### *Status offender means.*

28 C.F.R. § 31.304 (2008) provides in part:

(h) Status offender. A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

#### *Secure detention facility means.*

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

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

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and

(B) is used for the temporary placement of any juvenile who is accused of having committed an offense, any nonoffender, or of any other individual accused of having committed a criminal offense; . . .

#### *Status offenders who commit violation of valid court order excluded from prohibition of secure detention.*

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

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

(11) shall, in accordance with rules issued by the Administrator, provide that--

(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding-- . . .

(ii) juveniles who are charged with or who have committed a violation of a valid court order; . . . shall not be placed in secure detention facilities or secure correctional facilities; . . .

*Monitoring of detention facilities.*

28 C.F.R. § 31.303 (2008) provides in part.

(3) Valid court order. For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile. Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to the juvenile's attorney and/or legal guardian in writing and be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juveniles may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile alleged or found in a violation hearing to have violated a Valid Court Order may be held only in a secure juvenile detention or correctional facility, and not in an adult jail or lockup.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceeding;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3)(i), (ii) and (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must obtain and review a written report that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have

been exhausted or are clearly inappropriate. This report must be prepared and submitted by an appropriate public agency (other than a court or law enforcement agency).  
(vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

### *Forms*

All orders of the court shall be in substantial compliance with these rules. Courts which do not utilize the Mississippi Youth Court Information Delivery System (MYCIDS) or other network database of Mississippi youth courts, such as SWORD, may access at <http://www.mssc.state.ms.us> the following form(s):

*ORDER OF DISPOSITION OF CHILD IN NEED OF SUPERVISION AND VALID COURT ORDER;*  
*ORDER ADJUDICATING CHILD IN CONTEMPT OF COURT FOR VIOLATION OF VALID COURT ORDER;*  
*ORDER OF DISPOSITION FOR CHILD IN CONTEMPT OF COURT FOR VIOLATION OF VALID COURT ORDER;*  
*VALID COURT ORDER EXCEPTION FORM (VIOLATION OF VALID COURT ORDER FORM).*

## **RULE 11 TEMPORARY CUSTODY ORDERS / CUSTODY ORDERS**

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

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

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

Custody shall be deemed necessary: (1) when a child is endangered or any person would be endangered by the child; or to insure the child's attendance in court at such time as required; or when a parent, guardian or custodian is not available to provide for the care and supervision of the child; and (2) there is no reasonable alternative to custody. Unless there is substantial compliance with these procedures, the court shall order the child to be released to the custody of the child's parent, guardian, or custodian. Any order placing a child into custody shall comply with the requirements provided in section 43-21-301 of the Mississippi Code.

**(2) Order requirements.** The temporary custody order or custody order may be written or oral, but, if oral, reduced to writing as soon as practicable. The written order shall:

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

office.

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

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

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

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

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

(i) arrange for the custody of the child with any private institution or agency caring for children;

(ii) commit the child to the Department of Mental Health pursuant to section 41-21-61 et seq.; or

(iii) order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of the child.

**(b) Child protection proceedings.**

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

(i) there is probable cause the child is within the jurisdiction of the court; and

(ii) there is probable cause that custody is necessary.

Custody shall be deemed necessary: (1) when a child is endangered or any person would be endangered by the child; or to insure the child's attendance in court at such time as required; or when a parent, guardian or custodian is not available to provide for the care and supervision of the child; and (2) there is no reasonable alternative to custody. Unless there is substantial compliance with these procedures, the court shall order the child to be released to the custody of the child's parent, guardian, or custodian. Any order placing a child into custody shall comply with the requirements provided in section 43-21-301 of the Mississippi Code.

**(2) Order requirements.** The temporary custody order or custody order may be written or oral, but, if oral, reduced to writing as soon as practicable. The written order shall:

(i) specify the name and address of the child, or, if unknown, designate the child by any name or description by which the same can be identified with reasonable certainty;

(ii) specify the age of the child, or, if unknown, that the child is believed to be of an age subject to the jurisdiction of the youth court;

(iii) state that the effect of the continuation of the child's residing within the child's own home

would be contrary to the welfare of the child, that the placement of the child in foster care or relative care is in the best interest of the child;

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

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

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

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

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

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

No child in the custody of the Department of Human Services, Division of Family and Children's Services shall be placed in a foster care setting that has not been licensed or approved as meeting the Department of Human Services, Division of Family and Children's Services licensure standards, except that a child may be placed with a relative if there is: (1) an emergency process, as developed by the Department of Human Services, Division of Family and Children's Services in conjunction with the Council on Accreditation, that enables, after an initial screening of the relative's home in accordance with Mississippi's Settlement Agreement and Reform Plan, the child to be placed with the relative as soon as the child enters placement, and (2) a full licensing process, which shall be completed no later than sixty (60) calendar days after the child has entered placement. The Department of Human Services, Division of Family and Children's Services may waive non-safety licensing requirements for relative foster placements in individual cases pursuant to federal regulations.

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

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

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

plan or concurrent permanency plan is achieved, the court shall conduct a permanency hearing and permanency review hearings pursuant to these rules.

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

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

### *Comments & Procedures*

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

These provisions comport with the statutory procedures. *See* Miss. Code Ann. §§ 43-21-301, -307, -315 (2008). For procedures pertaining to these sections of the Mississippi Code refer to the appendix of these rules.

*Rule 11(a)(1).*

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

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

*Rule 11(b)(2).*

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

completes, within 60 calendar days after the child has been placed in the home, the full home study, fifteen hours of training, and all other licensure requirements. *See* RESOURCE FAMILY LICENSURE POLICY, MDHS POLICY MANUAL 4500-43 (2008); *see also* *Olivia Y.*, 351 F. Supp. 543 (S.D. Miss. 2004) (regarding the placement of children in DCFS custody with available relatives).

*Emergency Placement Safety Checklist.*

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

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

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

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

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

### ***Federal Requirements***

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

*Removal and foster care placement requirements.*

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

*Reasonable efforts determination.*

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

(b) Reasonable efforts determination. . . .

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

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

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

*Judicial determination of reasonable efforts to finalize a permanency plan.*

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

(b) Reasonable efforts. . . .

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

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

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

*Contrary to the welfare determination.*

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

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

*Concurrent planning.*

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

(b) Reasonable efforts. . . .

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

*Detention of juveniles.*

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

***Forms***

All orders of the court shall be in substantial compliance with these rules. Courts which do not utilize the Mississippi Youth Court Information Delivery System (MYCIDS) or other network database of Mississippi youth courts, such as SWORD, may access at <http://www.mssc.state.ms.us> the following form(s):

*PETITION TO TAKE CHILD INTO CUSTODY (DELINQUENT CHILD / CHILD IN NEED OF SUPERVISION);  
ORDER TO TAKE CHILD INTO CUSTODY (DELINQUENT CHILD / CHILD IN NEED OF SUPERVISION);  
PETITION TO TAKE CHILD INTO CUSTODY (ABUSE AND NEGLECT);  
ORDER TO TAKE CHILD INTO CUSTODY (ABUSE AND NEGLECT).*

**RULE 12 TAKING INTO CUSTODY WITHOUT CUSTODY ORDER**

Procedures for taking into custody without a custody order a child in a matter in which the youth court has exclusive original jurisdiction shall be pursuant to section 43-21-303 of the Mississippi Code. The custody of any child taken into custody shall comply with the detention requirements of sections 43-21-301(6) and 43-21-315 of the Mississippi Code.

***Comments & Procedures***

*Rule 12.*

For procedures pertaining to sections 43-21-301(6), 43-21-303, 43-21-315 of the Mississippi Code refer to the appendix of these rules.

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

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

***Federal Requirements***

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. *See* U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to taking a child into custody without a custody order include:

*Removal and foster care placement requirements.*

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

*Reasonable efforts determination.*

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

(b) Reasonable efforts determination. . . .

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

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

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

*Contrary to the welfare determination.*

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

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

*Detention of juveniles.*

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

## **RULE 13 APPOINTMENT OF GUARDIAN AD LITEM**

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

**(1)** when a child has no parent, guardian or custodian;

**(2)** when the court cannot acquire personal jurisdiction over a parent, a guardian or a custodian;

**(3)** when the parent is a minor or a person of unsound mind;

**(4)** when the parent is indifferent to the interest of the child or if the interests of the child and the parent, considered in the context of the cause, appear to conflict;

**(5)** in every case involving an abused or neglected child which results in a judicial proceeding;

or

(6) in any other instance where the court finds appointment of a guardian ad litem to be in the best interest of the child.

In cases where the court appoints a layperson as guardian ad litem, the court shall also appoint an attorney to represent the child. Upon appointment of a guardian ad litem, the court shall continue any pending proceedings for a reasonable time to allow the guardian ad litem to become familiar with the matter, consult with counsel and prepare for the cause.

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

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

- (1) protect the interest of a child for whom he/she has been appointed guardian ad litem; and
- (2) investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest.

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

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

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

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

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

### *Comments & Procedures*

*Rule 13(a).*

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

(5) (2008).

The appointment of a guardian ad litem pursuant to this rule is a mandatory obligation. *See* Miss. Code Ann. § 43-21-121(1), -(2) (2008); *In re R.D.*, 658 So. 2d 1378, 1385 (Miss. 1995) (“Whether requested or not, judges have the obligation to appoint a guardian ad litem to represent every minor alleged to be abused or neglected as the statute requires.”).

*Rule 13(b).*

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

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

*Rule 13(c).*

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

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

*Rule 13(d).*

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

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

*Rule 13(e).*

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

*Rule 13(f).*

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

*Rule 13(g).*

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

### ***Forms***

All orders of the court shall be in substantial compliance with these rules. Courts which do not utilize the Mississippi Youth Court Information Delivery System (MYCIDS) or other network database of Mississippi youth courts, such as SWORD, may access at <http://www.mssc.state.ms.us> the following form(s):

*ORDER APPOINTING CERTIFIED GUARDIAN AD LITEM.*

### **RULE 14 ATTORNEY OF RECORD / WITHDRAWAL OF COUNSEL**

**(a) Appointment of counsel in delinquency and children in need of supervision matters.** In delinquency and children in need of supervision matters, the youth court shall appoint legal counsel to represent indigent children at all critical stages, which include, but are not limited to, detention, adjudicatory, and disposition hearings and parole and probation revocation proceedings.

