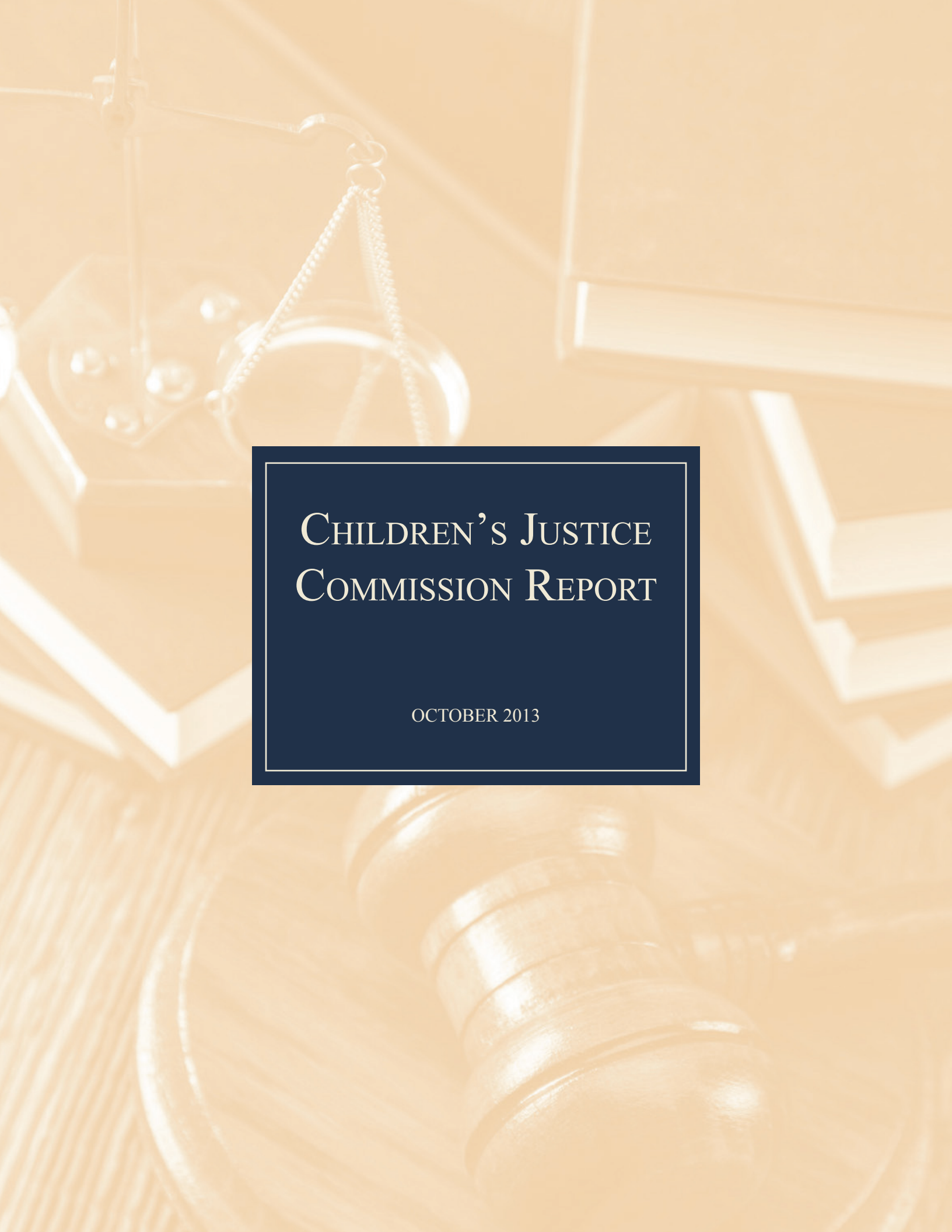

Children's Justice Commission Report

OCTOBER 2013

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The Mississippi Supreme Court created the Commission on Children's Justice in April 2006. The Commission laid the groundwork for the Mississippi Supreme Court's adoption of the Uniform Rules of Youth Court Practice. Mississippi Supreme Court Chief Justice William (Bill) Waller, Jr., re-established the Mississippi Children's Justice Commission by an order signed on June 8, 2010. In response to Chief Justice's charge to the Commission in that order, the Commission respectfully submits this report recommending a comprehensive review of all the state statutes pertaining to youth courts in the area of child protection and foster care cases. The Commission also recommends that such review identify changes necessary to develop a statewide comprehensive approach and judicial structure to accomplish the following: improve the administration of justice in child protection cases; create a more child-centered approach; provide a more integrated interagency state response; and improve coordination between community-based, state, and private resources.

The Commission recommends a comprehensive review of the judicial process in child protection cases in youth court to evaluate the sufficiency of the current youth court structure in Mississippi; the sufficiency of its current funding provided primarily by the county governments; and the need for uniform state level funding and state level accountability of youth courts statewide. The review of Mississippi's current judicial youth court structure and our allocation of judicial assets should include a review of models utilized successfully in other states and the model youth court programs in Mississippi that have proven more effective in achieving permanency and positive results for children and their families.[1]

To provide a more integrated[2] response in child protection cases, state agencies involved in responding, investigating, and presenting child protection cases to the court must establish effective liaison, procedures, processes, and integration of resources to maximize the effective provision of services and resources to the child or children involved in the proceeding so as to ensure that the judicial process of the child protection case results in no further trauma to the child involved and to achieve permanency as soon as possible. After considering much testimony and evidence-based practices and materials, the Commission concludes that the judiciary provides a more child-centered approach when a single judge hears all matters related to a single family's court experience and wherein the judicial process is "front-loaded" in child protection cases.[3] Of course, sufficient budget funding and appropriations are needed to provide these "front-loaded" services and to provide effective distribution of youth court judicial assets.

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[1] The Commission received testimony and material from the model youth court in Forrest County, Rankin County, and Adams County, Mississippi. The Commission also received testimony and supporting evidence reflecting the judicial structure in Texas wherein Texas revised its allocation of judicial assets and the state-appropriated monies to fund an associate judge position in the various judicial districts for youth courts. In the revised Texas youth court judicial process, an associate judge is appointed to preside over the youth courts in various counties located in a judicial district. The associate judge is subject to annual performance review and may be reappointed at the end of the appointed term.

[2] Children and families in child protection cases require that the youth court and the Mississippi Department of Human Services' case workers possess the capacity to implement an effective integrated response involving the resources of other state agencies, like Department of Mental Health, and also of non-state agencies such as private non-profit organizations that partner with youth courts.

[3] Note, youth court matters may be heard by the following depending upon the county and the chancery court district: a county court judge, a youth court referee appointed by the senior chancellor of that chancery court judicial district, or a chancery judge. *See* Rule 2(b), Uniform Rules of Youth Court Practice; Miss. Code Ann. § 43-21-107 (Rev. 2009) (providing for creation of youth courts); Miss. Code Ann. § 43-21-111 (appointed youth court referees).

The term "front-loaded" as used herein refers to when the process allows for adequate time to be spent at the beginning of the case to locate the whereabouts of family members, ensure proper service of process, appoint competent representation, engage the family in voluntary crisis intervention services, develop and implement a comprehensive case plan, and encourage parties to be a part of the solution for their children. This "front loading" significantly reduces the time frame required to achieve permanency for the children and their families. "Front-loading" in child protection cases requires sufficient judicial assets to provide individual calendaring and to allow the youth court to effectively control its docket by setting hearings for specific dates and times, scheduling the amount of time needed for specific hearings, setting future hearings at the conclusion of a hearing, and providing written notice of the date and time of the next hearing to all parties before leaving the court room.

Mississippi should fund youth courts statewide and develop youth courts that are more accountable and more uniform in procedures, administration of justice, and staffing. Currently in every county with a county court, the legislature created a youth court division. There are 21 county courts in Mississippi with 30 total county court judges. In all other counties, there is a youth court division in each chancery court wherein the chancellor hears youth court cases or appoints a youth court referee to perform youth court judicial functions.[4] Through the tireless efforts of dedicated youth court judges, Mississippi adopted Uniform Rules of Youth Court Practice in 2009 and currently the Rules contain amendments received through June 1, 2013. The State indeed improved the practice in youth courts through the adoption of uniform procedural rules, but youth court structure and assets differ from county to county resulting in a lack of uniformity resulting in an unacceptable risk of error in results in geographic areas without resources served by referees lacking sufficient staffing.[5] This lack of uniformity negatively impacts public confidence in our youth court system. This report now turns to address significant identified areas wherein the lack of a uniform state judicial youth court structure impacts pubic confidence in our courts.

Inconsistency exists from county to county as to whether a petition would be filed to seek an adjudication that a child is in need of supervision due to the cost of filing fees for the petitions. Information reflects that based upon the same information that in some counties, a petition may be filed wherein others only an informal adjustment, monitoring or no action is ordered to avoid incurring costs of filing fees.[6] Current Mississippi statutes provide that fees in youth court cases originating in petitions are to be paid by the county as provided by law in other cases.[7] Statutes also provide that upon receipt of a complaint for abuse or neglect that Mississippi Department of Human Services (MDHS) will conduct an informal preliminary inquiry. Miss. Code Ann. § 43-21-353 (Rev. 2009) (intake); Miss. Code Ann. §

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4 *See* Miss. Code Ann.§ 43-21-107(2)-(3) (Rev. 2009); Miss. Code Ann.§ 43-21-151 (Supp. 2013).

5 As acknowledged, counties bear the burden of financially supporting youth courts and providing the staffing required for the youth court to function. Youth court referees admittedly receive little administrative support, but the support received comes primarily from the following county assets: chancery clerk's office, appointed guardian ad litem(s), and youth court prosecutors.

6 *See Chrissy F. By Medley v. Miss. Dep't of Pub. Safety*, 925 F2.d 844 (5th Cir. 1991) (Finding that failure to file report and investigate violated the infant child's right to access to the courts).

7 *See* Miss. Code Ann. § 43-21-205 (Rev. 2009); *see also* Miss. Att'y Gen. Op., 95-0490, 1995 WL 526427, *Beckett* (Aug. 16, 1995); Miss. Att'y Gen. Op., 1999-0342, 1999 WL 1078446, *Sumners* (Aug. 27, 1999) (no fee charged unless a petition in youth court is filed).

43-21-357 (Supp. 2013) (preliminary inquiry); Miss. Code Ann. § 43-21-407 (Rev. 2009) (termination of informal adjustment). After the intake and preliminary inquiry in child protection cases, the youth court judge may take the following action: order no action be taken; order an informal adjustment be made without the filing of a petition; monitor the child, family, and other children in the same environment; order that the parents be warned or counseled informally; or order the filing of a petition by youth court prosecutor unless the youth court designated some other person to file the petition.[8] *See* Uniform Rule of Youth Court Practice 8; Miss. Code Ann. § 43-21-357; *see also* Miss. Code Ann. § 43-21-205 (Rev. 2009) (requires payment of fees by the county in youth court cases when petitions are filed).

