

FIRST CHANCERY COURT DISTRICT OF MISSISSIPPI

DISCOVERY OF YOUTH COURT RECORDS

A GUIDE TO ASSIST PRACTITIONERS IN
OBTAINING YOUTH COURT RECORDS FOR
CONSIDERATION IN CHANCERY MATTERS

POST OFFICE BOX 7395
TUPELO, MS 38802
(662) 432-2130

DISCOVERY OF YOUTH COURT RECORDS

INSTRUCTIONS FOR PRACTITIONERS

The following procedure should be followed for the discovery and disclosure of records involving a child when litigation is pending in Chancery Court.

Miss. Uniform Rules of Youth Court Practice Rule 6 sets forth the procedure to be followed when records are sought for use in a court other than a youth court, to-wit:

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

Miss. Uniform Rules of Youth Court Practice Rule 6(a). Further, this rule specifically authorizes the youth court to require a hearing to “determine whether the court or parties have a legitimate interest to be allowed access to the confidential files” and in making such determination, the youth court is required to consider “the nature of the proceedings, the welfare and safety of the public, and the interest of the child.” Miss. Uniform Rules of Youth Court Practice Rule 6(b).

Based upon this procedure outlined in Rule 6, the Chancery Court has prepared the following uniform forms for use when seeking the disclosure of protected records relating to minor children for use in a matter pending within the First Chancery Court District, with approval from the respective Youth Court Referees and Judges within our District. Please modify as needed, but ensure that you follow the procedure as set forth in Rule 6 of the Miss. Uniform Rules of Youth Court Practice when seeking the disclosure of records.

DISCOVERY OF YOUTH COURT RECORDS

FORMS

IN THE CHANCERY COURT OF _____ COUNTY, MISSISSIPPI

PETITIONER(S)

VS.

CAUSE NO. _____

RESPONDENT(S)

APPLICATION FOR ISSUANCE OF SUBPOENA DUCES TECUM

COMES NOW before the Court _____, the Petitioner(s)/Respondent(s)/Guardian ad Litem in the above-styled action, and files this, his/her/their Application for Issuance of Subpoena Duces Tecum seeking the disclosure of certain records pertaining to the minor child/children at issue herein, and in support thereof the Applicant would show unto the Court the following:

- 1. That the minor child/children at issue to whom the subpoena duces tecum applies are/is as follows:

NAME

DATE OF BIRTH

- 2. That the records sought for the child/children named above are as follows:

- A. **Youth Court records** as defined in section 43-21-251 of Mississippi's Youth Court Law and including but not limited to any and all pleadings, orders, summonses, exhibits, physical evidence, witness lists, court and deposition transcripts, dockets, notices, papers,, social records (including but not limited to social summaries, medical examination reports, and mental health examination reports) and Guardian *ad Litem* reports;
 - B. **Forensic interviews** conducted by a child advocacy center during any abuse or neglect investigation;
 - C. **Law enforcement records** as defined in section 43-21-255 of Mississippi's Youth Court Law and including but not limited to any and all police reports, booking sheets, photographs, affidavits, grand jury indictments, audio and/or video records, physical evidence, medical records, oral and written statements, witness lists and forensic interviews;
 - D. **Agency records** as defined in section 43-21-257 of Mississippi's Youth Court Law and including but not limited to Department of Child Protection Services files; and
 - E. All other documents maintained by any representative of the state, county, municipality, or other public agency insofar as they relate to the custody, adjudication, or disposition of a child who is the subject of a youth court cause or a Mississippi Department of Child Protection Services investigation.
3. That the Applicant further requests that the Court authorize a command to appear at trial or hearing to the Mississippi Department of Child Protection Services, authorizing their Family Protection Specialist, Supervisor, employee, or agent to appear and offer testimony regarding the agency's records relevant to the minor child at issue.

4. That said records are relevant to the issues pending before this Court and that disclosure of said records would be in the best interest of the minor **child/children** and in furtherance of the litigation pending herein.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that this Court would direct the issuance of a subpoena *duces tecum* directing the disclosure of certain records as set forth above, said records to be delivered to the Court under seal for an *in camera* inspection in accordance with the procedures set forth in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), to determine which, if any, records should be disclosed. Further, Applicant would request that this Court authorize the inclusion within said subpoena *duces tecum* of a command to the Mississippi Department of Child Protection Services, authorizing their Family Protection Specialist, Supervisor, employee, or agent to appear and offer testimony regarding the agency's records relevant to the minor child at issue.

SO REQUESTED, this the ____ day of _____, 20____.