**(b) Entry of appearance.** An attorney shall be deemed of record when the attorney appears personally before the court, files a written entry of appearance, or has been appointed by the court. Once an attorney is deemed of record that attorney shall continue to represent the party in all proceedings pertaining to the case except upon a withdrawal of counsel as set forth in Rule 14(c). After an entry of appearance, counsel shall be served with copies of all subsequent pleadings, motions and notices required to be served on the party which counsel represents.

**(c) Withdrawal of counsel.** An attorney who has made an entry of 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 after a notice of withdrawal has been served on the party which counsel represents.

### ***Comments & Procedures***

*Rule 14.*

This rule comports with the statutory procedures. *See* Miss. Code Ann. § 43-21-201(4) (2008). It is not to be construed to extend or limit the right to counsel under the Mississippi Youth Court Law.

*Qualifications for attorneys appointed to delinquency cases*

Miss. Code Ann. § 43-21-201(3) provides:

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.

## **RULE 15 PREHEARING PROCEDURES**

### **(a) Discovery**

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

**(2) Application for a discovery order.** If a request for discovery is refused, application may be made to the court for a written order granting the discovery. Motions for discovery shall certify that a request for discovery has been made and refused. An order granting discovery may make such discovery reciprocal for all parties to the proceeding, including the party requesting discovery. The court may deny, in whole or part, or otherwise limit or set conditions for discovery, upon its own motion, or upon a showing by a party upon whom a request for discovery is made that granting discovery may jeopardize the safety of a party, witness, or confidential informant, result in the production of perjured testimony or evidence, endanger the existence of physical evidence, violate a privileged communication, disclose confidential information, or impede the criminal prosecution of a minor as an adult or of an adult charged with an offense arising from the same transaction or occurrence. An application for a discovery

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

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

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

### **(b) Notice of alibi or insanity defense**

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

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

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

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

### **(c) Motion practice**

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

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

**(2) Memoranda and briefs.** Accompanying memoranda or briefs in support of motions are encouraged but not required. Where the movant has served a memorandum or brief, respondent may serve a reply within five (5) days after service of the movant's memorandum or brief. A

rebuttal memorandum or brief may be served within five (5) days of service of the reply memorandum. No memorandum or brief required or permitted herein shall be filed with the clerk. Memoranda or briefs shall not exceed twenty-five (25) pages in length.

**(d) Prehearing conference**

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

- (1) the simplification of issues;
- (2) the necessity or desirability of amendments to the petition;
- (3) the amount of time necessary to complete discovery;
- (4) whether the child intends to raise an alibi or insanity defense;
- (5) the limitation of the number of expert witnesses;
- (6) the exchange of reports of expert witnesses expected to be called by each party, but only to the extent that such does not require the disclosure of confidential or privileged information prohibited from disclosure pursuant to Rule 5 of these rules or otherwise by law;
- (7) the possibility of obtaining admissions of facts and of documents and other exhibits which will avoid unnecessary proof;
- (8) the imposition of sanctions as authorized by these rules;
- (9) such other matters as may aid in the disposition of the action.

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

**RULE 16 DETENTION HEARINGS / SHELTER HEARINGS**

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

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

- (1) A written report, complaint, or petition has been filed.
- (2) Reasonable oral or written notice of the time, place and purpose of the hearing has been given to the child; to the child's parent, guardian or custodian; to the child's guardian ad litem, if any; and to the child's counsel. If the parent, guardian or custodian cannot be found, the youth court may hold the hearing in the absence of the child's parent, guardian or custodian.
- (3) All parties present are afforded the opportunity to present evidence and cross-examine witnesses produced by others. The youth court may, in its discretion, limit the extent but not the right or presentation of evidence and cross-examination of witnesses. The youth court may receive any testimony and other evidence relevant to the necessity for the continued custody of the child without regard to the formal rules of evidence, including hearsay and opinion evidence. All testimony shall be made under oath and may be in narrative form.
- (4) At the conclusion of the detention hearing, the court finds and the detention order recites that:
  - (i) there is probable cause the child is within the jurisdiction of the court; and

(ii) there is probable cause that custody is necessary.

Custody shall be deemed necessary: (1) when a child is endangered or any person would be endangered by the child; or to insure the child's attendance in court at such time as required; or when a parent, guardian or custodian is not available to provide for the care and supervision of the child; and (2) there is no reasonable alternative to custody.

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

(5) The court orders custody of the child and that a petition be filed if one has not been filed.

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

**(b) Child protection proceedings.**

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

(1) A written report, complaint, or petition has been filed.

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

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

(4) At the conclusion of the shelter hearing, the court finds and the shelter order recites that:

(i) there is probable cause the child is within the jurisdiction of the court;

(ii) there is probable cause that custody is necessary as described in Rule 16(a)(4)(ii) of these rules; and

(iii) the effect of the continuation of the child's residing within the child's own home would be contrary to the welfare of the child; the placement of the child in foster care is in the best interest of the child; and, unless the reasonable efforts requirement is bypassed under section 43-21-603(7)(c) of the Mississippi Code: (1) reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or (2) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and there is no reasonable alternative to custody. The court shall order that reasonable efforts be made towards the reunification of the child with the child's family if it finds and the shelter order recites that the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within the child's own home, and there is no reasonable alternative to custody. Unless there is substantial compliance with these procedures, the court shall order the child to be released to the custody of the child's parent, guardian, or custodian. Any order placing a child

into custody shall comply with the requirements provided in section 43-21-301 of the Mississippi Code.

(5) The court orders custody of the child and that a petition be filed if one has not been filed.

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

### ***Comments & Procedures***

*Rule 16(a), -(b).*

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

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

For procedures pertaining to section 43-21-301(3)(b) of the Mississippi Code refer to the appendix of these rules.

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

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

For procedures pertaining to section 43-21-603(7)(c) of the Mississippi Code refer to the appendix of these rules.

*Rule 16(b)(iv).*

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

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

### ***Federal Requirements***

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

of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to detention/shelter hearings include:

*Reasonable efforts determination.*

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

(b) Reasonable efforts determination. . . .

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

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

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

*Contrary to the welfare determination.*

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

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

## **RULE 17 RIGHTS OF CHILD IN CUSTODY FOR DELINQUENCY AND CHILD IN NEED OF SUPERVISION PROCEEDINGS**

Procedures governing the rights of a child taken into custody for delinquency or as a child in need of supervision shall be in compliance with section 43-21-311 of the Mississippi Code.

### ***Comments & Procedures***

*Rule 17.*

For procedures pertaining to section 43-21-311 of the Mississippi Code refer to the appendix of these rules.

The rights set forth in section 43-21-311 of the Mississippi Code attach whenever the child is taken into custody for an offense which is within the jurisdiction of the youth court. *See Smith v. State*, 534 So. 2d 194, 196 (Miss. 1988) (“At the time [the child] gave his confession he had not been charged with any crime that would remove him from the Youth Court’s jurisdiction . . . Therefore, the circumstances surrounding [his] confession must satisfy the Youth Court Act.”). However, these rights do not necessarily apply to a minor who is a suspect in a crime carrying a potential life or death sentence. *See Moody v. State*, 838 So. 2d 324, 334 (Miss. Ct. App. 2002)

(“Once a minor becomes a suspect in a crime carrying a potential life sentence or death, to the extent that it becomes necessary to detain that person and inform him of his *Miranda* rights prior to an attempt to interrogate him, we conclude that Section 43-21-151(1)(a) is sufficiently invoked so as to remove that youthful suspect from the protections otherwise afforded him under the Youth Court Act.”). If the rights are applicable then failure to abide by them may constitute a violation of due process. *See Gallegos v. Colorado*, 370 U.S. 49, 55 (1962) (“The youth of the petitioner, the long detention, the failure to send for his parents, the failure immediately to bring him before the judge of the Juvenile Court, the failure to see to it that he had the advice of a lawyer or a friend - all of these combine to make us conclude that the formal confession . . . was obtained in violation of due process.”); *Edmonds v. State*, 955 So. 2d 787, 804 (Miss. 2007) (“[The] absence of a parent or guardian during the interrogation of a [child who was under the jurisdiction of the youth court] goes directly to the issue of voluntariness; such a violation renders the statement inadmissible as a violation of basic constitutional guarantees.”).

## **RULE 18 RELEASE FROM CUSTODY UPON CHANGE OF CIRCUMSTANCES**

Procedures governing the release of a child from custody upon a change in circumstances shall be conducted pursuant to section 43-21-313 of the Mississippi Code.

### *Comments & Procedures*

#### *Rule 18.*

For procedures pertaining to section 43-21-313 of the Mississippi Code refer to the appendix of these rules.

## **RULE 19 PROPER FACILITIES**

### **(a) Designating detention or shelter facilities.**

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

### **(b) Detention prohibitions.**

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

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

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

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

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

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

### ***Comments & Procedures***

#### *Rule 19(a).*

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

#### *Four core protections requiring State compliance.*

The JJDP Act, through the 2002 reauthorization, establishes four core protections with which participating States and territories must comply to receive grants under the JJDP Act:

- Deinstitutionalization of status offenders (DSO).
- Separation of juveniles from adults in institutions (separation).
- Removal of juveniles from adult jails and lockups (jail removal).
- Reduction of disproportionate minority contact (DMC), where it exists.

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

#### *Rule 19(b).*

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

#### *Rule 19(c).*

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

#### *Rule 19(d).*

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

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

### ***Federal Requirements***

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

#### *Secure detention facility means.*

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

- (12) the term “secure detention facility” means any public or private residential facility which—
- (A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and
  - (B) is used for the temporary placement of any juvenile who is accused of having committed an offense, any nonoffender, or of any other individual accused of having committed a criminal offense; . . .

#### *Secure correction facility means.*

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

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

#### *Contact with adult inmates prohibited.*

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

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

(12) provide that--

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

#### *Contact means.*

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

- (25) the term “contact” means the degree of interaction allowed between juvenile offenders in a secure custody status and incarcerated adults under section 31.303(d)(1)(i) of title 28, Code of Federal Regulations, as in effect on December 10, 1996; . . .