The impact of placing the burden upon the counties to bear the filing fees in child protection cases has also resulted in inconsistent content in the various petitions. Some counties include multiple children in one petition as alleging that such children are in need of supervision.[9] Other counties limited petitions to allegations pertaining to only one child per petition, but allow a petition to contain two or more offenses involving that same child as provided by Rule 20(b)(5), Uniform Rules of Youth Court Practice. The inconsistent practice pertaining to the content of the petitions resulted from counties' attempts to reduce the counties' costs for filing fees since only one fee is paid per petition regardless of number of children included therein.

Since statutes allow the youth court judge to order an informal adjustment or to order monitoring of the child without the incurring the costs required to file a petition, then potential, or the appearance thereof, exists for misplaced considerations to enter the decision as to whether or not to order the filing of a petition in child protection proceedings to avoid incurring filing fees. While the county bears the burden of the fees to be paid upon the filing of a petition in child protection proceedings, the State ironically possesses liability for negligent acts exempted from Mississippi's Torts Claims Act for those children injured in state custody. Additionally, requiring a judge to order the filing of a petition in youth court necessarily requires the judge to act as an advocate and outside of his impartial judicial role.[10] State level funding of statewide youth courts removes consideration of financial hardship of a county in the decision to file a petition or not, and establishing the authority and responsibility for the filing determination with the appropriate executive branch official protects the impartiality of the youth court judge.

Whether the funding stems from state, county, or both levels of resources, youth courts need sufficient resources to fulfill their purpose in child protection cases of protecting the child and of achieving permanency as soon as possible, and youth courts need resources to build strong families in child protection cases. Youth courts also require tools and resources necessary to provide appropriate and effective dispositions in juvenile justice adjudications. As discussed above, youth courts currently

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[8] Rule 20 (b) Uniform Rules of Youth Court Practice provides that 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 file the petition.

[9] The Commission learned that some counties include multiple children per petition in situations where the children are members of the same family or involved in the same incident.

[10] *See* Uniform Rule of Youth Court Practice 8 (intake).

receive most youth court funding from the county in which the court is located and serves. However, most of the resources and services for children and families that are served by youth court constitute state agency or private resources or services. The disconnect between the lack of county resources and a county youth court and the needed state and private resources inhibits an integrated response by all involved in child protection cases.

Mississippi moved toward a more community-based approach in 2007 without concurrently funding community based resources to support dispositions and needs of children in child protection cases and delinquency cases in youth courts.[11] Since withdrawing from reliance upon services of state institutional juvenile facilities and with the constraints upon the Department. of Mental Health funding, the State should evaluate needed investment in community-based options for youth court juvenile dispositions.[12] The State still does not possess a community-based juvenile justice Adolescent Opportunity Program (AOP) in every county.[13] Currently, less than half the State is served by an AOP.[14] Many rural counties possess few, if any, options or resources for community-based rehabilitative options. Also, with the recent expansion of drug courts to all the circuit court districts in Mississippi, little or no funds remain to support operations for youth court drug courts. The Commission therefore recommends review of statutes and resources to determine whether the current statewide system of care for youth in state custody may be utilized by youth courts to access those resources, through MDHS youth court counselor and the Multidisciplinary Assessment, Planning and Resource (MAP) and Adolescent (A) Teams to support youth drug courts.[15]

With respect to education, Mississippi statutes in the area of child protection and foster care should be reviewed to provide appropriate support for the educational welfare of children in state custody, particularly when transferring schools and school districts. Additionally, statutes and/or regulatory

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[11] *See* Miss. Code Ann. § 43-14-1(4)(a)-(b) (Supp. 2012) (establishing procedures for youth court offenders to access the statewide system of care through Multidisciplinary Assessment, Planning and Resource Teams and Adolescent Teams where the youth court counselor serves as a member); *see also* Miss. Code Ann. § 9-23-51 (Supp. 2012) (establishing special funds for drug court); Miss. Code Ann. § 43-21-605 (Supp. 2012) (setting forth authorized youth court dispositions for juveniles adjudicated delinquent). Currently, Multidisciplinary Assessment, Planning and Resource Teams and Adolescent Teams are not providing services or resources to support youth court dispositions wherein the youth court orders a juvenile adjudicated delinquent into a youth drug court program.

[12] The "Tony Gobar" grant is subject to whether funds are appropriated, and funds have not been sufficient to meet the needs for eligible at-risk youth. This grant provides individual assessment and comprehensive community intervention initiatives for eligible youth who would otherwise be committed to a training school. This grant seeks to provide at-risk youth and their families with access to necessary services available in their home community.

[13] These programs were formally identified as Adolescent Offender Programs. *See also* Miss. Code Ann. § 43-27-201 (Rev. 2009) (providing that AOPs are supposed to increase incrementally across the state over a specified period); *see also* Juvenile Justice Act of 2005 (attempting to reconcile the treatment and provision of services to juvenile offenders with the original rehabilitation goals of youth courts). The Juvenile Justice Act of 2005 required local county Adolescent Teams and Multidisciplinary Assessment, Planning and Resource Teams to work together to provide a system of care for youth offenders. The statute requires participation by the "child serving" state agencies on local county Multidisciplinary Assessment, Planning and Resource Teams.

[14] MDHS provides that Mississippi will soon have forty-seven AOPs statewide for our eighty-two counties.

[15] *See* Miss. Code Ann. § 43-14-1(4)(a) (Supp. 2012) (providing that juveniles have access to the statewide system of care through the A Team participation with the MAP Teams across the state).

requirements should establish procedures for liaison or reporting requirements for the school district wherein the child is placed to the MDHS case worker and ultimately to the supervising youth court in child protection cases to ensure that the supervising youth court is aware of significant school placement matters, like alternative school placement, or of disciplinary issues concerning a child in foster care. For example, such information regarding the child's progress and educational welfare is provided in Tennessee by requiring the assigned DHS case worker to file a quarterly report with the supervising court. Tennessee Code Annotated section 37-1-130 also requires that where a court finds a child neglected or dependant and places the child in state custody, the receiving school system must convene a multidisciplinary team prior to placement of the child if the child is handicapped as defined by state and federal laws and regulations and entitled to special education and related services. Similar measures to support the educational success of foster children in state custody should be considered in Mississippi.

Specific educational requirements and curriculum should be established for all youth court guardians ad litem (GALs), MDHS case workers, and others youth court personnel as needed, to be trained in the area of educational advocacy to assist in the educational success of children involved in child protection cases. The youth court and those that work in youth court should possess knowledge of the law, rights, and programs available to children with disabilities, including educational disabilities, as defined by state and federal laws. CASA currently provides educational advocacy training for all of its personnel and this program could be expanded. The Commission further recommends the consideration of establishing a standing GAL position per each chancery court district, or some other allocation, to assist youth courts, and such qualifications and standards should be identified for the youth court GAL position. The revolving door of numerous GALs impacts the effectiveness of the process and whereas a standing GAL position would benefit from development of historical knowledge by the GAL and would ensure the court is served by a well-trained GAL ready to face the broad issues raised in youth court. The State ultimately bears responsibility and potential liability for the safety and welfare of children in child protection court cases. As discussed above, Mississippi statutes should be revised to enable a more integrated interagency state response in child protection cases, as well as delinquency adjudications requiring services to aid in rehabilitation. In acknowledging that the State bears the responsibility for youth court child protection cases and for the welfare of children in state custody, then the State should embrace a transition to a congruent and integrated statewide judicial structure for youth courts to ensure integrity in the judicial process and to provide better outcomes for children and families.

In addition to recommending that Mississippi fund and allocate judicial resources at the state level to ensure the effective administration of justice and to ensure public confidence in the integrity of our youth courts across our eighty-two counties, the Commission also recommends that Mississippi adopt standards that reflect best practices in youth court procedures and adopt best practices to provide an effective and integrated response by the state in child protection cases. More specifically, the Commission recommends that Mississippi adopt best practice standards in both the judicial process and in an integrated interagency response involving interagency coordination, as well as community and private sector involvement. To implement best practices in youth courts, the Commission recommends the following standards and related milestones:

I. Standard: Increase Prevention and Early Intervention Efforts

1. Utilize caring community cornerstones, such as Excel by 5; Mississippi Building Blocks; 0-3 (Forest County); 1st Steps Early Intervention Program)
2. Expand Mississippi Family Nurse Partnership
3. Develop Medicaid and other insurance reimbursement policy to assist with screening, assessment, and referral
4. Strengthen community-based mental health services
5. Strengthen families socially, economically, and spiritually
6. Coordinate and maximize resources using collaboration and new technologies – Are we maximizing available assets and technologies, *i.e. Mississippi Public Broadcasting*
7. Review and evaluate access to services and eliminate barriers

II. Standard: Increase Collaboration and Integration of Child and Family Services across Systems

1. Establish Permanent Standing Children's Justice Commission and its Partners
2. Map and publicize resources across communities, state, nationally and internationally - make resources available on a website
3. Sustain and replicate effective systems of care
4. Develop seamless service delivery options for children and families
5. Increase the numbers of qualified professionals who can provide services through retention and creation
6. Assess system for timely and effective delivery of services
7. Conduct emergency preparedness plans (mass care, child care, reunification, mental health, pediatric health care, recovery)

III. Standard: Training - Educate and Advocate for Systematic Reform of the System

1. Strengthen and educate the connection among state advocates
2. Bring together national, state, and local advocates for action
3. Examine the structure and responsibilities of the key players
4. Create and act upon a statewide strategic plan with one-, five-, and ten-year goals
5. Establish a permanent commission on children, youth, and families
6. Develop effective methods to education legislative and congressional leaders on matters affecting youth court.
7. Seek statutory amendments as needed to implement best practices in youth courts.
8. Establish law enforcement and MDHS first responder training for sworn law enforcement officers and MDHS workers to provide practical knowledge of how to respond and what agencies or resources are available to respond to sexual assault cases, child abuse and child neglect reports. Provide resources reflecting government and non-government agencies, and contact information therefore, that assist law enforcement and MDHS first responders in sexual assault, child neglect and child physical abuse cases

9. Establish standing operating procedures and memorandums of agreement between law enforcement MDHS (in counties) for response to reports of child abuse, neglect, and sexual assault. The procedures should include contact information of hospitals, clinics, prosecutors in the particular jurisdiction, law enforcement in the relevant jurisdiction, agencies and institutions providing assistance to such first responders and with Children Advocacy Centers across the state.
10. Expand SANE nurse training to ensure that each county possess at least one nurse with SANE nurse certification.
11. Develop and explore on line training for law enforcement and providing net work of information to law enforcement first responders on line.

IV. Standard: Harness the Power of Data and Improve Accountability

1. Develop system capabilities that share data
2. Increase accountability through the use of data
3. Share the data with stakeholders and the public
4. Foster court improvement projects to streamline the system
5. Create standardized model processes and protocols
6. Create a web site with on line resources and links

V. Standard: Develop and Promote Foundational Principles

1. Every child deserves a safe and permanent home in the shortest time possible
2. Avoid unnecessary separation of child and family if the child can remain safely in the home
3. A child's sense of time requires timely permanency decisions
4. Youth court judges have a responsibility to provide individual case oversight, as well as system oversight and leadership

VI. Provide State Level Oversight of the Administration of Justice in Mississippi's Youth Courts through established and permanent Children's Justice Commission

1. The Commission should provide reports and recommendations to the Mississippi Supreme Court as requested and as needed regarding systemic improvements or obstacles related to Mississippi's youth courts and procedures impacting child protection cases.