**APPLICANT/APPLICANT'S
COUNSEL**

CERTIFICATE OF SERVICE

I, _____, as **Guardian ad Litem** or **counsel for the Petitioner(s)/Respondent(s)** herein, do hereby certify that I have this day forwarded a true and correct copy of the *Application for Issuance of Subpoena Duces Tecum* filed on the ___ day of _____, 20___ by **United States Postal Service (postage prepaid)/electronic mail/facsimile**, to the following:

[Insert name(s) and contact information of all other attorneys of record in the matter, as well as the Chancellor to whom the matter is assigned.]

SO CERTIFIED, this the day of _____, 20___.

APPLICANT'S COUNSEL

IN THE CHANCERY COURT OF _____ COUNTY, MISSISSIPPI

_____ PETITIONER(S)

VS. CAUSE NO. _____

_____ RESPONDENT(S)

SUBPOENA DUCES TECUM

STATE OF MISSISSIPPI
COUNTY OF _____

TO: Youth Court of _____ County, Mississippi
ATTN:
AT: _____

YOU ARE HEREBY SUMMONED AND COMMANDED to provide the following documents within ten (10) days of your receipt of this Subpoena *Duces Tecum*:

- 1. Documents identified herein pertaining to the following **minor child/children** at issue:

NAME	DATE OF BIRTH
_____	_____
_____	_____
_____	_____
_____	_____

- 2. Records under your control which are to be produced are as follows:

A. **Youth Court records** as defined in section 43-21-251 of Mississippi's Youth Court Law and including but not limited to any and all pleadings, orders,

summonses, exhibits, physical evidence, witness lists, court and deposition transcripts, dockets, notices, papers,, social records (including but not limited to social summaries, medical examination reports, and mental health examination reports) and Guardian *ad Litem* reports;

- B. Forensic interviews** conducted by a child advocacy center during any abuse or neglect investigation;
- C. Law enforcement records** as defined in section 43-21-255 of Mississippi's Youth Court Law and including but not limited to any and all police reports, booking sheets, photographs, affidavits, grand jury indictments, audio and/or video records, physical evidence, medical records, oral and written statements, witness lists and forensic interviews;
- D. Agency records** as defined in section 43-21-257 of Mississippi's Youth Court Law and including but not limited to Department of Child Protection Services files; and
- E. All other documents** maintained by any representative of the state, county, municipality, or other public agency insofar as they relate to the custody, adjudication, or disposition of a child who is the subject of a youth court cause or a Mississippi Department of Child Protection Services investigation and which may be maintained in the records of the entity to whom this command is issued.

Said records shall be disclosed to the undersigned Chancellor for an in camera inspection in accordance with the procedures set forth in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987) and delivered in person to 200 West Jefferson Street, Tupelo, Mississippi 38804 or delivered via United States Postal Service, postage prepaid, the address of Post Office Box 7395, Tupelo, Mississippi 38802.

Further, you are hereby directed to authorize the Mississippi Department of Child Protection Services, their Family Protection Specialist, Supervisor, Employee, or Agent assigned to this matter to appear and offer testimony regarding the agency's records relevant to the minor child at issue upon the matter being called for hearing before this Court.

HAVE YOU THEN AND HERE this writ, and fail not under penalty of law.

SO ISSUED, this the ____ day of _____, 20____.

CHANCELLOR

IN THE YOUTH COURT OF _____ COUNTY, MISSISSIPPI

IN RE: THE INTEREST OF:

_____,
A MINOR
DATE OF BIRTH _____

CAUSE NO. _____

**ORDER PERMITTING LIMITED DISCLOSURE
OF RECORDS INVOLVING A CHILD**

ON THIS DAY, this cause came on to be heard upon the request for disclosure of certain records pertaining to the minor child named hereinabove, and this Court having heard and considered the same, does hereby find that this Court has authority under Mississippi Code Annotated § 42-21-261(1) to order a limited disclosure of the child's records to the recipient who is and shall be:

- ___ A. The judge of another youth court or member of another youth court staff;
- ___ B. The court of the parties in a child custody or adoption cause in another court;
- ___ C. A judge of any other court or members of another court staff;
- ___ D. D. A representative of a public or private agency providing supervision or having custody of the child under order of the youth court;
- ___ E. A person engaged in a bona fide research purpose;
- ___ F. A duly authorized representative of the Mississippi Department of Employment Security for the purpose of a child's enrollment into the Job Corps Training Program as authorized by Title IV of the Comprehensive Employment Training Act of 1973 (29 USCS §923 et seq.);
- ___ G. A person for which there are compelling circumstances affecting the health or safety of the child and that such disclosure is in the best interest of the child, to wit: _____;
- ___ H. A person who was subject of a knowingly made false allegation of child abuse or neglect which has resulted in a conviction of a perpetrator in accordance with Section 97-35-47 or which allegation was referred by CPS to a prosecutor or law enforcement official in accordance with the provision of Section 43-21-353(4) and that disclosure of such records is required for the best interest of the child,

the public safety and/or the functioning of the youth court; or to identify a person who knowingly made a false allegation of child abuse or neglect.