*Collated facilities means.*

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

(28) the term “collocated facilities” means facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds; . . .

*Criteria for juvenile facilities if collated with an adult jail or lockup.*

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

*Status offenders who commit violation of valid court order.*

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

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

(11) shall, in accordance with rules issued by the Administrator, provide that—

(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding— . . .

(ii) juveniles who are charged with or who have committed a violation of a valid court order; shall not be placed in secure detention facilities or secure correctional facilities; . . .

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

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

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

(11) shall, in accordance with rules issued by the Administrator, provide that— . . .

(B) juveniles--

(i) who are not charged with any offense; and

(ii) who are--

(I) aliens; or

(II) alleged to be dependent, neglected, or abused;

shall not be placed in secure detention facilities or secure correctional facilities; . . .

*Six hour jail or lockup limitation.*

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

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

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

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

(i) for processing or release;

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

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

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

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

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

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

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

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

(i) in which--

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

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

(ii) that--

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

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

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

...

## **RULE 20 PETITION**

### **(a) Delinquency proceedings.**

**(1) Filing.** All proceedings seeking an adjudication that a child is a delinquent child shall be initiated by the filing of a petition. Upon authorization of the youth court, the petition shall be drafted and filed by the youth court prosecutor unless the youth court has designated some other person to draft and file the petition.

**(2) Time.** The petition shall be filed within five (5) days from the date of a detention hearing continuing custody. Unless another period of time is authorized by the court, in noncustody cases the petition shall be filed within ten (10) days of the court order authorizing the filing of a petition. The court may, in its discretion, dismiss the petition for failure to comply with the time schedule contained herein.

**(3) Form.** The petition shall be entitled "IN THE INTEREST OF \_\_\_\_\_."

**(4) Contents.** The petition shall set forth plainly and concisely with particularity:

(i) identification of the child, including the child's full name, birth date, age, sex and residence;

(ii) 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;

(iii) 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;

(iv) a citation of the statute or ordinance which the child is alleged to have violated;

(v) a prayer for the type of adjudicatory relief sought; and

(vi) if any of the facts herein required are not known by the petitioner.

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. 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 the child's prejudice.

On each petition alleging a delinquent child, the following notice shall be placed in capital letters at the bottom of the petition:

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

**(5) Two or more offenses alleged in same petition.** The youth court may order that two (2) or more offenses be alleged in the same petition in a separate count for each offense if each particular offense is one in which a child could be adjudicated either as a delinquent child or as a child in need of supervision.

On each count admitted or proved in accordance with these rules, the court shall enter a separate adjudication on that count within its adjudicatory order and, after the disposition hearing, a separate disposition on that count within its disposition order. The court may order the disposition of any count to run concurrent or consecutive to any other count(s) or current dispositions, as it deems in the best interest of the child and in the interest of justice.

**(6) Motion to transfer to a criminal court.** The petition may contain a motion to transfer.

**(7) Amendments.** A petition may be amended at any time on order of the youth court for good cause shown so long as there is no prejudice to the parties.

**(8) Responsive pleadings not required.** No party shall be required to file a responsive pleading.

**(b) Child in need of supervision proceedings.**

**(1) Filing.** All proceedings seeking an adjudication that a child is a child in need of supervision shall be initiated by the filing of a petition. Upon authorization of the youth court, the petition shall be drafted and filed by the youth court prosecutor unless the youth court has designated some other person to draft and file the petition.

**(2) Time.** The petition shall be filed within five (5) days from the date of a detention hearing

continuing non-secure placement custody. Unless another period of time is authorized by the court, in noncustody cases the petition shall be filed within ten (10) days of the court order authorizing the filing of a petition. The court may, in its discretion, dismiss the petition for failure to comply with the time schedule contained herein.

**(3) Form.** The petition shall be entitled "IN THE INTEREST OF \_\_\_\_\_."

**(4) Contents.** The petition shall set forth plainly and concisely with particularity:

- (i) identification of the child, including his full name, birth date, age, sex and residence;
- (ii) 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;
- (iii) 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 child in need of supervision;
- (iv) a prayer for the type of adjudicatory relief sought; and
- (v) if any of the facts herein required are not known by the petitioner.

On each petition alleging a child in need of supervision, the following notice shall be placed in capital letters at the bottom of the petition:

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

**(5) Two or more offenses alleged in same petition.** The youth court may order that two (2) or more offenses be alleged in the same petition in a separate count for each offense if each particular offense is one in which a child could be adjudicated either as a delinquent child or as a child in need of supervision.

On each count admitted or proved in accordance with these rules, the court shall enter a separate adjudication on that count within its adjudicatory order and, after the disposition hearing, a separate disposition on that count within its disposition order. The court may order the disposition of any count to run concurrent or consecutive to any other count(s) or current dispositions, as it deems in the best interest of the child and in the interest of justice.

**(6) Amendments.** A petition may be amended at any time on order of the youth court for good

cause shown so long as there is no prejudice to the parties.

**(7) Responsive pleadings not required.** No party shall be required to file a responsive pleading.

**(c) Child protection proceedings.**

**(1) Filing.** All proceedings seeking an adjudication that a child is a neglected child or an abused child shall be initiated by the filing of a petition. Upon authorization of the youth court, the petition shall be drafted and filed by the youth court prosecutor unless the youth court has designated some other person to draft and file the petition.

**(2) Time.** The petition shall be filed within five (5) days from the date of a shelter hearing continuing custody. In noncustody cases, unless another period of time is authorized by the court, the petition shall be filed within ten (10) days of the court order authorizing the filing of a petition. The court may, in its discretion, dismiss the petition for failure to comply with the time schedule contained herein.

**(3) Form.** The petition shall be entitled "IN THE INTEREST OF \_\_\_\_\_."

**(4) Contents.** The petition shall set forth plainly and concisely with particularity:

- (i) identification of the child, including his full name, birth date, age, sex and residence;
- (ii) 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;
- (iii) 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;
- (iv) a prayer for the type of adjudicatory relief sought; and
- (v) if any of the facts herein required are not known by the petitioner.

On each petition alleging an abused or neglected child, the following notice shall be placed in capital letters at the bottom of the petition:

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

- (5) Two or more children subject of the same petition.** Two (2) or more children may be the subject of the same petition if: (i) they are siblings and (ii) they are alleged to be neglected or abused from a common source of mistreatment or neglect. On each charge of abuse and neglect in the same petition admitted or proved in accordance with these rules, the court shall enter a separate adjudication on that charge within its adjudicatory order and, after the disposition hearing, a separate disposition on that charge in its disposition order.
- (6) Amendments.** A petition may be amended at any time on order of the youth court for good cause shown so long as there is no prejudice to the parties.
- (7) Responsive pleadings not required.** No party shall be required to file a responsive pleading.

### *Comments & Procedures*

*Rule 20(a)(1), -(b)(1), -(c)(1).*

These provisions comport with the statutory procedures. *See* Miss. Code Ann. § 43-21-451 (2008).

Intake shall assign, pursuant to step 5 of Exhibit A of the Uniform Youth Court Case Identification and Docket Numbering System, a petition number for each petition filed on matters coming before the youth courts of the State of Mississippi. *See* Amended Special Order No. 46 (Miss. Dec. 12, 1997).

*Rule 20(a)(2), -(b)(2), -(c)(2).*

These provisions comport with the statutory procedures. *See* Miss. Code Ann. § 43-21-451 (2008).

*Rule 20(a)(3), -(b)(3), -(c)(3).*

These provisions comport with the statutory procedures. *See* Miss. Code Ann. § 43-21-453 (2008).

*Rule 20(a)(4), -(b)(4), -(c)(4).*

These provisions comport with the statutory procedures. *See* Miss. Code Ann. § 43-21-455 (2008).

A petition which institutes a youth court proceeding must recite factual allegations specific and definite enough to fairly apprise the child, the child's parents, custodians or guardians of the particular act or acts of misconduct or the particular circumstances which will be inquired into at the adjudicatory proceedings. *See In re Dennis*, 291 So. 2d 731, 733 (Miss. 1974); *see also In re M.R.L.*, 488 So. 2d 788, 792-93 (Miss. 1986) (holding that children expressly charged as children in need of supervision could not be found, absent an amendment to the petition, neglected children). The youth court is a court of statutory and limited jurisdiction, and the facts vesting jurisdiction should be shown affirmatively. *See Monk v. State*, 116 So. 2d 810, 811 (Miss. 1960). A petition charging delinquency is to include the statute or ordinance which the child is alleged to have violated. *See In re R.T.*, 520 So. 2d 136, 137 (Miss. 1988).

*Rule 20(a)(5), -(b)(5), -(c)(5).*

These provisions comport with the statutory procedures. *See* Miss. Code Ann. § 43-21-455 (2008).

*Rule 20(a)(6).*

This provision comports with the statutory procedures. *See* Miss. Code Ann. § 43-21-455 (2008).

*Rule 20(a)(7), -(b)(6), -(c)(6).*

These provisions comport with the statutory procedures. *See* Miss. Code Ann. § 43-21-457 (2008).

*Rule 20(a)(8), -(b)(7), -(c)(7).*

These provisions comport with the statutory procedures. *See* Miss. Code Ann. § 43-21-459 (2008).

### ***Forms***

All orders of the court shall be in substantial compliance with these rules. Courts which do not utilize the Mississippi Youth Court Information Delivery System (MYCIDS) or other network database of Mississippi youth courts, such as SWORD, may access at <http://www.mssc.state.ms.us> the following form(s):

*PETITION OF DELINQUENCY / CHILD IN NEED OF SUPERVISION;  
PETITION OF ABUSE OR NEGLECT.*

### **RULE 21 PROPER VENUE**

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

**(b) Child protection proceedings.** If a child is alleged to be an abused or neglected child, the proceedings shall be commenced in the county where the child's custodian resides or in the county where the child is present when the report is made to the intake unit.

### ***Comments & Procedures***

*Rule 21(a).*

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

*Rule 21(b).*

This provision comports with the statutory procedures. *See* Miss. Code Ann. § 43-21-155(2) (2008).