2. The Commission should provide a venue wherein state agencies involved in child welfare and education and child protection cases may come together to resolve systemic obstacles in child protection cases and positive outcomes for children and their families.

3. The Commission should also provide a venue for liaison with non-government partners that work or assist with the youth courts, its goals, children and/or their families, in child protection cases.

The Commission also recommends the following related recommendations for consideration:

I. Modify the Mississippi Code of Judicial Conduct Canon 3(B)(7)(e) to recognize the unique role of a youth court or chancery court judge in state child protection cases pertaining to a termination of parental rights or a loss of parental custody. Similarly, revise the Mississippi Rules of Professional Conduct for lawyers serving as guardians ad litem (GAL) for children in abuse and neglect cases to acknowledge and enable the unique role of the judge therein and the need to communicate ex parte in emergency situations.

A. Recognize the role of the youth court judge as the custodian of the children within the youth court's jurisdiction in matters including the following: applicable rules of conduct; ability to access resources; supervising case status; and recognizing the court's need for independent and credible information.

B. Statutorily establish and fund a full time GAL position as an arm of the youth court judge to assist the respective youth court judge in the court's duty to determine the child's best interest. To assist the youth court in its duties, the investigatory duties provided by a GAL assisting the youth court judge may be fulfilled by a trained non-lawyer.

II. Establish Resident Jurist state level position to assist youth courts statewide and establish sufficient staffing for youth courts to effectively administer justice in the cases before the court. Also, expand the role of the judiciary's leadership as a "convenor" in youth court child protection cases to ensure timely review and provision of support, services, and interventions to achieve better outcomes and permanency.

At the state level, establish a "resident jurist" position to assist the Mississippi Supreme Court in performing its supervisory role with respect to the effective administration of justice in youth courts. This resident jurist position would assist in the area of youth court by serving as a liaison with state agencies involved in child protection such as MDHS. The resident jurist would also conduct on-site training for youth courts, their staff, and for those that practice in youth courts in child protection cases. In assisting the Mississippi Supreme Court in its supervisory role of all the courts in this state, the resident jurist would also provide judicial training to youth court judges. As the judiciary's liaison with state agencies and the private sector, the resident jurist would also obtain data related to child protection cases to provide feedback to youth court judges and the Mississippi Supreme Court to assist in measuring and improving performance of youth courts in achieving permanency and positive results for families and children. The resident jurist would assist the Mississippi Supreme Court at the state level in the operation of a standing Children's Justice Commission and provide liaison with youth court partners.

With respect to youth court staffing, the effective administration of justice requires sufficient resources and staffing. Sufficient staffing allows youth courts to effectively recruit, coordinate, and access community public and private resources for youth court programs. Courts that possess sufficient staff to perform duties of a community coordinator potentially increase resources available for that

court's programs. Youth courts achieve permanency more quickly and effectively when resources are "front-loaded" and such coordination can assist in that goal as reflected in the successes of Model Youth Court Programs. Various models exist at the local level to accomplish the goal of an integrated private sector, state agency, and community involvement. Please review the Appendix provided by the Adams County Youth Court wherein an established community nonprofit partnership included the youth court in its mission and fund-raising mission. Additionally, the Forrest County Youth Court has successfully implemented a model youth court program with partnerships with USM, the private sector, and other partners.

A standing state level Children's Commission should also include partners not traditionally considered as a youth court resource or tool, such as MPB and/or Mississippi's Institutions of Higher Learning. For example, internet training could be provided locally through innovative use of state online programming by MPB or other groups for early childhood education, parenting, nutrition, and the like.

Also, furthering the judicial role as a convenor in the area of youth court and with those that work or support youth courts, a "resident jurist" position created on the state level could assist the judiciary in training local youth courts, their staff, those who practice in youth court or support the child protection response. A resident jurist may serve in various roles, i.e. as a trainer regarding state and national youth court standards, as a liaison for the Mississippi Supreme Court and state agencies and youth court partners to resolve systematic obstacles to the effective administration of justice in youth courts and to reduce the risk of institutional secondary trauma to children by the child protection court action instituted to protect the child.

III. Establish systematic processes, procedures, and boards necessary to provide continuing foster child feedback as to systematic obstacles to the judiciary and youth court partners through MDHS-established Foster Child advisory boards, foster care mentors, and foster care court buddy programs.[16]

IV. Revise Mississippi Code Annotated section 43-21-201 (Rev. 2009) to enact a statutory right to court-appointed counsel for indigent parents in child protection proceedings initiated by the state when termination proceedings are initiated potentially resulting in deprivation of permanent custody or termination of parental rights. *See* Miss. Code Ann. section 93-15-103 (grounds for termination of parental rights)

Such an amendment would create a state statutory right to court appointed counsel for indigent parents/guardians in cases where the state seeks to terminate a parent's rights to care and custody of his or her child, and this proposed statutory amendment would create a statutory based right, not a

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[16] This report reviews evidence-based programs that assist or share the same goals as youth courts. However, this report does not address funding or contracting with such ancillary and supportive programs. *See City of Abbeville v. Vermilion Parish Police Jury*, 85 So. 3d 233 (La. Ct. App. 2012).

constitutional right, to such counsel. This recommendation is proposed based upon the situation currently existing in Mississippi's youth courts impacting procedural due process. Only 21 counties in Mississippi now have a county court, and the remainder of the counties are considered too rural to support a county court. In those counties, an appointed youth court referee presides over most youth courts unless the Chancellor presides. Youth court referees possess little to no administrative support, and in many counties, the county prosecutor reportedly refuses to present the testimony and evidence from the DHS worker(s) involved in the case since such workers are state, not county, employees. Also, inconsistency exists as to whether sufficient evidence exist to support the filing of a petition or whether a matter is handled informally without the filing of a petition.

Based upon this currently existing youth court structure, the Commission recommends that a state statutory right to court appointed counsel be established for indigent parents/guardians when the state initiates a termination of parental rights proceeding that could deprive them of their parental rights or permanent custody. *See* Miss. Code Ann. § 93-15-103. This recommend provides a procedural safeguard to protect the procedural due process rights of indigent parents when such proceedings are initiated due to the high risk of potential error that exists due to the lack of a state wide and state funded uniform youth court system. *See MLB v. SLJ*, 519 U.S. 102, 109 (1986) (U.S. Supreme Court found Mississippi procedural due process lacking in review of appeal of indigent parent in a termination of parental rights case)

The Commission learned that the risk of error is reduced in youth court in termination or loss of permanent custody cases wherein indigent parents are represented by legal counsel. The risk of error results from the currently existing procedural deficiencies caused by the lack of resources, insufficient personnel, inadequate funding, and absence of a uniform youth court structure. Such representation would assist the youth court in ensuring that the court possesses all the relevant information needed and that ensures that the state complied with applicable laws and regulations prior to terminating the parental rights or permanent custody of an indigent parent/guardian. The Commission's proposed state statutory right to appointed counsel, for indigent parents/guardians in termination of parent rights proceedings, addresses procedural due process as discussed in United States Supreme Court in *Lassiter v. Dep't of Soc. Svs. of Durham Cnty., N.C.,* 452 U.S. 18 (1981), wherein appointment of counsel would be necessary to ensure a fair and adequate hearing.

In this third context addressed in *Lassiter*, the U.S. Supreme Court weighed the factors of *Mathews v Eldridge*, 424 US 319 (1976), addressing the interest affected by official action; the risk of erroneous deprivation through procedures used and the value of safeguards and fiscal burdens that the additional safeguards would entail. In reviewing more current U.S. Supreme jurisprudence to include *MLB,* 519 US at 109, the Commission recommends a state established right to court appointed counsel for indigent parents/guardians facing a termination of their parental right to constitutes a reasonable safeguard to reduce the risk of erroneous deprivation in light of the existing youth court structure and resources. This Commission recommendation provides a prospective procedural safeguard, as opposed to the retrospective standard of appellate review used to determine whether the lack of representation constituted error by retrospectively assessing whether such representation would have made a determinative difference. The third context evaluated in *Lassiter* indeed acknowledged that procedures

impacting the risk of erroneous deprivation of an interest or right due to official action may warrant additional procedural safeguards.

Five years after *Lassiter* the United States Supreme Court in the Mississippi child protection case of *M.L.B. v. S.L.J.,* 519 U.S. 102, 109 (1986), found Mississippi's youth courts lacking in procedural due process thereby requiring appointment of counsel for an indigent parent in termination of parental rights case. The U. S. Supreme Court in *MLB* provided that the court was not impressed with Mississippi's attempt to save money with youth courts. *MLB***,** 519 U.S. at 109**.** We also acknowledge that also subsequent to *Lassiter,* in the case of *Troxel v. Granville*, 530 U.S. 57 (2000), the U.S. Supreme Court found that parental rights to custody and care of child constitute liberty interest protected by the United States Constitution's 14th Amendment due process protections. The Commission assessed Mississippi's youth court currently existing procedures that impact procedural due process in termination proceedings relative to the risk of error created thereby. After reviewing the existing procedures, resources, legal precedent, the Commission recommends a statutory right to counsel be established for indigent parents facing a loss of permanent custody or termination of parental rights pursuant to state initiated action.

In *M.L.B.*, the United States Supreme Court reviewed Mississippi's judicial process in proceedings to terminate parental rights in the case of an indigent parent seeking to appeal in forma pauperis and requests for waiver of costs and free transcripts. As acknowledged above, the Supreme Court in *M.L.B.* found Mississippi's system lacking in procedural safeguards to protect the fundamental rights of the parents in their relationships with their children. *Id*. at 104-05. In reversing the Mississippi judiciary's denial of an indigent parent's request for free transcripts, the Supreme Court explained "[w]hen deprivation of parental status is at stake, . . . counsel is sometimes part of the process that is due." *Id.* at 123 (citing *Lassiter,* 452 U.S. at 31-32). The Court further explained that while *Lassiter* and *Santosky v. Kramer,* 455 U.S. 745 (1982), yielded divided opinions, the Court was unanimous in its view that the interest of parents in their relationship with their children was a constitutionally protected liberty interest. *M.L.B.,* 519 U.S. at 119.

A further review of case law regarding parental representation is located at the appendix

V. Comprehensive review of Mississippi's youth court structure to include effectiveness of the current allocation and structure of judicial assets.

The comprehensive review should evaluate the effectiveness of at least the following: the allocation and structure of judicial assets; current training for referees and youth court county court judges; administrative support for youth court county court judges and also provide for referees serving in judicial capacities; current procedure and practice in youth courts; sufficiency of current selection procedures for youth court referees; and compare Mississippi's current youth court judicial structure and systematic procedures in the area of child protection to the effectiveness of those utilized by other states to include Texas.