## **RULE 22 SUMMONS**

### **(a) Adjudication hearings.**

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

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

**(2) Form.** The form of the summons shall be pursuant to section 43-21-503 of the Mississippi Code.

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

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

### **(3) Manner of service.**

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

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

**(iii) If parent, guardian, or custodian exercising parental responsibilities resides and can be located within the state.** Service of summons shall be made personally by delivery of a copy of the summons with a copy of the petition in a sealed envelope attached to the summons. A child

may be served in the same manner as an adult. Service of the summons and petition, motions, notices and all other papers upon a child who has not reached his fourteenth birthday shall be effectuated by making service upon the child's parent, guardian or custodian and guardian ad litem, if any.

**(iv) If parent, guardian, or custodian exercising parental responsibilities does not reside or cannot be located within the state.** If the parent, guardian, or custodian exercising parental responsibilities does not reside within the state or cannot be located 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 court may take jurisdiction as if summons had been personally served as herein provided.

**(4) Time.** Summons shall be served not less than three (3) days before the date set for the adjudicatory hearing of proceedings concerning the child.

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

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

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

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

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

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

**(c) Modification of disposition hearings.** Service of summons for modification of disposition

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

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

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

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

### *Comments & Procedures*

#### *Rule 22(a)(1).*

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

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

#### *Rule 22(a)(2).*

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

#### *Rule 22(a)(3).*

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

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

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

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

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

*Rule 22(a)(7).*

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

*Rule 22(b), -(c).*

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

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

### *Forms*

All orders of the court shall be in substantial compliance with these rules. Courts which do not utilize the Mississippi Youth Court Information Delivery System (MYCIDS) or other network database of Mississippi youth courts, such as SWORD, may access at <http://www.mssc.state.ms.us> the following form(s):

*ORDER TO ISSUE SUMMONS;*

*STIPULATION WAIVING SERVICE OF SUMMONS;*

*SUMMONS.*

### **RULE 23 TRANSFER OF CASES**

**(a) Transfers from youth court.** Procedures for transferring cases from youth court to criminal court shall be conducted pursuant to section 43-21-157 of the Mississippi Code.

**(b) Transfers to youth court.** Procedures for transferring cases from other courts to youth court shall be conducted pursuant to section 43-21-159 of the Mississippi Code.

**(c) Removal by the youth court of certain criminal misdemeanor offenses.** Unless the cause has been transferred, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult, except for violations under the Implied Consent Law, and was convicted, the youth court shall have power on its own motion to remove jurisdiction from any criminal court of any offense including a hunting or fishing violation, a

traffic violation, or a violation of section 67-3-70 of the Mississippi Code, committed by a child in a matter under the jurisdiction of the youth court and proceed therewith in accordance with the provisions of the Mississippi Youth Court Law. Such does not apply to a youth who has a pending charge or a conviction for any crime over which circuit court has original jurisdiction.

**(d) Stay of execution by the youth court of certain criminal misdemeanor offenses.** After conviction and sentence of any child by any 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.

**(e) Youth court may order the destruction of certain records maintained by a criminal court.** The youth court shall have the power to order and supervise the destruction of any records involving children maintained by a criminal court in accordance with section 43-21-265 of the Mississippi Code.

**(f) Expungement of certain records in other courts.** 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 of the Mississippi Code, and to order a refund of fines and costs. Such does not apply to a youth who has a pending charge or a conviction for any crime over which circuit court has original jurisdiction.

### ***Comments & Procedures***

#### ***Rule 23(a).***

For procedures pertaining to section 43-21-157 of the Mississippi Code refer to the appendix of these rules.

This provision adopts the statutory procedures for transferring cases from youth court to criminal courts. Such procedures require conducting a bifurcated hearing and making specific statutory findings. *See Buck v. State*, 838 So. 2d 256, 261 (Miss. 2003) (“[T]he statutory youth court transfer procedure is comprehensive and must be followed.”); *Hicks v. State*, 870 So. 2d 1238, 1240 (Miss. Ct. App. 2004) (“The [transfer] order entered in this matter fully complied with the statutes. . . . Accordingly, [the] claim that the youth court did not have the necessary jurisdiction to transfer the case to circuit court is without merit.”); *Biggs v. State*, 741 So. 2d 318, 331 (Miss. Ct. App. 1999) (“[B]efore transferring a juvenile for trial in the circuit courts, the youth court must first conduct a bifurcated hearing and (1) determine . . . [that] probable cause exists to believe that the child committed the alleged offense; and (2) find by clear and convincing evidence that there are no reasonable prospects of rehabilitation within the juvenile system.”).

*Rule 23(b).*

For procedures pertaining to section 43-21-159 of the Mississippi Code refer to the appendix of these rules.

This provision adopts the statutory procedures for transferring cases from other courts to youth court. These procedures require that the circuit court determine whether the transfer is in the best interest of the child and in the interest of justice. *See State v. U.G.*, 726 So. 2d 151, 155 (Miss. 1998) (“Neither the best interest of the child nor “the interest of justice” overrides the other, but they can be separate interests and must be given full review by the circuit court.”). *But. cf. Horne v. State*, 825 So. 2d 627, 634 (Miss. 2002) (“The acts of the perpetrators demonstrate a clear lack of conscience. . . . We find that, even though the circuit court erred by not considering the two factors under *State v. U.G.*, this error was harmless.”). A transfer to youth court may be made at any stage of the proceedings prior to the attachment of jeopardy. *Hoops v. State*, 681 So. 2d 521, 536 (Miss. 1996). By statute, “[n]o 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.” Miss. Code Ann. 43-21-159(7) (2008); *see also Cockrell v. State*, 811 So. 2d 305, 307-08 (Miss. Ct. App. 2001) (holding that section 43-21-159(7) prohibited transfer of a firearm offense committed by sixteen year old to youth court); *Wash v. State*, 807 So. 2d 452, 459 (Miss. Ct. App. 2001) (holding that the issue of the child’s age at the time of the event is critical in determining whether a transfer is prohibited under section 43-21-159(7)).

*Rule 23(c).*

This provision comports with the statutory procedures. *See* Miss. Code Ann. 43-21-159(1) (2008).

*Rule 23(d) through (f).*

These provisions comport with the statutory procedures. *See* Miss. Code Ann. 43-21-159(2) (2008).

## **RULE 24 ADJUDICATION HEARINGS**

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

#### **(1) Time of hearing.**

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

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

**(2) Acceptance of admissions.** At any time after the petition has been filed, all parties to the

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

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

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

(i) without a jury and may be recessed from time to time;

(ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;

(iii) by excluding the general public and admitting only those persons found by the court to have a direct interest in the cause or work of the court; and

(iv) with a complete record of all evidence taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

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

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

(i) the right to counsel;

(ii) the right to remain silent;

(iii) the right to subpoena witnesses;

(iv) the right to confront and cross-examine witnesses; and

(v) the right to appeal, including the right to a transcript of the proceedings.

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

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

**(6) Evidence.** In arriving at its adjudicatory decision, the court shall consider only evidence

which has been formally admitted at the adjudicatory hearing. The following evidentiary procedures apply to these hearings:

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

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

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

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

**(b) Child protection proceedings.**

**(1) Time of hearing.**

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

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

**(2) Where parties do not contest the allegations in the petition.** At any time after the petition has been filed, all parties to the cause may appear before the judge and voluntarily choose not to contest the allegations in the petition. In such instances, the court may adjudicate the child as a neglected child or an abused child or a sexually abused child or a dependent child, as applicable, if there is a sufficient factual basis to sustain the charge(s) and the court has verified the information and explained the rights and procedures required pursuant to Rule 24(b)(4) of this

rule.

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

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

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

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

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

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

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

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

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

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

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

### *Comments & Procedures*

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

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

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

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

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

#### *Rule 24(a)(3).*

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

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

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

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

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

testimony of other witnesses.

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

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

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

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

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

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

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

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

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

M.R.E. 101 provides:

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

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

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

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a).

...

(3) Miscellaneous Proceedings. . . . probable cause hearings in . . . youth court cases; . . . disposition hearings; granting or revoking probation; issuance of warrants for arrest, . . . and

search warrants; and proceedings with respect to release on bail or otherwise.

(4) Contempt Proceedings. Contempt proceedings in which the court may act summarily.

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

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

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

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

The burden of proof in delinquency and children in need of supervision proceedings is proof beyond a reasonable doubt. *See In re Winship*, 397 U.S. 358, 368 (1970); *L.M. v. State*, 600 So. 2d 967, 969 (Miss. 1992); *In re Dennis*, 291 So. 2d 731, 733 (Miss. 1974). The burden of proof in child protection proceedings is proof by a preponderance of the evidence. *See E.S. v. State*, 567 So. 2d 848, 850 (Miss. 1990).

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

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

## **RULE 25 ADJUDICATION ORDERS**

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

**(1) Content.** An adjudication order shall recite that the child has been adjudicated a delinquent child or a child in need of supervision, as applicable, but in no event shall it recite that the child has been found guilty. No order of adjudication concerning any child shall recite that a child has been found guilty; but it shall recite that a child is found to be a delinquent child or a child in need of supervision. Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the adjudication that the child is a delinquent child or a child in need of supervision. Any order of adjudication shall be confidential as provided by section 43-21-561(5) of the Mississippi Code and as otherwise provided by law.

**(2) Two or more offenses alleged in same petition.** On each count admitted or proved in accordance with these rules, the court shall enter a separate adjudication on that count within its adjudicatory order.

### **(b) Child protection proceedings.**

**(1) Content.** An adjudication order shall recite that the child has been adjudicated a neglected child or an abused child or a sexually abused child or a dependent child, as applicable, but in no event shall it recite that the child has been found guilty. Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the adjudication that the child is a neglected child or an abused child or a sexually abused child or a dependent child. Any order of adjudication shall be confidential as provided by section 43-21-561(5) of the Mississippi Code and as otherwise provided by law.

**(2) Two or more children subject of the same petition.** On each charge of abuse and neglect in the same petition admitted or proved in accordance with these rules, the court shall enter a

separate adjudication on that charge within its adjudicatory order.

### ***Comments & Procedures***

*Rule 25(a)(1), -(b)(1).*

These provisions comport with the statutory procedures. *See* Miss. Code Ann. § 43-21-561(5) (2008).