VI. Establish a "Court Performance Improvement Program" for child protection cases in local youth courts. Establish such program in collaboration with MDHS to receive timely court data

in child protection cases to enable local youth courts to review and improve the processing time in their courts. Enable the resident jurist to serve as liaison between the judiciary and state agencies including MDHS to obtain data and information relevant to child protection cases to measure performance in achieving permanency and positive results and to improve performance in youth courts administration of justice.

VII. Review current statutes to ensure compliance with federal statutory requirements in child protection cases as well as requirements imposed on the state by recent federal court settlement agreements. (I.E. Federal Court Compliance Requirements provided by Olivia Y. Settlement)

VIII. Establish liaison and process for notification to the supervising youth court by a school district through the MDHS case worker when the district considers the placement of such child in an alternative school. Also establish assessment tools to determine sufficient resources and counselor/student ratios in school districts with significant at-risk student population and foster children.

IX. Establish Quarterly MDHS Case Worker Reports.

Require MDHS assigned case worker to file quarterly progress reports with the supervising youth court for all children in state custody.[17] This quarterly report should be filed with the supervising court and should include all information gathered during contacts, to include school contact and contacts gathered during child and family team meetings.[18] The quarterly report should also include the advisory recommendations of the permanency roundtables from that quarter's roundtable meeting.

X. Aspire to establish yearly MDHS permanency roundtable meetings in each MDHS region as a long term goal. In support of this goal, request supporting funding and additional personnel. In the event that a MDHS permanency roundtable is held, then the report of such meeting should be filed with the youth court possessing jurisdiction of the case.

MDHS permanency roundtables meet now only with the financial assistance of a private organization, The Casey Foundation, in Mississippi to review the progress of permanency for children in out-of-home placements. Funding and personnel are not currently available to establishing regular meetings much less regular meeting intervals.

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[17] For example, Tennessee requires such quarterly reports to be filed by completion of a form entitled "CS-0430 Quarterly Progress Reports" and also requires uniformity in the information that is provided to the court in the report. Mississippi currently reflects some inconsistency in the information provided to the youth court. Such inconsistencies include the inclusion of information about school and academic progress or lack thereof, while others do not. See and compare the following statutory sections: Tennessee Code Annotated sections 37-1-130-131 (2013); 37-1-132 (2010); 37-2-404 to -407 (2010); 37-4-201 (2010); 37-4-207 (2010); 37-5-106 (2013); *see also* Miss. Code Ann. § 43-15-13(5) (Rev. 2009) (identifies five categories of information that must be provided as a minimum for the Foster Care Review, and some courts seek only this minimum information). Note, the identified minimum information fails to include information about school progress or school discipline or whether the child was referred by a school or others to a youth court for supervision as delinquent.

[18] Compare with State of Tennessee, Administrative Policies and Procedures: 16.32. Tennessee requires the filing of such quarterly reports and requires that the first quarterly report be filed within ninety days of the date the child was placed in custody and every three months thereafter.

However, we support the aspiration of yearly MDHS permanency round tables if sufficient funding and personnel are provided to enable MDHS to do so. If an MDHS roundtable indeed convenes, then the report of such meeting would provide the supervising youth court with valuable non-binding advice and recommendations. If the legislature provided funding and resources sufficient to support annual MDHS permanency roundtables, an amendment of statute would be required to statutorily establish such. *See* Mississippi Code Annotated section 43-15-13 (Rev. 2009). *See also* Miss. Code Ann. § 43-15-13 (5) (foster care review boards may be conducted by the youth court or its designee, or the MDHS or its designee).

XI. Establish a Filing Requirement for the Report of the Family Team Meetings

Family Team Meetings occur within the first 30 days of a child coming into custody and every 90 days thereafter. MDHS calls an extra meeting if a substantial change occurs, if a worker, or if the family believes a need exists warranting a meeting. These meetings are also held prior to a child coming into care and are an integral part of the MDHS family centered approach.

Family Service Plans are done within the first 30 days of a child coming into care and every 90 days thereafter. Family Service Plans are a written part of the MDHS practice model and incorporate the plan for services. The family is included in the planning process. Most of the time the plans will be developed in a family team meeting and often will be updated in the family team meeting.

Additionally, Mississippi Code Annotated section 43-15-13(5) requires Foster Care Reviews within ninety days of the date of the child's placement in custody and not less than every six (6) months thereafter, for so long as the child remains in state custody. Currently MDHS conducts the first one between the fifth and sixth month of a child coming into custody. The Foster Care Review Boards also have follow-up recommendations. This is accomplished through a continuous quality improvement process. Reports of the Foster Care Review are required by the decree in the Olivia Y. Case. These Foster Care Review reports are based upon a 6 month data gathering schedule.

The goal of "front-loading" resources in child protection cases may be assisted by requiring the report of the Family Team Meeting to be filed with the court. Filing of the report allows information to be pushed to the court. The goal is also reflected in the recommendation to establish a filing requirement of a quarterly report by the MDHS showing the all the contacts by the case worker and MDHS regarding the child during the quarter.

XII. Study the youth court prosecutorial duties and the assignments of youth court public defenders for sufficiency of personnel and pay in relation to the youth court case load. For references See Mississippi Code Annotated sections 19-23-11 and 25-31-11.

XIII. Seek Funding and resources and statutorily authority to create positions for MDHS in house counsel to be located in and serve the various MDHS regions.

Other states, such as Louisiana, have in-house counsel co-located with the Parish (county) level DHS offices. The in-house counsel would be available to advise MDHS case workers on various issues that arise within the scope of their child protection duties and such in-house counsel could also assist in preparing MDHS case workers for youth court. Such in-house counsel could also provide valuable liaison with the county attorney prosecuting attorney as well as with the youth court public defender if needed.

APPENDIX I

Review of law relevant to establishing a statutory right to legal counsel in youth court for indigent parents facing termination of parental rights or loss of custody

Such an amendment would create a state statutory right to counsel in cases where the state seeks to terminate a parent's rights to care and custody of his or her child, and this amendment would address the need to reduce the risk of error in MS youth court decisions due to the lack of resources, personnel, a uniform youth court structure, and related procedures. This amendment addresses the third context set forth by the United States Supreme Court in *Lassiter v. Dep't of Soc. Svs. of Durham Cnty., N.C.,* 452 U.S. 18 (1981), wherein appointment of counsel would be necessary to ensure a fair and adequate hearing. We acknowledge that subsequent to *Lassiter* the United States Supreme Court in the Mississippi child protection case of *M.L.B. v. S.L.J.,* 519 U.S. 102 (1986), found Mississippi's youth courts lacking in procedural due process thereby requiring appointment of counsel for an indigent parent in termination of parental rights case. The U. S. Supreme Court in MLB provided that the court was not impressed with Mississippi's attempt to save money with youth courts. We also acknowledge that also subsequent to *Lassiter,* in the case of *Troxel v. Granville*, 530 U.S. 57 (2000), the U.S. Supreme Court found that parental rights to custody and care of child constitute liberty interest protected by the United States Constitution's 14th Amendment due process protections. In assessing Mississippi's youth court procedural due process relative to the risk of error created thereby and in light of precedent, the Commission recommends a statutory right to counsel be established for indigent parents facing a loss of custody or termination of parental rights.

APPENDIX II

Review of Case Law Relevant to Court-Appointed Counsel for Indigent Parents in Cases involving Termination of Parental Rights or loss of Permanent Custody In Current MS Youth Court Structure

A review of jurisprudence in the area of appointment of counsel in child protection cases shows that the United States Supreme Court recognized a presumption against the appointment of counsel exists where no deprivation of physical liberty is at stake. *See Lassiter*, 452 U.S. at 25-27. In Mississippi, *Lassiter* has been applied to determine whether the presumption against appointment of counsel was overcome in light of complexity of the case. Subsequent to *Lassiter*, the Mississippi Supreme Court set forth the "determinative difference" test to determine whether this presumption has been overcome. *See K.D.G.L.B.P. v. Hinds Cty. Dep't of Human Svs.*, 771 So. 2d 907, 910 (Miss. 2000). However, *Lassiter* clearly recognized that deficiencies in procedural due process could rise to a level where the risk of error in the youth court's decision was sufficiently high to rebut the presumption against appointment of counsel. *Lassiter*, 452 U.S. at 31-32.

The *Lassiter* Court acknowledges that a parent's right to the care, companionship, custody, and management of their children are of such importance that these rights require deference and, absent a countervailing interest, protection. *Id*. at 27. The *Lassiter* Court further recognized that the parents' interest in accuracy and justice of the decision to terminate their parental status is an extremely important one, and the Court referred to a North Carolina statute creating a statutory right to counsel in such cases, North Carolina General Statute section 7A-289.29 (Supp. 1979). *Id.* at 28.

Our Mississippi Supreme Court has followed the precedent of *Lassiter* in holding that no right to counsel exists in such cases unless the petition to terminate contains allegations of abuse or neglect upon which criminal charges could be brought, or unless the complexity of the case required such appointment. *See K.D.G.L.B.P.*, 771 So. 2d at 910 (a 2000 Mississippi Supreme Court case finding that, on appeal, court must determine whether appointment of counsel in a termination of parental rights proceeding would have made a "determinative difference"); *see also J.C.N.F. v. Stone Cnty. Dep't of Human Svs.*, 996 So. 2d 762 (Miss. 2008) (finding no due process right to counsel for parent in termination proceedings); *Parker v. Bliven*, 59 So. 3d 619 (Miss. Ct. App. 2010) (no right to counsel exists in child custody modification action between two private citizens, the parents); *Green v. Miss. Dep't of Human Svs.*, 40 So. 3d 660 (Miss. Ct. App. 2010) (finding that precedent recognized no right to counsel for parents unless petition to terminate contained potential criminal charges against parents or was of a complex nature). The *K.D.G.L.B.P.* court discussed *Lassiter*'s precedent of requiring a case-by-case analysis to determine if appointment was needed, and the court acknowledged that *Lassiter* weighed procedural due process factors against the presumption that no right to counsel exists without potential for deprivation of physical liberty.

Significantly, subsequent to *Lassiter*, the United States Supreme Court found in the case of *M.L.B.*, 519 U.S. at 109, Mississippi courts lacking in sufficient procedural due process protections in a child protection case. In *M.L.B.*, the United States Supreme Court reviewed Mississippi's judicial

process in proceedings to terminate parental rights in the case of an indigent parent seeking to appeal in forma pauperis and requests for waiver of costs and free transcripts. The Supreme Court found Mississippi's system lacking in procedural safeguards to protect the fundamental rights of the parents in their relationships with their children. *Id*. at 104-05. In reversing the Mississippi judiciary's denial of an indigent parent's request for free transcripts, the Supreme Court explained "[w]hen deprivation of parental status is at stake, . . . counsel is sometimes part of the process that is due." *Id.* at 123 (citing *Lassiter,* 452 U.S. at 31-32). The Court further explained that while *Lassiter* and *Santosky v. Kramer,* 455 U.S. 745 (1982), yielded divided opinions, the Court was unanimous in its view that the interest of parents in their relationship with their children was a constitutionally protected liberty interest. *M.L.B.,* 519 U.S. at 119.

The Supreme Court provided that the interests of parents in their relationship with their children was sufficiently fundamental to come within the finite class of liberty interest protected by the 14th Amendment of the United States Constitution. *Id*. at 119. The Court also provided that Mississippi's countervailing interest in off-setting the costs of the judicial system is unimpressive when measured against the rights at stake when depriving a parent of their relationship to their child. *Id.* at 104. The Court acknowledged deficiencies in the chancellor's order terminating parental rights in that case wherein the order recited the applicable statute but contained no evidentiary support or factual findings. *Id*.

Mississippi jurisprudence acknowledges that *Lassiter* provided that the presumption against court-appointed counsel may be rebutted. *See K.D.G.L.B.P.*, 771 So. 2d at 910. As stated, Mississippi jurisprudence recognizes a right to counsel in child protection cases wherein the petition contains potential criminal charges and recognizes appointed counsel may be needed in complex cases for a fair hearing. However, *Lassiter* also acknowledged that procedural due process may give rise to a right to appointed counsel in cases wherein the risk of error in the judicial decisions are high due to a lack of procedural safeguards. *See Lassiter*, 452 U.S. at 31-32. This high risk of error in Mississippi youth courts was addressed in *M.L.B.* We turn now to address the United States Supreme Court decision in *M.L.B.*

The Supreme Court then specifically addressed Mississippi's judicial process in *M.L.B.,* finding it lacking in procedural fairness. In 2000, the Supreme Court's opinion in *Troxel v. Granville*, 530 U.S. 57, 66 (2000), addressed child custody, and again the Court held that due process provided by the 14th amendment protects the fundamental rights of parents to make decisions concerning the care and custody of their child and protects the parents from deprivation of these rights by third parties. The Mississippi Supreme Court has held that *Troxel* does not apply to custody disputes between two parents. *See Mabus v. Mabus*, 847 So. 2d 815, 819 (¶16) (Miss. 2003).

Therefore, based upon the foregoing, we recommend that Mississippi Code Annotated section 43-21-201 be revised to provide a statutory right to appointed counsel for indigent parents or guardians, in state initiated child protection cases, where the loss of their parental rights or custodial rights is at stake. Alternatively, the Commission recommends that section 43-21-201 be amended to provide for a right to court appointed counsel in such cases wherein judicial decisions potentially result in a loss of custody, even temporary custody, such as shelter hearings, temporary custody, and removal decisions.

APPENDIX III

THE SCOPE OF YOUTH COURT JURISDICTION

2013

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THE SCOPE OF YOUTH COURT JURISDICTION

I. POWERS OF GOVERNMENT

- **A. Branches of government**
- **B. Judicial branch**
- **C. Construing constitutional grants of power**

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- **B. Power to fully adjudge the subject-matter**
- **C. Not synonymous to exclusive jurisdiction**
- **D. Establishment of inferior courts not precluded**

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- **D. Legislative enactments on incidental and dependent matters**

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- **A. Term originated in probate court**
- **B. Constitution of 1869 conferred "minor's business" on chancery court**
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- **A. Inferior courts may be abolished whenever deemed expedient**
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- **C. A superior court's constitutional powers cannot be diminished by statute**
- **D. Inferior courts are special courts of limited jurisdiction**

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- **F. When trying to thwart the State's parens patriae powers**

X. COMMENTARY ON THE SCOPE OF YOUTH COURT JURISDICTION

THE SCOPE OF YOUTH COURT JURISDICTION

I. POWERS OF GOVERNMENT

A. Branches of government

"The powers of the government of the state of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, towit: those which are legislative to one, those which are judicial to another, and those which are executive to another." Miss. Const. art. I, § 1.

"No person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others. The acceptance of an office in either of said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments." Miss. Const. art. I, § 2.

B. Judicial branch

"The judicial power of the state shall be vested in a Supreme Court and such other courts as are provided for in this constitution." Miss. Const. art. VI, § 144.

The Mississippi Constitution provides for the following courts:

Supreme court (Miss. Const. art. VI, § 146).
Circuit courts (Miss. Const. art. VI, §§ 156, 161, and 162).
Chancery courts (Miss. Const. art. VI, §§ 157, 159, 160, and 161).
Justice courts (Miss. Const. art. VI, § 171).
Inferior courts (Miss. Const. art. VI, § 172).

C. Construing constitutional grants of power

"The power therefore to create inferior courts necessarily implies the power to clothe them when created with a part of the jurisdiction which had been vested in the courts established by the Constitution; otherwise they could have no jurisdiction whatever, for the Constitution had disposed of all. Any other supposition leads to a charge of absurdity in the convention, in having done a useless and unmeaning act; and such a presumption is not to be indulged when the act can have a sensible application." *Houston v. Royston*, 8 Miss. 543 (1843).

"All our courts, including the chancery, derive their jurisdiction from the constitution; and the expressing of jurisdiction over certain matters for one, excludes it from all others." *Wilson v. Duncan*, 44 Miss. 642 (1871).

"It is a familiar rule that the fundamental purpose in construing a constitutional provision is to ascertain and give effect to the intent of those who adopted it, to constantly keep in mind the object desired to be accomplished and the evils sought to be prevented or remedied. . . . This principle of construction remains true even in the matter of grants of power, a feature upon which there is some more of strictness." *Moore v. General Motors Acceptance Corporation*, 125 So. 411, 412-13 (Miss. 1930).

II. FULL JURISDICTION OF CHANCERY COURT

A. Constitutional provision

"The chancery court shall have full jurisdiction in the following matters and cases, viz.:
(a) All matters in equity;
(b) Divorce and alimony;
(c) Matters testamentary and of administration;
(d) Minor's business;
(e) Cases of idiocy, lunacy, and persons of unsound mind;
(f) All cases of which the said court had jurisdiction under the laws in force when this Constitution is put in operation." Miss. Const. art. VI, § 159.

B. Power to fully adjudge the subject-matter

"We are instructed to give a meaning to every word in a constitution or statute, for each (we must suppose) was used to aid in giving complete expression to the will of the lawmaker. The word 'full'—'full jurisdiction'— implies that nothing is reserved. Whatever is a matter of equity, as to that the power to adjudge is full." *Bank of Mississippi v. Duncan*, 52 Miss. 740 (1876).

"The source of the equity jurisdiction of the chancery court is the Constitution. Section 159. Among other matters, this section vests in the chancery court full jurisdiction of all matters in equity. There is no limitation on the power of the chancery court in equity matters except that the rights enforced or to be protected must come within the province and policy of remedial justice, and be a matter involving civil rights or property. Griffith, Miss. Chancery Practice, Sec. 25." *Duvall v. Duvall*, 80 So. 2d 752, 755 (Miss. 1955).

C. Not synonymous to exclusive jurisdiction

"This Court has rejected the assertion that Article 6, Section 159 of the Mississippi Constitution conferred *exclusive jurisdiction* in all matters of equity when it conferred *full jurisdiction* over such matters. *W. Horace Williams Co. v. Fed. Credit Co.*, 198 Miss. 111, 21 So.2d 582, 583 (1945) (emphasis added). However, the Legislature has instructed that 'proceedings to obtain a divorce *shall* be by complaint in chancery....' Miss.Code Ann. § 93–5–7 (Rev.2004) (emphasis added)." *Germany v. Germany*, 123 So. 3d 423, 427 (Miss. 2013).

D. Establishment of inferior courts not precluded

"Appellant says that when Section 159, Constitution 1890, conferred upon the chancery court full jurisdiction in all matters of equity, it meant thereby to confer upon that court exclusive jurisdiction in matters of equity and that this would prohibit the exercise by the county court of any part of such jurisdiction although done as an inferior court of equity under Section 172 of the Constitution. This contention was denied in *State ex rel. Knox v. Speakes*, 144 Miss. 125, 109 So. 129, nearly twenty years ago, and we had supposed that everybody has considered the debate on that issue as having been closed, as it is." *W. Horace Williams Co. v. Federal Credit Co.*, 21 So. 2d 582, 58283 (Miss. 1945).

"The family court's jurisdiction is despite the Mississippi Constitution, which states in Section 159 of Article 6 that the chancery court 'shall have full jurisdiction in ... [m]inor's business....' *See id.* Yet, Section 172 of Article 6 of the Mississippi Constitution states that '[t]he legislature shall, from time to time, establish such other inferior courts as may be necessary, and abolish the same whenever deemed expedient.' *See id.* In light of such, this court has held constitutional the youth court and its jurisdiction." *In re T.A.P.*, 742 So. 2d 1095, 110203 (Miss. 1999).

III. ALL MATTERS IN EQUITY

A. Not entirely dependent on subject-matter

"The 'full powers in all matters of equity' which are secured to it by the provision for its establishment, were intended to embrace such subjects of jurisdiction as the chancery court has possessed by immemorial usage, or particular legislative enactments. If this be so, then it follows, that whenever the legislature create a new subject of chancery jurisdiction, it becomes immediately one of those 'matters of equity' of which that court has full jurisdiction by the constitution. It is not the subject of the suit which determines the criterion of the jurisdiction of a court of chancery, so much, as the particular mode in which it proceeds, differing then, from a court of law principally in the mode of proof, of trial and of relief. . . . And this power is constantly exerted, regardless of the subject matter in all cases, where without it, adequate justice cannot be done in the courts of law." *Farish v. State*, 5 Miss. 170 (1839).

B. Immemorial usage

"[E]quity is defined to be that system of justice which is administered by the high court of chancery in England in the exercise of its extraordinary jurisdiction." *Smith v. Everett*, 50 Miss. 575 (1874).

"[T]he equitable jurisdiction and power of the chancery court is limited to the system of justice administered by England's high court of chancery." *In re Bell*, 962 So. 2d 537, 540 (Miss. 2007).

C. Legislative enactments enlarging chancery's equity powers

"The Constitution . . . vests the judicial power in the several courts therein provided for, and, in very general terms, prescribes the jurisdiction of each; hence, referring to the legislature and to the courts themselves the duty of determining the specific subjects embraced by their respective jurisdictions." *Servis v. Beatty*, 32 Miss. 52 (1856).

"The constitution does not confine the several courts in a straight jacket. When it established a chancery court 'with full jurisdiction in all matters of equity,' it meant that system of equity jurisprudence, unwritten and positive, which existed in this state in 1869, with all its capabilities of improvement and expansion. It left the court free to take its share in a wider development of its peculiar jurisprudence, and to new applications of its principles, to the shifting transactions of men, and the changing condition of society, assisted from time to time by legislative enactments. It meant the system as it then was, and such accessions as would be made by its natural growth, and the contributions by the legislature. The system as it was, and as it might grow to be in the future." *Bell v. City of West Point*, 51 Miss. 262 (1875).

"[We have] held that the legislature may add new equity powers to those created by the Constitution, but it can not subtract from such chancery power." *Wheeler v. Shoemake*, 57 So. 2d 267, 285-86 (Miss. 1952).