*Rule 25(a)(2), -(b)(2).*

These provisions comport with the statutory procedures. *See* Miss. Code Ann. § 43-21-455 (2008).

### ***Forms***

All orders of the court shall be in substantial compliance with these rules. Courts which do not utilize the Mississippi Youth Court Information Delivery System (MYCIDS) or other network database of Mississippi youth courts, such as SWORD, may access at <http://www.mssc.state.ms.us> the following form(s):

*PETITION TO ENTER ADMISSION AS A DELINQUENT CHILD / CHILD IN NEED OF SUPERVISION;  
ORDER ADJUDICATING CHILD AS A DELINQUENT CHILD / CHILD IN NEED OF SUPERVISION (CHILD  
ADMITTING ALLEGATIONS IN PETITION);  
ORDER ADJUDICATING CHILD AS A DELINQUENT CHILD / CHILD IN NEED OF SUPERVISION;  
ORDER ADJUDICATING CHILD AS AN ABUSED OR NEGLECTED CHILD OR SEXUALLY ABUSED CHILD.*

## **RULE 26 DISPOSITION HEARINGS**

### **(a) Delinquency proceedings.**

**(1) Time of hearing.** If the child has been adjudicated a delinquent child, the 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 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.

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

(i) without a jury and may be recessed from time to time;

(ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;

(iii) by excluding the general public and admitting only those persons found by the court to have a direct interest in the cause or work of the court;

(iv) with a complete record of all the evidence taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

Any person found by the court to have a direct interest in the cause shall have the right to appear

and be represented by legal counsel.

**(3) Evidence.** In arriving at its dispositional decision, the court shall consider only evidence presented at the disposition hearing. The following evidentiary procedures apply to these disposition hearings:

(i) All testimony shall be under oath unless waived all parties and may be in narrative form.

(ii) The court may consider any evidence that is material and relevant to the disposition of the cause, including hearsay and opinion evidence.

(iii) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence to subpoena, confront and examine the person who prepared or furnished data for the report and to introduce evidence controverting the contents of the report.

(iv) The 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 cases with consent of the child's counsel.

**(4) Explaining the purpose of the dispositional hearing.** At the beginning of each disposition hearing, the judge shall inform the parties of the purpose of the hearing.

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

**(6) Factors for consideration.** 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:

(i) the nature of the offense;

(ii) the manner in which the offense was committed;

(iii) the nature and number of a child's prior adjudicated offenses;

(iv) the child's need for care and assistance;

(v) the child's current medical history, including medication and diagnosis;

(vi) the child's mental health history, which may include, but not be limited to, the Massachusetts Youth Screening Instrument version 2 (MAYSI-2);

(vii) copies of the child's cumulative record from the last school of record, including special education records, if applicable;

(viii) recommendation from the school of record based on areas of remediation needed;

(ix) disciplinary records from the school of record; and records of disciplinary actions outside of the school setting.

Additionally, pursuant to section 43-27-25 of the Mississippi Code, no child who is seriously handicapped by mental illness or retardation shall be referred to a state-supported training school.

**(7) Entering disposition order.** After consideration of all the evidence and the relevant factors, the 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. Upon a written motion by a party, the court shall make written findings of fact and conclusions of law upon which it relies for the disposition order.

**(b) Child in need of supervision proceedings.**

**(1) Time of hearing.** If the child has been adjudicated a child in need of supervision, the 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 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.

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

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

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

**(3) Evidence.** In arriving at its dispositional decision, the court shall consider only evidence presented at the disposition hearing. The following evidentiary procedures apply to these disposition hearings:

- (i) All testimony shall be under oath unless waived all parties and may be in narrative form.
- (ii) The court may consider any evidence that is material and relevant to the disposition of the cause, including hearsay and opinion evidence.
- (iii) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence to subpoena, confront and examine the person who prepared or furnished data for the report and to introduce evidence controverting the contents of the report.
- (iv) The 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 child in need of supervision cases with consent of the child's counsel.

**(4) Explaining the purpose of the dispositional hearing.** At the beginning of each disposition hearing, the judge shall inform the parties of the purpose of the hearing.

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

**(6) Factors for consideration.** 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:

- (i) the nature and history of the child's conduct;
- (ii) the family and home situation; and
- (iii) the child's need of care and assistance.

**(7) Entering disposition order.** After consideration of all the evidence and the relevant factors, the 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 child in need of supervision. Upon a written motion by a party, the court shall make written findings of fact and conclusions of law upon which it relies

for the disposition order.

**(c) Child protection proceedings.**

**(1) Time of hearing.** If the child has been adjudicated a neglected child or an abused child, the youth court shall immediately set a time and place for a disposition hearing which shall be separate, distinct and subsequent to the adjudicatory hearing. The disposition hearing 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.

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

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

Any person found by the court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel, which shall include the foster parent(s) and the residential child caring agency providing care for the child.

**(3) Evidence.** In arriving at its dispositional decision, the court shall consider only evidence presented at the disposition hearing. The following evidentiary procedures apply to these disposition hearings:

- (i) All testimony shall be under oath unless waived all parties and may be in narrative form.
- (ii) The court may consider any evidence that is material and relevant to the disposition of the cause, including hearsay and opinion evidence.
- (iii) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence to subpoena, confront and examine the person who prepared or furnished data for the report and to introduce evidence controverting the contents of the report.
- (iv) The 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 abuse and neglect cases with consent of the child's counsel.

**(4) Explaining the purpose of the dispositional hearing.** At the beginning of each disposition hearing, the judge shall inform the parties of the purpose of the hearing.

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

**(6) Factors to be considered.** 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:

- (i) the child's physical and mental conditions;
- (ii) the child's need of assistance;

- (iii) the manner in which the parent, guardian or custodian participated in, tolerated or condoned the abuse, neglect or abandonment of the child;
  - (iv) the ability of a child's parent, guardian or custodian to provide proper supervision and care of a child; and
  - (v) 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.
- (7) Entering disposition order.** After consideration of all the evidence and the relevant factors, the 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 neglected child or an abused child. Upon a written motion by a party, the court shall make written findings of fact and conclusions of law upon which it relies for the disposition order.

### *Comments & Procedures*

*Rule 26(a)(1), -(b)(1), -(c)(1).*

These provisions comport with the statutory procedures. *See* Miss. Code Ann. § 43-21-601 (2008).

The disposition hearing is separate, distinct and subsequent to the adjudicatory hearing. *See In re J.E.J.*, 419 So. 2d 1032, 1034 (Miss. 1982) (“Here, the court could have adjourned for fifteen (15) minutes, the entire record could have been offered in evidence and he could then have entered a disposition order.”). However, unless a continuance is necessary, the court may conduct the disposition hearing immediately after the adjudicatory hearing. *See In re L.C.A.*, 938 So. 2d 300, 306 (Miss. Ct. App. 2006) (“L.C.A. neither requested a continuance nor argued that a continuance was necessary. Accordingly, we find no merit to the issue [that the youth court failed to comply with section 43-21-601].”).

*Rule 26(a)(2), -(b)(2), -(c)(2).*

These provisions comport with the statutory procedures. *See* Miss. Code Ann. §§ 43-21-203, -603 (2008).

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

In child protection proceedings, the foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the disposition hearing. *See also* Miss. Code Ann. 43-15-13(11) (providing rights to be extended to foster parents).

*Rule 26(a)(3), -(b)(3), -(c)(3).*

The Mississippi Rules of Evidence do not apply to dispositional hearings. *See* M.R.E. 1101(b)(3); *S.C. v. State*, 795 So. 2d 526, 529 (Miss. 2001) (“The youth court may hear any

evidence that is material and relevant to [the] disposition of the cause, including hearsay and opinion evidence.”); *In re R.D.*, 658 So. 2d 1378, 1383-84 (Miss. 1995) (“Dispositional hearings in youth courts are very informal, allowing for hearsay testimony as well as reports from various individuals or agencies who have information concerning the well being and “best interest” of the minors before the court.”).

M.R.E. 101 provides:

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

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

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

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a).

...

(3) Miscellaneous Proceedings. . . . probable cause hearings in . . . youth court cases; . . . disposition hearings; granting or revoking probation; issuance of warrants for arrest, . . . and search warrants; and proceedings with respect to release on bail or otherwise.

(4) Contempt Proceedings. Contempt proceedings in which the court may act summarily.

*Rule 26(a)(6), -(b)(6), -(c)(6).*

This provision comports with the statutory procedures. *See* Miss. Code Ann. §§ 43-21-603; 43-27-25 (2008).

*Rule 26(a)(7), -(b)(7), -(c)(7).*

These provisions comport with the statutory procedures. *See* Miss. Code Ann. § 43-21-603 (2008).

## **RULE 27 DISPOSITION ORDERS**

### **(a) Delinquency proceedings.**

**(1) Authorized dispositions.** In delinquency cases, the disposition order may include any of the alternatives as set forth in section 43-21-605(1) of the Mississippi Code. Additionally, the court may order:

**(i)** drug testing pursuant to section 43-21-605(8) of the Mississippi Code;

**(ii)** any appropriate disposition designed for the treatment and care of a child in need of special care, including civil commitment to a state institution providing care for that disability or infirmity, pursuant to section 43-21-611 of the Mississippi Code;

**(iii)** parents or guardians to pay for the support of the child placed in custody of any person or agency (other than the custody of a state training school), including any necessary medical treatment, pursuant to section 43-21-615(2) of the Mississippi Code;

**(iv)** parents or guardians of a child placed in a state-supported training school to receive counseling and parenting classes pursuant to section 43-21-605(4) of the Mississippi Code;

**(v)** any person found encouraging, causing, or contributing to the delinquency of the child to do or omit to do any act deemed reasonable and necessary for the welfare of the child pursuant to

section 43-21-617 of the Mississippi Code;

**(vi)** 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 pursuant to section 43-21-619(1) of the Mississippi Code;

**(vii)** parents, guardians or custodians who exercise parental custody or control of a child who has willfully or maliciously caused personal injury or damaged or destroyed property to pay damages or restitution and to participate in a counseling program or other suitable family treatment program for the purpose of preventing future occurrences pursuant to section 43-21-619(2) of the Mississippi Code;

**(viii)** enrollment or reenrollment of any compulsory-school-age child in school (but in no event may a child who has been expelled from a school district for commission of a "violent act", as such term is defined under section 43-21-605(8) of the Mississippi Code, be placed in another school district), and further order appropriate education services, pursuant to section 43-21-621 of the Mississippi Code.