D. Legislative enactments on incidental and dependent matters

"But the word 'full'—'full jurisdiction'—is not satisfied when restricted to the subjects of it. It indicates that where the court takes hold of a subject it ought to dispose of it fully and finally. That suggests an appropriate field for legislation, within constitutional limits." *Bank of Mississippi v. Duncan*, 52 Miss. 740 (1876).

"If the subject of litigation be a 'matter of equity,' why should not the Legislature give to the court cognizance over all incidental and dependent matters, so as to give to the respective litigants the full benefit of their rights, and enable the court to pronounce finally?" *State v. Marshall*, 56 So. 792, 796 (Miss. 1911).

IV. MINOR'S BUSINESS

A. Term originated in probate court

"The revised constitution of the State, article 4, section 18, creates the Probate Court and defines its jurisdiction. It provides: 'That a court of probate shall be established in each county of this State, with jurisdiction in all matters testamentary and of administration, in orphans' business, and allotment of dower, in cases of idiocy and lunacy, and of persons non compos mentis.' NOTE.The Convention of 1865 amended the constitution of the State so as to give jurisdiction to the Probate Court 'in minors' business.' Ordinances of Convention, page 36." *Ex parte Atkinson*, 40 Miss. 17 (1864).

"We admit that the constitution framed by the convention in 1865 and the present constitution of the state use the term 'minors' business' in defining the jurisdiction, instead of the expression 'orphans' business,' as used by the constitution of 1832." *Harrington v. Wofford*, 46 Miss. 31 (1871).

"[I]t is manifest that both in the Constitution of 1817 and that of 1832 the words 'orphans' business' were used, not in a restricted sense, but as of the same import as 'minors' business.'" *Hall v. Wells*, 54 Miss. 289 (1877) (Simrall, J., concurring).

B. Constitution of 1869 conferred "minor's business" on chancery court

"There was always great embarrassment and difficulty in defining the precise boundaries of jurisdiction between the chancery and probate courts. It was because much of the latter was exclusive. The constitution of 1869 relieves the courts of that subject of vexation, by vesting in the chancery court all the jurisdiction conferred by the constitution of 1832 on both the chancery and probate courts." *Bank of Mississippi v. Duncan*, 52 Miss. 740 (1876).

"Under the Constitution of 1832 the courts of chancery did not entertain [bills charging acts of devastavit by the executors], because the Constitution was construed as withholding that jurisdiction from them. But under the present Constitution the Chancery Court has all the cognizance formerly exercised by courts of chancery and the Probate Courts, and we are no longer perplexed to find the shadowy line which separated them." *Buie v. Pollock*, 55 Miss. 309 (1877).

C. Protection of infants traditionally in equity

"Infants and persons of unsound mind are disabled under the law to act for themselves. Long ago it became the established rule for the court of chancery to act as the superior guardian for all persons under such disability. This inherent and traditional power and protective duty is made complete and irrefragable by the provisions of our present state constitution. It is not competent for the Legislature to abate the said powers and duties or for the said court to omit or neglect them." *Union Chevrolet Co. v. Arrington*, 138 So. 593, 595 (Miss. 1932).

"Mississippi Constitution Sec. 159(d) provides: 'The chancery court shall have full jurisdiction in the following matters and cases, viz.: * * * (d) Minor's business; * * *.' The chancery court is given 'full' jurisdiction over 'minor's business.' This is a constitutional statement of a traditional equity jurisdiction. From the earliest times, infants were regarded as entitled to the special protection of the state." *Wheeler v. Shoemake*, 57 So. 2d 267, 285 (Miss. 1952).

D. Jurisdiction over minors limited to matters involving equitable relief

"While it is true that both complainants were minors, this case neither involved nor required any equitable relief. An analysis of the case law concerning Section 159(d), clearly shows that the jurisdiction of the chancery court over minors is limited to matters involving equitable relief. The action at bar arises from a tort claim, and we have made it clear previously that courts of equity should not assume jurisdiction over claims for personal injury. . . . One reason for such a rule is that historically tort claims have been tried by jury." *McLean v. Green*, 352 So. 2d 1312, 1314 (Miss. 1977).

"This case [alleging intentional infliction of emotional distress] concerns a tort issue; as stated above, the chancery court does not have jurisdiction over such actions." *Little v. Collier*, 759 So. 2d 454, 457 (Miss. Ct. App. 2000).

See also Tyson Breeders, Inc. v. Harrison, 940 So. 2d 230 (Miss. 2006) (breach of contract case not seeking equitable relief); *Lawrence County School Dist. v. Brister*, 823 So. 2d 459 (Miss. 2001) (negligence case not seeking equitable relief); and *Farris v. State*, 764 So. 2d 411 (Miss. 2000) (criminal case); *but see Louisville & N. R. Co. v. Hasty*, 360 So. 2d 925, 927 (Miss. 1978) (holding that Article 147 of the Mississippi Constitution prevented reversal solely on the ground of jurisdiction even though the tort claim by the minors neither involved nor required any equitable relief).

V. FORUM FOR ADMINISTERING PARENS PATRIAE POWERS

A. Abused, neglected, and delinquent children

"As long as parents properly exercise their duty, under their natural rights, to rear, educate, and control their children, their right to do so may not be interfered with solely because some other person or some other institution might be deemed better suited for that purpose. The children of the poor cannot be taken from them, and awarded to the rich or to some rich and powerful institution, merely because such person or such institution might, in the judgment of the court, do a better part by the child than the natural parents. But where the parents fail to perform their natural duty to so rear and educate the child as to make it a useful, intelligent, and moral being, but permit it to go unrestrained and to become vicious in its habits and practices, and a menace to the rest of society, the state, as parens patriæ of all children, may assert its power and apply the curative, so as to prevent injury to the child and to society by the negligent and wrongful conduct of the parents in failing to exercise the proper control and restraint over the child in its tendencies." *Bryant v. Brown*, 118 So. 184, 188 (Miss. 1928).

"By section 159 of the state Constitution, the chancery court is given full jurisdiction of minors' business, cases of idiocy, lunacy, and persons of unsound mind, and all matters of equity, and the court of chancery has generally been openly recognized as the forum administering the power of the state known as parens patriæ power." *Bryant v. Brown*, 118 So. 184, 189 (Miss. 1928).

"We see no reason in a proper case why the court, looking to the interest of the minors, for whom it is parens patriae, could not provide, after a full and adequate inquiry, for payment, in part, of debts in other commodities or land. It is true that this is a power that ought to be exercised with great caution, but we assume that the court did act with caution and prudence and on full inquiry." *Neely v. Craig*, 139 So. 835, 838 (Miss. 1932).

"[T]he Youth Court Act is soundly based upon the police power of the State and its vital interest as parents patriae of children. And there is an additional reason why the act is valid. It grants the powers therein delegated to a constitutional court, under the instant facts, and that court has an inherent as well as an express constitutional jurisdiction over and interest in minors." *Wheeler v. Shoemake*, 57 So. 2d 267, 285 (Miss. 1952).

B. Termination of parental rights

"There can be no doubt, under the doctrine of parens patriae, that the State has the sovereign power of guardianship over persons under disability, and it alone has the right and power to determine the recipient of the privilege to adopt one of its wards. To insure the best interest of a child, the power of the State transcends the rights of natural parents; and if they are unfit to have the custody, their children may be taken from them." *Eggleston v. Landrum*, 50 So. 2d 364, 366 (Miss. 1951).

"There is no doubt that a state legislature has the power to enact laws governing the termination of parental rights." *Natural Father v. United Methodist Children's Home*, 418 So. 2d 807, 809 (Miss. 1982)

C. Adoptions

"Adoption was not known to the common law; it is a creature of statute; and no person is entitled to adopt another as of right. . . . Because of the considerable power the State has over children, based on its position as parens patriae, the wisdom and judgment of the legislature in providing for procedure in adoption cases should not be questioned unless manifestly unreasonable or clearly unconstitutional." *Brunt v. Watkins*, 101 So. 2d 852, 856 (Miss. 1958).

"[C]hancery courts have exclusive jurisdiction over adoptions and may exercise such jurisdiction, even if a youth court has established jurisdiction over the minor due to abuse and neglect, and even if a youth court already has awarded custody to someone other than the adoption petitioner." *Miss. Dep't of Human Servs. v. Watts*, 116 So. 3d 1056, 1061 (Miss. 2012).

VI. INFERIOR COURTS

A. Constitutional provision

"The legislature shall, from time to time, establish such other inferior courts as may be necessary, and abolish the same whenever deemed expedient." Miss. Const. art. VI, § 172.

"The Court judicially established that the legislative power to create 'inferior courts' is plenary in *Thomas*, and that those courts may have the same jurisdiction as a constitutionally created court in *Houston*. Regardless, whether we apply *Thomas* or *Houston*, either case would sanction the legislative scheme creating the Court of Appeals." *Marshall v. State*, 662 So. 2d 566, 570 (Miss. 1995).

B. What is an inferior court?

"In interpreting Section 172 of the Constitution two questions arise, (1) To what court created by the Constitution must the legislative court be inferior, and (2) What is the test by which to determine whether a legislative court is an inferior court? The first of these questions was decided in *Houston v. Royston, 1 Smedes & M. 238*, wherein the court held that the legislative court must be inferior to the constitutional court, a part of the jurisdiction of which it exercises. So that we come at once to the second. There are three universally recognized tests for determining whether a court is an inferior court: (1) if its jurisdiction is special and limited and its judgments are valid only when its jurisdiction to render them appears therefrom, (2) if its jurisdiction is less extensive than that of another court over the same general subject matter, and (3) if its proceedings are subject to the supervision and control of another court." *Drummond v. State*, 185 So. 207, 211 (Miss. 1938) (Smith, J., concurring).
"It is thus clear that a court is an 'inferior court' when subject to the controlling authority or review of a constitutionally created court. *See, Ex Parte Tucker,* 164 Miss. 20, 143 So. 700 (1932)." *Marshall v. State*, 662 So. 2d 566, 572 (Miss. 1995).

C. Jurisdiction is special, limited, and less extensive

"[W]hatever judicial power an inferior court hereafter established might have, must be subtracted from one or the other of the courts now in existence." *Bell v. City of West Point*, 51 Miss. 262 (1875).

"But nothing in *Wheeler* suggests any constitutional infirmity in the jurisdiction of those youth courts in counties having county courts where the youth courts are made divisions thereof. 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." *In re T.L.C.*, 566 So. 2d 691, 696 (Miss. 1990).

"The matter should be transferred to chancery court. The original paternity action could not have been brought in youth court. No allegations of abuse, neglect, or delinquency have been asserted, thus the matter is not one for which the youth court has been granted jurisdiction." *Helmert v. Biffany*, 842 So. 2d 1287, 1292 (Miss. 2003).