**(2) Two or more offenses alleged in same petition.** The court shall enter a separate disposition on each adjudicated count. The court may order the disposition of any count to run concurrent or consecutive to any other count(s) or current disposition(s), as it deems in the best interest of the child and in the interest of justice.

**(3) Additional matters pertaining to delinquency orders:**

**(i) Admission packet to be provided to training school.** If the disposition ordered by the court includes placing the child in the custody of a training school, an admission packet shall be prepared for the child and provided to the training school pursuant to section 43-21-603(8) of the Mississippi Code. 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.

**(ii) Detention facility to comply with educational services requirements.** If a disposition order requires placement of a child in a juvenile detention facility, the facility shall comply with the educational services requirements of section 43-21-321 of the Mississippi Code.

**(iii) School to be notified if child is to miss school due to other placement.** If a disposition order requires that a child miss school due to other placement, the court shall notify a child's school while maintaining the confidentiality of the court process pursuant to section 43-21-605(2) of the Mississippi Code.

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

**(v) Fines to be paid in the general fund, exception.** Any fines levied under Mississippi's Youth Court Law 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.

**(b) Child in need of supervision proceedings.**

**(1) Authorized dispositions.** In children in need of supervision cases, the disposition order may include any of the alternatives as set forth in section 43-21-607(1) of the Mississippi Code.

Additionally, the court may order:

- (i)** drug testing pursuant to section 43-21-607(2) of the Mississippi Code;
- (ii)** any appropriate disposition designed for the treatment and care of a child in need of special care, including civil commitment to a state institution providing care for that disability or infirmity, pursuant to section 43-21-611 of the Mississippi Code;
- (iii)** parents or guardians to pay for the support of the child placed in custody of any person or agency, including any necessary medical treatment, pursuant to section 43-21-615(2) of the Mississippi Code;
- (iv)** 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 pursuant to section § 43-21-619(1) of the Mississippi Code;
- (v)** parents, guardians or custodians who exercise parental custody or control of a child who has willfully or maliciously caused personal injury or damaged or destroyed property to pay damages or restitution and to participate in a counseling program or other suitable family treatment program for the purpose of preventing future occurrences pursuant to section 43-21-619(2) of the Mississippi Code;
- (vi)** enrollment or reenrollment any compulsory-school-age child in school, and further order appropriate education services, pursuant to section 43-21-621 of the Mississippi Code.

**(2) Two or more offenses alleged in same petition.** The court shall enter a separate disposition on each adjudicated count. The court may order the disposition of any count to run concurrent or consecutive to any other count(s) or current disposition(s), as it deems in the best interest of the child and in the interest of justice.

**(c) Child protection proceedings.**

**(1) Authorized dispositions.** In neglect and abuse cases, the disposition order may include any of the alternatives as set forth in section 43-21-609 of the Mississippi Code. Disposition orders shall comply, as applicable, with the requirements set forth in sections 43-21-603(7) and 43-21-609(f) and (g) of the Mississippi Code. Additionally, the court may order:

- (i)** any appropriate disposition designed for the treatment and care of a child in need of special care, including civil commitment to a state institution providing care for that disability or infirmity, pursuant to section 43-21-611 of the Mississippi Code;
- (ii)** parents or guardians to pay for the support of the child placed in custody of any person or agency, including any necessary medical treatment pursuant to section 43-21-615(2) of the Mississippi Code;
- (iii)** any person found encouraging, causing, or contributing to the abuse or neglect of the child to do or omit to do any act deemed reasonable and necessary for the welfare of the child pursuant to section 43-21-617 of the Mississippi Code;
- (iv)** 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 pursuant to section 43-21-619(1) of the Mississippi Code;

(v) enrollment or reenrollment any compulsory-school-age child in school, and further order appropriate education services, pursuant to section 43-21-621 of the Mississippi Code.

**(2) Two or more children subject of the same petition.** The court shall enter a separate disposition on each adjudicated charge.

**(d) Other matters pertaining to disposition orders.**

**(1) Transportation costs.** The costs of transporting any child to any institution or agency shall be pursuant to section 43-21-615(1) of the Mississippi Code. In the case of a female child, the court shall designate some suitable woman to accompany her to the institution or agency.

**(2) Mississippi Crime Victims' Bill of Rights.** The youth court judge shall comply with the Mississippi Crime Victims' Bill of Rights (Miss. Code Ann. § 99-43-1 et seq.) as is applicable to youth courts.

**(3) Registration of Sex Offenders.** The youth court judge shall comply with the Registration of Sex Offenders (Miss. Code Ann. § 45-33-21 et seq.) as is applicable to youth courts.

### *Comments & Procedures*

*Rule 27(a).*

This provision comports with the statutory procedures. *See* Miss. Code Ann. §§ 43-21-605, -611, -615, -617, -619, -621 (2008). For procedures pertaining to these sections of the Mississippi Code refer to the appendix of these rules.

The conditions and terms of a disposition must be reasonable and appropriate. *See In re Green*, 203 So. 2d 470, 472 (Miss. 1967) (“The Youth Court was amply justified in finding that the condition [of “stay out of trouble”] was valid under the particular facts of this case, and that [the child] had violated it.”); *K.N.L. v. State*, 803 So. 2d 1245, 1249 (Miss. Ct. App. 2002) (“[T]he prohibition against [the child who had shoplifted from] going to the mall or to a [particular] store is reasonable and appropriate.”). A court may order parents, guardians, or custodians to pay certain expenses. *See, e.g., In re B.D.*, 720 So. 2d 476, 479 (Miss. 1998) (“In this case, all parties had notice that restitution was being sought, along with the amounts at issue. A hearing was held with counsel for the appellants present and allowed to present argument, cross-examine witnesses and object. This Court finds that the procedure followed by the Youth Court met due process requirements. Section 43-21-619 is not violative of the state or federal constitutions.”). Courts are prohibited from committing an offender age eighteen or older to the division of youth services for placement in a state supported training school. *See In re L.C.A.*, 938 So. 2d 300, 307 (Miss. Ct. App. 2006).

*Rule 27(b).*

This provision comports with the statutory procedures. *See* Miss. Code Ann. §§ 43-21-607, -611, -615, -617, -619, -621 (2008). For procedures pertaining to these sections of the Mississippi Code refer to the appendix of these rules.

*Rule 27(c).*

This provision comports with the statutory procedures. *See* Miss. Code Ann. §§ 43-21-603, -609, -611, -615, -617, -619, -621 (2008). For procedures pertaining to these sections of the

Mississippi Code refer to the appendix of these rules.

The polestar consideration in child custody cases is the best interest of the child. *See, e.g., In re E.M.*, 810 So. 2d 596, 600 (Miss. 2002) (“It defies logic to think that parents or relatives who have severely and permanently injured E.M. and have caused the death of her younger brother could be trusted to properly care for and raise E.M. without further incident. . . . [T]he judgment of the youth court judge should be reversed and E.M. should be placed in appropriate foster care.”); *In re S.M.*, 739 So. 2d 473, 475 (Miss. Ct. App. 1999) (“The court directed the Department to work with the parties with an ultimate goal of returning [the child] to his family. This action is within the discretion of the court and is not inconsistent with the evidence.”). The youth court has no authority to commit a neglected child to training school. *See In re Slay*, 147 So. 2d 299, 300 (Miss. 1962).

### ***Federal Requirements***

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

Pursuant to the United States District Court’s Order Regarding the Suicide Prevention Action Plan, youth court judges must review the federal requirements for dispositional hearings for youths that are to be committed to a training school. The Division of Youth Services must have all medical and mental records prior to accepting a youth into a training school. The youth court should review the medical and mental records prior to the youth’s commitment. Failure to have the medical and mental records, will result in the youth not being admitted to the training school. *See* Order Regarding Suicide Prevention Action plan, Civil Action No.: 3:03-cv-1354-HTW-JCS (S. Miss. Apr. 30, 2008).

### ***Forms***

All orders of the court shall be in substantial compliance with these rules. Courts which do not utilize the Mississippi Youth Court Information Delivery System (MYCIDS) or other network database of Mississippi youth courts, such as SWORD, may access at <http://www.mssc.state.ms.us> the following form(s):

*ORDER OF DISPOSITION OF DELINQUENT CHILD;*  
*ORDER OF DISPOSITION OF A DELINQUENT CHILD WHO IS TO BE COMMITTED TO A STATE TRAINING SCHOOL;*  
*ORDER OF DISPOSITION OF CHILD IN NEED OF SUPERVISION;*  
*ORDER OF DISPOSITION OF ABUSED OR NEGLECTED CHILD;*  
*ORDER TO TRANSPORT CHILD.*

## **RULE 28 MODIFICATION OF DISPOSITION ORDERS / ANNUAL REVIEWS**

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

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

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

**(b) Child protection proceedings.**

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

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

**(c) Dependent children.**

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

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

**(d) Durable legal custody.**

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

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

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

***Comments & Procedures***

*Rule 28(a).*

For procedures pertaining to section 43-21-613 of the Mississippi Code refer to the appendix of these rules.

The youth court has continuing jurisdiction to modify the disposition of a delinquent or child in need of supervision as necessary. *See In re Liddell*, 232 So. 2d 733, 736 (Miss. 1970) (“The youth

court's jurisdiction of a youth adjudged to be delinquent is a continuing one, with continuing power to alter the terms of the probation if, in the best interests of the child, the original arrangement proves inadequate or to have been ill advised."). Any modification is to be of equal or greater precedence which the youth court could have originally ordered. *See* Miss. Code Ann. § 43-21-613(2) (2008).

*Rule 28(b).*

For procedures pertaining to section 43-21-613 of the Mississippi Code refer to the appendix of these rules.

The youth court has continuing jurisdiction to modify the disposition of an abused or neglected child as necessary. *See In re R.D.*, 658 So. 2d 1378, 1386 (Miss. 1995) ("Section 43-21-613 provides that orders of the youth court determining the disposition of a child who has been adjudicated neglected, for instance, may be modified in the discretion of the youth court thereafter, as necessary."). Modification of a custody order requires a material change in circumstances and that the modification be in the best interest of the child. *See In re V.L.W.*, 751 So. 2d 1033, 1035 (Miss. 1999). Any modification is to be of equal or greater precedence which the youth court could have originally ordered. *See* Miss. Code Ann. § 43-21-613(2) (2008).

*Rule 28(c).*

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

*Rule 28(d).*

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

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

## **RULE 29 PERMANENCY HEARINGS**

### **(a) Time of hearing following disposition.**

#### **(1) When reasonable efforts to maintain child within child's own home are not required.**

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

#### **(2) When reasonable efforts to maintain child within child's own home are required.**

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

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

(ii) the date of the child's removal from the allegedly abusive or neglectful custodian/parent.

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

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

### **(b) Summons.**

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

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

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

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

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

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

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

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

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

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

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

**(d) Findings pertaining to termination of parental rights.**

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

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

(2) Where the court does not make a finding under Rule 29(d)(1), the Department of Human Services, Division of Family and Children's Services may forward a termination of parental rights package to the Mississippi Attorney General's Office for termination of parental rights petition to be filed pursuant to the "Termination of Rights of Unfit Parents Law" if:

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

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

***Comments & Procedures***

*Rule 29(a)(1).*

This provision complies with the federal and state requirements. *See* 45 U.S.C. § 1355.20 (2008).

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

*Foster parents to attend permanency review hearings.*

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

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

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

*Rule 29(a)(2).*

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

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

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

*Rule 29(b).*

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

Persons who should always be present at the permanency hearing include: “judge or judicial officer; age-appropriate children; parents whose rights have not been terminated, including putative fathers; relatives with legal standing or other custodial adults; assigned caseworker; agency attorney; attorney for parents (separate attorney if conflict warrants); legal advocate for the child and/or GAL/CASA; court reporter or suitable technology; and security personnel.”

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES:

IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 85 (1995). Other persons whose presence may be needed at the permanency hearing include: “extended family members; . . . prospective adoptive parents; judicial case management staff; service providers; adult or juvenile probation or parole officers; other witnesses.” *Id.*

*Rule 29(c).*

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

*Key decisions to be determined at review hearing.*

Key decisions the court should make at the permanency review hearing include: “whether there is a need for continued placement of a child; whether the court-approved, long-term permanent plan for the child remains the best plan for the child; whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child; whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances; whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs; whether the terms of visitation need to be modified; whether terms of child support need to be set aside or adjusted; whether any additional court orders need to be made to move the case toward successful completion; [and] what time frame should be followed to achieve reunification or other permanent plan for each child. NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 75 (1995).

*Key elements for showing reasonable efforts.*

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

*Rule 29(d)(1).*

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

*Rule 29(d)(2).*

The Department of Human Services, Division of Family and Children’s Services is required to make reasonable efforts to finalize the adopted permanency plan and concurrent plan for the child. This provision is consistent with federal and state laws. *See* 42 U.S.C. § 675 (2008); 45 C.F.R. § 1356.21 (2008); Miss. Code Ann. § § 43-15-13, 93-15-101 to -111 (2008).

*Termination of parental rights package.*

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

### ***Federal Requirements***

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

#### *Foster care maintenance payments program implementation requirements.*

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

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

#### *Foster care maintenance payments cover.*

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

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

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

#### *Foster care means.*

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

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

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

#### *Date child is considered to have entered foster care means.*

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

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

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

*Permanency hearing means; time requirements.*

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

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

Permanency hearing means:

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

(i) Returned to the parent;

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

(iii) Referred for legal guardianship;

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

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

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

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

*Permanency hearing determinations.*

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

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

(C) with respect to each such child, (i) procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to

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

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

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

(b) Reasonable efforts. . . .

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

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

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

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

*Judicial determination of reasonable efforts to finalize a permanency plan.*

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

(b) Reasonable efforts. . . .

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

(i) The State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned

permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

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

*Contrary to the welfare determination.*

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

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

*Documentation of judicial determinations.*

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

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

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

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

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

*Concurrent planning.*

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

(b) Reasonable efforts. . . .

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

*Trial home visits.*

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

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

### *Forms*

All orders of the court shall be in substantial compliance with these rules. Courts which do not utilize the Mississippi Youth Court Information Delivery System (MYCIDS) or other network database of Mississippi youth courts, such as SWORD, may access at <http://www.mssc.state.ms.us> the following form(s):

*ORDER OF PERMANENCY HEARING (CHILD TO BE RETURNED TO PARENTS);*

*ORDER OF PERMANENCY HEARING (CHILD TO BE PLACED WITH SUITABLE RELATIVES);*

*ORDER OF PERMANENCY HEARING (CHILD TO BE PLACED TO ESTABLISH DURABLE LEGAL CUSTODY);*

*ORDER OF PERMANENCY HEARING (CHILD TO BE PLACED FOR ADOPTION).*

### **RULE 30 FOSTER CARE REVIEW HEARINGS**

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

### *Comments & Procedures*

#### *Rule 30.*

For procedures pertaining to section 43-15-13 of the Mississippi Code refer to the appendix of these rules.

#### *Rights of foster parents.*

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

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

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

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

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

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

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

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

- (iii) Direct interviews between the family protection worker or specialist and the child, previously discussed and understood by the foster parents;
- (e) The opportunity to develop confidence in making day-to-day decisions in regard to the child;
- (f) The opportunity to learn and grow in their vocation through planned foster parent education;
- (g) The opportunity to be heard regarding agency practices that they may question; and
- (h) Reimbursement for costs of the foster child's care in the form of a board payment based on the age of the foster child as prescribed in Section 43-15-17.

### ***Federal Requirements***

*Reviews no less frequently than once every six months.*

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

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

### **RULE 31 PERMANENCY REVIEW HEARINGS**

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

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

**(b) Summons.**

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

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

- (2) Form.** The form of the summons shall be pursuant to Rule 22(a)(2) of these rules.
- (3) Manner of service.** The manner of service shall be pursuant to Rule 22(a)(3) of these rules, except in no event shall summons issue to the parent(s) whose parental rights have been terminated.
- (4) Time.** Summons shall be served not less than three (3) days before the date set for the permanency review hearing.
- (5) Waiver of summons by a party other than the child.** Waiver of summons by a party other than the child shall be pursuant to Rule 22(a)(5) of these rules.
- (6) Waiver of three (3) day's time before hearing by a child served with process.** Waiver of three (3) day's time before the permanency review hearing by a child served with process shall be pursuant to Rule 22(a)(6) of these rules.
- (7) Enforcement.** Enforcement of the summons shall be pursuant to Rule 22(a)(7) of these rules.

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

**(d) Findings pertaining to termination of parental rights.**

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

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

**(2)** Where the court does not make a finding under Rule 31(d)(1), the Department of Human Services, Division of Family and Children's Services may forward a termination of parental rights package to the Mississippi Attorney General's Office for termination of parental rights petition to be filed pursuant to the "Termination of Rights of Unfit Parents Law" if:

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

### ***Comments & Procedures***

*Rule 31(a).*

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

*Rule 31(b)(1).*

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

*Foster parents responsibility to attend certain hearings.*

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

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

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

Persons who should always be present at the permanency hearing include: “judge or judicial officer; age-appropriate children; parents whose rights have not been terminated, including putative fathers; relatives with legal standing or other custodial adults; assigned caseworker; agency attorney; attorney for parents (separate attorney if conflict warrants); legal advocate for the child and/or GAL/CASA; court reporter or suitable technology; and security personnel.”

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 85 (1995). Other persons whose presence may be needed at the permanency hearing include: “extended family members; . . . prospective adoptive parents; judicial case management staff; service providers; adult or juvenile probation or parole officers; other witnesses.” *Id.* These listings should likewise pertain to a permanency review hearing.

*Rule 31(c).*

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

*Key decisions to be determined at review hearing.*

Key decisions the court should make at the permanency review hearing include: “whether there is a need for continued placement of a child; whether the court-approved, long-term permanent plan for the child remains the best plan for the child; whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child; whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances; whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs; whether the terms of visitation need to be modified; whether terms of child support need to be set aside or adjusted; whether any additional court orders need to be made to move the case toward successful completion; [and] what time frame should be followed to achieve reunification or other permanent plan for each child. NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 75 (1995).

*Key elements for showing reasonable efforts.*

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

*Rule 31(d)(1).*

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

*Rule 31(d)(2).*

The Department of Human Services, Division of Family and Children's Services is required to make reasonable efforts to finalize the adopted permanency plan and concurrent plan for the child. This provision is consistent with federal and state laws. *See* 42 U.S.C. § 675 (2008); 45 C.F.R. § 1356.21 (2008); Miss. Code Ann. § § 43-15-13, 93-15-101 to -111 (2008).

*Termination of parental rights package.*

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

### ***Federal Requirements***

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

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

### ***Forms***

All orders of the court shall be in substantial compliance with these rules. Courts which do not utilize the Mississippi Youth Court Information Delivery System (MYCIDS) or other network database of Mississippi youth courts, such as SWORD, may access at <http://www.mssc.state.ms.us> the following form(s):

*ORDER OF PERMANENCY REVIEW HEARING.*

## **RULE 32 CIVIL COMMITMENTS WITHIN THE JURISDICTION OF THE YOUTH COURT**

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

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

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

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

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

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

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

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

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

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

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

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

electronic device or by some combination thereof.