D. Subject to the supervision and control of another court

"It is well settled by those decisions that the Legislature may create inferior courts which shall exercise a jurisdiction for beyond that of a petty court. In fact, it is settled that as respects its constitutional validity all that is required of a court created by legislative act under the quoted constitutional section is that when a new court is created which shall exercise a part of the jurisdiction vested by the Constitution in another court, the said new court must be inferior in ultimate authority to the Constitutional court whose jurisdiction is of the same character as that given to the new court. *See State v. Speakes*, 144 Miss. 125, 159, 109 So. 129. It is competent, therefore, to create a court which may be permitted to exercise in full measure the same jurisdiction as the circuit court, so long as the circuit court shall be superior thereto and this attribute of superiority is accomplished by giving the circuit court the controlling authority of reversal, revisal, correction, and direction over the new court, as by certiorari, appeal, etc." *Ex parte Tucker*, 143 So. 700, 701 (Miss. 1932).

E. Streamlining the appellate process

"[As a result of the Convention of 1890,] Section 172 became of the same force and effect as if there had been added the following words'And appeals from the courts created under this section may be taken direct to the Supreme Court if so prescribed by the Legislature.'" *Drummond v. State*, 185 So. 207, 210 (Miss. 1938).

"If we perceive Roy's point, it goes not so much to the youth court's jurisdiction ab initio as to this court's jurisdiction to hear a direct appeal, Roy apparently preferring that the appeal go to chancery court, thus establishing the youth court's inferiority. The social imperative for prompt disposition of matters affecting children is sufficiently within the police power—as read broadly in *Wheeler*—that the legislature may streamline the appellate process as it has done in the present act." *In Interest of T.L.C.*, 566 So. 2d 691, 696-97 (Miss. 1990).

"[P]ursuant to Article 6, Section 146 of the Mississippi Constitution, the Legislature is constitutionally empowered to confer appellate jurisdiction on this Court over direct appeals from the [Mississippi Workers' Compensation] Commission . . . ." *Johnson v. Sysco Food Services*, 86 So. 3d 242, 247 (Miss. 2012).

VII. DISTINCTIONS BETWEEN SUPERIOR AND INFERIOR COURTS

A. Inferior courts may be abolished whenever deemed expedient

"The legislature shall, from time to time, establish such other inferior courts as may be necessary, and abolish the same whenever deemed expedient." Miss. Const. art. VI, § 172.

B. A superior court's jurisdiction is presumed

"[N]o presumption is indulged in favor of a court of special and limited jurisdiction, and, where the jurisdictional facts do not appear of record, its judgments are void." *Dulion v. Folkes*, 120 So. 437, 441 (Miss. 1928).

"The chancery court, in exercising its jurisdiction over guardianships and minors and their business, has general and constitutional jurisdiction, and all facts necessary to sustain jurisdiction or decrees of the chancery court are presumed to exist unless the contrary appear in the record." *In re Heard's Guardianship*, 163 So. 685, 686 (Miss. 1935).

C. A superior court's constitutional powers cannot be diminished by statute

"The Legislature can do no more than give [an inferior court] a concurrent jurisdiction, for it cannot divest jurisdiction already vested, and the superior court of chancery has 'full jurisdiction in all matters of equity.'" *State v. Speakes*, 109 So. 129, 133 (Miss. 1926).

"Nevertheless, Section 159 of Article 6 of the Mississippi Constitution provides that 'the chancery court shall have full jurisdiction [over] ... minor's business,' and such jurisdiction, granted by the Constitution, 'cannot be diminished by statute.' *White v. White*, 26 So.3d 342, 347 (Miss.2010). Therefore, despite statutory language to the contrary, the chancery court did not err in exercising jurisdiction over the matter of Baby Dennis's custody." *B.A.D. v. Finnegan*, 82 So. 3d 608, 618 (Miss. 2012) (Kitchens, J., concurring in part and in result).

"The statutes which bestow jurisdictional powers on the Youth Court do not diminish the Chancery Court's jurisdictional authority granted by our Constitution. Therefore, even though the Youth Court properly exercised jurisdiction over proceedings related to these abused and neglected minors, its jurisdiction did not extend to the Wattses' petition for adoption, and the Youth Court may not exercise its jurisdiction in a manner 'so as to thwart the adoption proceedings.'" *Miss. Dep't of Human Servs. v. Watts*, 116 So. 3d 1056, 1060-61 (Miss. 2012).

D. Inferior courts are special courts of limited jurisdiction

"But nothing in *Wheeler* suggests any constitutional infirmity in the jurisdiction of those youth courts in counties having county courts where the youth courts are made divisions thereof. 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." *In re T.L.C.*, 566 So. 2d 691, 696 (Miss. 1990).

"[T]he Special Court of Eminent Domain, in which this case originated, is a special court sitting only to hear matters of eminent domain. There is no authority limiting its jurisdiction in those instances where the subject property is owned all or in part by a minor, nor do the Cockrells cite any." *Cockrell v. City of Southaven*, 730 So. 2d 1119, 1123 (Miss. 1998).

"Statutes grant both the chancery court and the youth court jurisdiction over the adjudication of minors. One difference, however, is that the general jurisdiction of chancery court encompasses that of youth court, whereas youth court jurisdiction is limited to specifically delineated matters, towit, abused, neglected, or delinquent children." *Helmert v. Biffany*, 842 So. 2d 1287, 1290 (Miss. 2003).

VIII. YOUTH COURT

A. Limited jurisdiction

Abused, neglected, delinquent, or dependent children: "The youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child except in the following circumstances: . . . ." Miss. Code Ann. § 4321151(1).

Transfers from circuit court: "The youth court shall also have jurisdiction of offenses committed by a child which have been transferred to the youth court by an order of a circuit court of this state having original jurisdiction of the offense, as provided by Section 4321159." Miss. Code Ann. § 4321151(4).

Termination of parental rights when conducted by a county court sitting as a youth court that has jurisdiction over the parties under Mississippi's Youth Court Law: "Any person, agency or institution may file for termination of parental rights in the chancery court or the family or county court sitting as the youth court of the county in which a defendant or the child resides, or in the county where an agency or institution holding custody of the child is located." Miss. Code Ann. § 9315105(1).

B. Special proceedings

"The youth court shall be in session at all times." Miss. Code Ann. § 4321203(1).

"All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults." Miss. Code Ann. § 4321203(2).

"Hearings in all cases involving children shall be conducted without a jury and may be recessed from time to time." Miss. Code Ann. § 4321203(3).

"No proceeding by the youth court in cases involving children shall be a criminal proceeding but shall be entirely of a civil nature." Miss. Code Ann. § 4321203(5).

"The general public shall be excluded from the hearing, and only those persons shall be admitted who are found by the youth court to have a direct interest in the cause or work of the youth court." Miss. Code Ann. § 4321203(6).

"The proceeding in the chancery court is not for the purpose of inflicting punishment or entertaining criminal jurisdiction. It is the remedial proceeding designed to reform and educate the child into habits of industry, good morals, and conduct." *Bryant v. Brown*, 118 So. 184, 188 (Miss. 1928).

C. Special purpose (parens patriae)

"This chapter shall be liberally construed to the end that each child coming within the jurisdiction of the youth court shall become a responsible, accountable and productive citizen, and that each such child shall receive such care, guidance and control, preferably in such child's own home as is conducive toward that end and is in the state's and the child's best interest. It is the public policy of this state that the parents of each child shall be primarily responsible for the care, support, education and welfare of such children; however, when it is necessary that a child be removed from the control of such child's parents, the youth court shall secure proper care for such child." Miss. Code Ann. § 4321103.

"(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 4321103 of the Mississippi Code." U.R.Y.C.P. 3.

"[The Youth Court Law] is a legitimate exercise of the police power of the State. It is a sincere and in many respects realistic attempt to begin to cope with the serious contemporary problems of juvenile delinquency." *Wheeler v. Shoemake*, 57 So. 2d 267, 279 (Miss. 1952).

IX. PRIORITY OF JURISDICTION RULE

A. What is the priority of jurisdiction rule?

"The 'priority of jurisdiction' rule states, 'In order that the rule may be applicable, which prevents interference by another court with the jurisdiction of the court first assuming it, the second action should be between the same parties, *seeking on the one hand, and opposing on the other, the same remedy, and should relate to the same question.' Id.* at 1210 (citing 21 C.J.S. Courts § 492, at 751 (1940))." *In re D.L.D.*, 606 So. 2d 1125, 1129 (Miss. 1992).

"This Court recognized the 'well established rule ... that where two (2) suits between the same parties over the same controversy are brought in courts of concurrent jurisdiction, the court which first acquires jurisdiction retains jurisdiction over the whole controversy to the exclusion or abatement of the second suit.' However, for the 'priority of jurisdiction' rule to apply, 'there must, of necessity, be a determination that both actions involved the same controversy, the same remedy, and that such related to the same question.'" *Miss. Dep't of Human Servs. v. Watts*, 116 So. 3d 1056, 1060 (Miss. 2012).

B. Abuse and neglect proceedings

"We hold that a chancery court may not exercise jurisdiction over any abused or neglected child or any proceeding pertaining thereto over which the youth court may exercise jurisdiction if there has been a prior proceeding in the youth court concerning that same child. We note especially, however, that this holding is limited to questions of priority jurisdiction in counties that have a county court sitting as a youth court in addition to a chancery court." *K.M.K. v. S.L.M.*, 775 So. 2d 115, 118 (Miss. 2000).

"It is clear that the youth court in this case possessed original jurisdiction, as M.I. and T.I. were adjudicated neglected and abused, thus falling squarely within the purview of Mississippi Code Section 43–21–151(1). Further, based on the statutory authority of youth courts to modify disposition orders and to retain jurisdiction over an abused or neglected child until the child reaches age twenty, we conclude that the youth court in this case clearly retains jurisdiction over the matter so long as it did not otherwise terminate its jurisdiction." *In re M.I.*, 85 So. 3d 856, 858 (Miss. 2012).

C. Divorce proceedings

"The 'priority of jurisdiction' rule should not apply to the case sub judice because, like *Beggiani*, neither the same subject matter nor the rights of the same parties are being adjudicated in both courts. The divorce proceedings involve only Jacqueline Clark DeLee and Ruben DeLee as parties. Although not a party to the divorce proceeding, the best interests of the minor child are considered. In contrast, the minor child is the major party in the Youth Court proceeding. Unlike the divorce proceeding in Chancery Court, the Youth Court's sole issue is the treatment and welfare of the minor child." *In re D.L.D.*, 606 So. 2d 1125, 1129 (Miss. 1992).

D. Adoption proceedings

"Even though a juvenile court may have obtained and retained jurisdiction over a custody case by an initial adjudication of dependency and a custody award, jurisdiction of another court in a subsequent adoption proceeding is unaffected, and the juvenile court could not act so as to thwart the adoption proceedings. *Id.* at 56." *Petition of Beggiani*, 519 So. 2d 1208, 1211 (Miss. 1988).

"We note that there are some matters concerning abused and neglected children over which the youth court has no jurisdiction. *See* Miss.Code Ann. § 93173 (1994) (adoption petitions must be filed in the chancery court). Our holding in this case is, of course, limited by statutory authority determining proper jurisdiction." *K.M.K. v. S.L.M.*, 775 So. 2d 115, 118 n.1 (Miss. 2000).

"Further, it has been recognized that adoption proceedings are entirely separate and distinct statutory proceedings neither connected with nor controlled by the prior custody awards of another court. *Lewison v. State*, 193 So.2d 53 (Fla.Dist.Ct.App.1966). Even though a juvenile court may have obtained and retained jurisdiction over a custody case by an initial adjudication of

dependency and a custody award, jurisdiction of another court in a subsequent adoption proceeding is unaffected, and the juvenile court could not act so as to thwart the adoption proceeding." *Miss. Dep't of Human Servs. v. Watts*, 116 So. 3d 1056, 1060 (Miss. 2012).

E. Termination of parental rights proceedings

"The youth court has different divisions. Miss.Code Ann. § 4321107 (1993). One division of the youth court is the County Court, presided over by the county court judge or a judge chosen by the county court judge, in those counties that have a county court. *Id.* Another division is a division of the Chancery Court, presided over by a chancellor or a youth court referee. *Id.*; Miss.Code Ann. § 4321111 (Supp.1999). In jurisdictions where there is no county court, the chancery court would rightfully retain jurisdiction over cases involving termination of parental rights. Miss.Code Ann. § 9315105." *K.M.K. v. S.L.M.*, 775 So. 2d 115, 118 n.2 (Miss. 2000).

F. When trying to thwart the State's parens patriae powers

"As a consequence of the fact that an adoption is superior to a custody award, and additionally as the Youth Court of Carroll County did not pursue the best interests of the children, its decision is reversed." *Petition of Beggiani*, 519 So. 2d 1208, 1214 (Miss. 1988).

"Further, it has been recognized that adoption proceedings are entirely separate and distinct statutory proceedings neither connected with nor controlled by the prior custody awards of another court. *Lewison v. State*, 193 So.2d 53 (Fla.Dist.Ct.App.1966). Even though a juvenile court may have obtained and retained jurisdiction over a custody case by an initial adjudication of dependency and a custody award, jurisdiction of another court in a subsequent adoption proceeding is unaffected, and the juvenile court could not act so as to thwart the adoption proceeding." *Miss. Dep't of Human Servs. v. Watts*, 116 So. 3d 1056, 1060 (Miss. 2012).

X. COMMENTARY ON THE SCOPE OF YOUTH COURT JURISDICTION

The Mississippi Constitution divides the powers of government into three distinct departments–legislative, judicial, and executive–each of which may not encroach upon the powers properly belonging to one of the others. Miss. Const. art. 1 §§ 1, 2. The judicial power of the state is vested in a Supreme Court and such other courts as are provided for in the Mississippi Constitution. Miss. Const. art IV § 144. But this particular vesting of power does not apply to inferior courts:

Such a provision [as "the legislature might from time to time establish such other inferior courts as might be deemed necessary, and abolish the same whenever they should be deemed expedient"] indicates that the convention thought that it might be convenient and proper to make some changes in the judicial system. Nothing else could have induced such a provision. And it must have been the design to clothe the legislature with power to make such changes. Such a provision was not inserted to give the legislature power to provide for the exercise of a jurisdiction which had not been disposed of, for it was all appropriately vested by the constitution; none remained

> for legislative disposition. The power therefore to create inferior courts, necessarily implies the power to clothe them when created with a part of the jurisdiction which had been vested in the courts established by the constitution; otherwise they could have no jurisdiction whatever, for the constitution had disposed of all. Any other supposition leads to a charge of absurdity in the convention, in having done a useless and meaningless act; and such a presumption is not to be indulged, when the act can have a sensible application.
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> Houston v. Royston, 8 Miss. 543 (1843).

Thus, the legislature cannot create new judicial powers but only applications of existing ones already vested in the Supreme Court, circuit courts, chancery courts, or justice courts. That is why 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 despite the language of section 4321151 of the Mississippi Code granting the youth court "exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child . . . ." In other words, chancery court's judicial power to hear such actions was already vested even if theretofore portions of it had lain dormant. On the other hand, the Supreme Court, by virtue of its inherent authority to establish rules to promote justice, uniformity, and the efficiency of courts, could adopt rules of procedures for chancery courts to follow when taking up child protection proceedings. See Newell v. State, 308 So. 2d 71, 76 (Miss. 1975) ("The inherent power of this Court to promulgate procedural rules emanates from the fundamental constitutional concept of the separation of powers and the vesting of judicial powers in the courts."). And, in January 2009, it did just that by adopting the Uniform Rules of Youth Court Practice.

So what exactly is an inferior court? In Ex Parte Tucker, the Court remarked:

> [I]t is settled that as respects its constitutional validity all that is required of a court created by legislative act under the quoted constitutional section is that when a new court is created which shall exercise a part of the jurisdiction vested by the Constitution in another court, the said new court must be inferior in ultimate authority to the Constitutional court whose jurisdiction is of the same character as that given to the new court.
>
> Ex Parte Tucker, 143 So. 700, 701 (Miss. 1932).

The Court further noted that this "attribute of superiority" could be accomplished by giving the superior court a "controlling authority of reversal, revisal, correction, and direction over the new court, as by certiorari, appeal, etc." Id. But thereafter, in Drummond v. State, the Court recognized the power of the legislature to streamline appeals from inferior courts directly to the Supreme Court:

> [As a result of the Convention of 1890,] Section 172 became of the same force and effect as if there had been added the following words–"And appeals from the courts created under this section may be taken direct to the Supreme Court if so prescribed by the Legislature."
>
> Drummond v. State, 185 So. 207, 210 (Miss. 1938).

This judicial position has been reaffirmed by subsequent opinions of the Court. See, e.g., Johnson v. Sysco Food Services, 86 So. 3d 242, 247 (Miss. 2012) ("[P]ursuant to Article 6, Section 146 of the Mississippi Constitution, the Legislature is constitutionally empowered to confer appellate jurisdiction on this Court over direct appeals from the [Mississippi Worker's Compensation] Commission . . . ."); In re T.L.C., 566 So. 2d 691, 69697 (Miss. 1990) ("The social imperative for prompt disposition of matters affecting children is sufficiently within the police power–as read broadly in Wheeler–that the legislature may streamline the appellate process as it has done in the present act.").

It should also be noted that the legislative power to create inferior courts is plenary:

> The Court judicially established that the legislative power to create "inferior courts" is plenary in Thomas, and that those courts may have the same jurisdiction as a constitutionally created court in Houston. Regardless, whether we apply Thomas or Houston, either case would sanction the legislative scheme creating the Court of Appeals.

Marshall v. State, 662 So. 2d 566, 570 (Miss. 1995).

But there are limitations to that power:

- The legislature may not divest a superior court of its already vested powers. See, e.g., State v. Speakes, 109 So. 129, 133 (Miss. 1926) ("The Legislature can do no more than give [an inferior court] a concurrent jurisdiction, for it cannot divest jurisdiction already vested . . . .").

- The legislature may not defeat the general jurisdiction of the superior court. An inferior court's jurisdiction is less than its superior counterpart. See, e.g., Cockrell v. City of Southhaven, 730 So. 2d 1119, 1123 (Miss. 1998) ("[T]he Special Court of Eminent Domain, in which this case originated, is a special court sitting only to hear matters of eminent domain."); 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.").

- The legislature must provide either some measure of supervision and control by the constitutional court whose jurisdiction is of the same character or a direct appeal to the Supreme Court. See Drummond v. State, 185 So. 207, 211 (Miss. 1938) (Smith, J. concurring) (setting forth criteria for determining whether a court is an inferior court).

Another aspect of the State's plenary power is that of parens patriae to ensure the protection and welfare of its citizens and the best interests of children and others subject to a disability or infirmity. See, e.g., Bryant v. Brown, 118 So. 184, 188 (Miss. 1928) ("[T]he state, as parens patriae of all children, may assert its power and apply the curative, so as to prevent injury to the child and to society by the negligent and wrongful conduct of the parents in failing to exercise the proper control and restraint over the children in its tendencies.").

With these considerations in mind, the legislature was clearly acting within its plenary power in establishing youth courts:

> [T]he Youth Court Act is soundly based upon the police power of the State and its vital interest as parents patriae of children. And there is an additional reason why the act is valid. It grants the powers therein delegated to a constitutional court, under the instant facts, and that court has an inherent as well as an express constitutional jurisdiction over and interest in minors.

Wheeler v. Shoemake, 57 So. 2d 267, 285 (Miss. 1952).

And, likewise, in establishing which courts may hear termination of parental rights cases:

> There can be no doubt, under the doctrine of parens patriae, that the State has the sovereign power of guardianship over persons under disability, and it alone has the right and power to determine the recipient of the privilege to adopt one of its wards. To insure the best interest of a child, the power of the State transcends the rights of natural parents; and if they are unfit to have the custody, their children may be taken from them.

Eggleston v. Landrum, 50 So. 2d 364, 366 (Miss. 1951); see also Natural Father v. United Methodist Children's Home, 418 So. 2d 807, 809 (Miss. 1982) ("There is no doubt that a state legislature has the power to enact laws governing the termination of parental rights.").

And, likewise too, in granting chancery court exclusive jurisdiction to hear adoption cases:

> Adoption was not known to common law; it is a creature of statute; and no person is entitled to adopt another as of right. . . . Because of the considerable power the State has over children, based on its position as parens patriae, the wisdom and judgment of the legislature in providing for procedure in adoption cases should not be questioned unless manifestly unreasonable or clearly unconstitutional.

Brunt v. Watkins, 101 So. 2d 852, 856 (Miss. 1958).

But, whenever operating as a forum for administering parens patriae, the particular court with proper jurisdiction must comply with the statutory mandates and court rules.

- In youth court proceedings, that means following the "Mississippi Youth Court Law" and the Uniform Rules of Youth Court Practice.

- In termination of parental rights proceedings, that means following the "Termination of Rights of Unfit Parents Law" set forth in sections 9315101 through 93-15-111 of the Mississippi Code and any applicable court rules.

- In adoption proceedings, that means following Title 93, Chapter 17 of the Mississippi Code and any applicable court rules.

Also, with respect to youth court proceedings, it should be noted that the court's responsibility encompasses far more than simply providing for custodial arrangements:

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

Miss. Code Ann. § 4321103; see also U.R.Y.C.P. 3(c) ("These rules shall be interpreted and applied in keeping with the philosophy expressed in section 4321103 of the Mississippi Code.").

All of the proceedings, though, are about finding and securing a safe and permanent home for children within due process of law. Administering court procedures on this basis positively reflects on the principle of constitutional construction and the separation of powers doctrine:

> [T]he fundamental purpose in construing a constitutional provision is to ascertain and give effect to the intent of those who adopted it, to constantly keep in mind the object desired to be accomplished and the evils sought to be prevented or remedied . . . This principle of construction remains true even in matters of grants of power, a feature upon which there is some more of strictness.

Moore v. General Motors Acceptance Corporation, 125 So. 411, 41213 (Miss. 1930).