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

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

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

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

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

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

### *Comments & Procedures*

#### *Rule 32(a).*

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

*Rule 32(a)(7).*

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

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

*Rule 32(b).*

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

### ***Forms***

All orders of the court shall be in substantial compliance with these rules. Courts which do not utilize the Mississippi Youth Court Information Delivery System (MYCIDS) or other network database of Mississippi youth courts, such as SWORD, may access at <http://www.mssc.state.ms.us> the following form(s):

*ORDER OF PRE-EVALUATION SCREENING AND TREATMENT AND MENTAL EXAMINATION AND PHYSICAL EVALUATION;*

*ORDER OF INPATIENT COMMITMENT FOR CHILD WITHIN THE JURISDICTION OF THE YOUTH COURT.*

## **RULE 33 TRUANCY**

### **(a) Truant child alleged as child in need of supervision**

**(1) Filing a report of a truant child alleged as a child in need of supervision.** When a school attendance officer has made all attempts to secure enrollment and/or attendance of a compulsory-school-age child and is unable to effect the enrollment and/or attendance, the attendance officer shall file a report with the youth court intake unit. Sheriffs, deputy sheriffs and municipal law enforcement officers shall be fully authorized to investigate all cases of nonattendance and unlawful absences by compulsory-school-age children and to file a report with the youth court intake unit.

**(2) Intake.** Intake procedures shall be conducted pursuant to Rule 8(a) of these rules.

**(3) Court orders upon intake recommendations.** Court orders upon intake recommendations shall be conducted pursuant to Rule 9(a) of these rules, except that if the court orders that an informal adjustment process be made it shall be initiated as expeditiously as possible.

**(4) Petition.** Procedures for filing a petition shall be conducted pursuant to Rule 20(b) of these rules.

**(5) Proper venue.** Proper venue shall be pursuant to Rule 21(a) of these rules.

**(6) Summons for adjudicatory hearings.** Service of summons shall be made pursuant to Rule

22(a) of these rules.

**(7) Summons for disposition hearings.** Service of summons shall be made pursuant to Rule 22(b) of these rules.

**(8) Adjudication hearings.** Adjudication hearings alleging a truant child as a child in need of supervision shall be conducted pursuant to Rule 24(a) of these rules, except that such hearings shall be conducted as expeditiously as possible and no later than twenty-one (21) days of the petition being filed.

**(9) Adjudication orders.** Adjudication orders shall comply with Rule 25(a) of these rules.

**(10) Disposition hearings.** Disposition hearings for a truant child adjudicated as a child in need of supervision shall be conducted pursuant to Rule 26(b) of these rules, except that such hearings shall be conducted as expeditiously as possible and no later than twenty-one (21) days of the petition being filed.

**(11) Disposition orders.** The disposition order may include any disposition allowed under Rule 27(b) of these rules. The court shall make an appropriate disposition to ensure compliance with Mississippi's Compulsory School Attendance Law, including enrollment or re-enrollment in school pursuant to sections 37-13-91 and 43-21-621 of the Mississippi Code.

**(12) Modification of disposition orders and annual reviews.** Modification of disposition orders and annual reviews shall be conducted pursuant to Rule 28(a) of these rules.

**(b) Truant child alleged as a neglected child**

**(1) Filing a report of a truant child alleged as a neglected child.** When a school attendance officer has made all attempts to secure enrollment and/or attendance of a compulsory-school-age child and is unable to effect the enrollment and/or attendance, the attendance officer shall file a report with the youth court intake unit. Sheriffs, deputy sheriffs and municipal law enforcement officers shall be fully authorized to investigate all cases of nonattendance and unlawful absences by compulsory-school-age children and to file a report with the youth court intake unit.

**(2) Intake.** Intake procedures shall be conducted pursuant to Rule 8(b) of these rules.

**(3) Court orders upon intake recommendations.** Court orders upon intake recommendations shall be conducted pursuant to Rule 9(b) of these rules, except that if the court orders that an informal adjustment process be made it shall be initiated as expeditiously as possible.

**(4) Petition.** Procedures for filing a petition shall be conducted pursuant to Rule 20(c) of these rules.

**(5) Proper venue.** Proper venue shall be pursuant to Rule 21(b) of these rules.

**(6) Summons for adjudicatory hearings.** Service of summons shall be made pursuant to Rule 22(a) of these rules.

**(7) Summons for disposition hearings.** Service of summons shall be made pursuant to Rule 22(b) of these rules.

**(8) Adjudication hearings.** Adjudication hearings alleging a truant child as a neglected child shall be conducted pursuant to Rule 24(b) of these rules, except that such hearings shall be conducted as expeditiously as possible and no later than twenty-one (21) days of the petition being filed.

**(9) Adjudication orders.** Adjudication orders shall comply with Rule 25(b) of these rules.

**(10) Disposition hearings.** Disposition hearings for a truant child adjudicated as a neglected child shall be conducted pursuant to Rule 26(c) of these rules, except that such hearings shall be conducted as expeditiously as possible and no later than twenty-one (21) days of the petition

being filed.

**(11) Disposition orders.** The disposition order may include any disposition allowed under Rule 27(c) of these rules. The court shall make an appropriate disposition to ensure compliance with Mississippi's Compulsory School Attendance Law, including enrollment or re-enrollment in school pursuant to sections 37-13-91 and 43-21-621 of the Mississippi Code.

**(12) Modification of disposition orders and annual reviews.** Modification of disposition orders and annual reviews shall be conducted pursuant to Rule 28(b) of these rules.

**(13) Permanency hearings.** Permanency hearings shall be conducted pursuant to Rule 29 of these rules.

**(14) Foster care review hearings.** Foster care review hearings shall be conducted pursuant to Rule 30 of these rules.

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

### *Comments & Procedures*

*Rule 33(a)(1), -(b)(1).*

A school attendance officer should not file a report until all attempts have been made to secure enrollment and/or attendance of the truant child. *See* Miss. Code Ann. §§ 37-13-89(4), -91(7).

*Duties of school attendance officers.*

Miss. Code Ann. § 37-13-89(4) provides:

It shall be the duty of each school attendance officer to:

- (a) Cooperate with any public agency to locate and identify all compulsory-school-age children who are not attending school;
- (b) Cooperate with all courts of competent jurisdiction;
- (c) Investigate all cases of nonattendance and unlawful absences by compulsory-school-age children not enrolled in a nonpublic school;
- (d) Provide appropriate counseling to encourage all school-age children to attend school until they have completed high school;
- (e) Attempt to secure the provision of social or welfare services that may be required to enable any child to attend school;
- (f) Contact the home or place of residence of a compulsory-school-age child and any other place in which the officer is likely to find any compulsory-school-age child when the child is absent from school during school hours without a valid written excuse from school officials, and when the child is found, the officer shall notify the parents and school officials as to where the child was physically located;
- (g) Contact promptly the home of each compulsory-school-age child in the school district within the officer's jurisdiction who is not enrolled in school or is not in attendance at public school and is without a valid written excuse from school officials; if no valid reason is found for the nonenrollment or absence from the school, the school attendance officer shall give written notice to the parent, guardian or custodian of the requirement for the child's enrollment or attendance;
- (h) Collect and maintain information concerning absenteeism, dropouts and other attendance-related problems, as may be required by law or the Office of Compulsory School Attendance Enforcement; and

(i) Perform all other duties relating to compulsory school attendance established by the State Department of Education or district school attendance supervisor, or both.

*Rule 33(a)(6), -(a)(7), -(b)(6), -(b)(7).*

Persons who may be appointed by the court to serve summons under these provisions include: a sheriff, deputy sheriff, a municipal law enforcement officer, a constable, a school attendance officer, a school official, a youth court counselor, or any other person deemed appropriate.

*Rule 33(a)(8), -(b)(8).*

This provision departs from the usual time requirements for conducting an adjudication hearing, but is consistent with the statutory directive requiring that “[t]he youth court shall expedite a hearing to make an appropriate adjudication and a disposition to ensure compliance with the Compulsory School Attendance Law.” *See* Miss. Code Ann. § 37-13-91(7) (2008).

## **RULE 34 INTERSTATE COMPACT FOR PLACEMENT OF CHILDREN**

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

### ***Comments & Procedures***

*Rule 34.*

For procedures pertaining to sections 43-18-1 through 43-18-17 of the Mississippi Code refer to the appendix of these rules.

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

### ***Federal Requirements***

*Procedures for the orderly and timely interstate placement of children.*

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

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

(25) provide that the State shall have in effect procedures for the orderly and timely interstate placement of children; and procedures implemented in accordance with an interstate compact, if incorporating with the procedures prescribed by paragraph (26), shall be considered to satisfy the requirement of this paragraph;

(26) provides that--

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

(I) conduct and complete the study; and

(II) return to the other State a report on the results of the study, which shall address the extent to

which placement in the home would meet the needs of the child; and  
(ii) in the case of a home study begun on or before September 30, 2008, if the State fails to comply with clause (i) within the 60-day period as a result of circumstances beyond the control of the State (such as a failure by a Federal agency to provide the results of a background check, or the failure by any entity to provide completed medical forms, requested by the State at least 45 days before the end of the 60-day period), the State shall have 75 days to comply with clause (i) if the State documents the circumstances involved and certifies that completing the home study is in the best interests of the child; except that  
(iii) this subparagraph shall not be construed to require the State to have completed, within the applicable period, the parts of the home study involving the education and training of the prospective foster or adoptive parents;  
(B) the State shall treat any report described in subparagraph (A) that is received from another State or an Indian tribe (or from a private agency under contract with another State) as meeting any requirements imposed by the State for the completion of a home study before placing a child in the home, unless, within 14 days after receipt of the report, the State determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child; and  
(C) the State shall not impose any restriction on the ability of a State agency administering, or supervising the administration of, a State program operated under a State plan approved under this part to contract with a private agency for the conduct of a home study described in subparagraph (A); . . .

## **RULE 35 DRUG COURTS**

Drug courts procedures shall be pursuant to the guidelines developed by the State Drug Court Advisory Committee.

### *Comments & Procedures*

#### *Rule 35.*

Section 9-23-7 of the Mississippi Code provides: “The Administrative Office of Courts shall be responsible for certification and monitoring of local drug courts according to standards promulgated by the State Drug Courts Advisory Committee.”

## **RULE 36 REHEARING OF REFEREE’S ORDER**

Procedures for a rehearing of a referee’s order shall be pursuant to section 43-21-111(5) of the Mississippi Code.

### *Comments & Procedures*

#### *Rule 36.*

For procedures pertaining to section 43-21-111(5) of the Mississippi Code refer to the appendix of these rules.

## **RULE 37 APPEALS FROM FINAL ORDERS OR DECREES**

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

### *Comments & Procedures*

#### *Rule 37.*

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