THEREFORE, IT IS HEREBY ORDERED that the records involving the minor child named in the above styled cause be disclosed only as specified below:

1. The person or agency to whom the records shall be disclosed is:

2. The extent of the records which shall be disclosed is:

A. Youth Court records as defined in Section 43-21-251 of Mississippi's Youth Court

Law: Any and all pleadings, orders, summonses, exhibits, physical evidence, witness lists, court and deposition transcripts, dockets, notices and Guardian ad Litem reports;

B. Agency records as defined in Section 43-21-257 of Mississippi's Youth Court Law:

Department of Child Protection Services files, Guardian ad litem files, medical records and reports, psychiatric records and reports;

C. Law enforcement records as defined in Section 43-21-255 of Mississippi's Youth

Court Law: Any and all police reports, booking sheets, photographs, affidavits, grand jury indictments, audio and/or video records, physical evidence, medical records, oral and written statements, witness lists and forensic interviews; and

D. All other documents maintained by any representative of the state, county, municipality, or other public agency insofar as they relate to the custody, adjudication, or disposition of a child who is the subject of a youth court cause or a Mississippi Department of Child Protection Services investigation.

E. All other documents maintained by any representative of the state, county, municipality, or other public agency insofar as they relate to the custody, adjudication, or disposition of a child who is the subject of a youth court cause or a Mississippi Department of Child Protection Services investigation and which may be maintained in the records of the entity to whom this command is issued.

3. The purpose of the disclosure is:

IT IS FURTHER ORDERED that pursuant to Mississippi Code Annotated § 42-21-261(2), any records which are disclosed under this order and the contents thereof shall be kept confidential by the person or entity to whom the records are disclosed except as provided in this order. Any further disclosure of any record involving the Child shall be made only under and by order of this Court or a Court receiving the records pursuant to the instant Order.

IT IS FURTHER ORDERED that the Family Protection Specialist(s), Supervisor(s), Employee(s), or Agent(s) of the Mississippi Department of Human Services who have knowledge or prior involvement in matters pertaining to the minor child identified above shall be authorized to appear and offer testimony regarding the agency's records relevant to the minor child at issue upon the matter being called for hearing before the Chancery Court issuing a Subpoena Duces Tecum for the records being disclosed hereunder.

ALL SO ORDERED, this the ____ day of _____, 20____.

YOUTH COURT JUDGE/REFEREE

COUNTY

IN THE CHANCERY COURT OF _____ COUNTY, MISSISSIPPI

PETITIONER(S)

VS.

CAUSE NO. _____

RESPONDENT(S)

ORDER FOR DISCLOSURE OF RECORDS

CAME BEFORE THE COURT on the Court's own motion for disclosure of certain Youth Court records received by the Court from the _____ County Youth Court / _____ Department of Child Protection Services pertaining to the minor child, _____ (date of birth _____), and the Court, finding that it is necessary that the records be reviewed by counsel for the parties during the course of the instant litigation, does hereby **FIND, ORDER, ADJUDGE, AND DECREE** as follows:

- A. That pursuant to a Subpoena Duces Tecum issued _____, this Court received copies of all records relevant to the minor child, _____ (date of birth _____), as maintained by the _____ County Youth Court / _____ Department of Child Protection Services.
- B. That said records have been reviewed by the Court in accordance with the procedures set forth in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), and having reviewed said records, the Court does find that disclosure of said records would be in the best interest of the minor child named herein, in furtherance of the litigation.

- C. That, upon their appearing and requesting same, said records shall be disclosed to the attorneys of record for the parties hereto. That each attorney of record shall have the right to inspect, review, and copy the records received by the Court.
- D. That each attorney receiving a copy of the aforementioned records shall maintain these records under his or her control as strictly confidential.
- E. That each attorney may review the records with the party who is his or her respective client, but shall not provide copies to said client unless otherwise ordered by this Court.
- F. Any further disclosure of any record being disclosed involving the child named herein shall be made only under and by order of this Court.

ALL SO ORDERED, ADJUDGED, AND DECREED, this the ____ day of _____, 20__.

CHANCELLOR

DISCOVERY OF YOUTH COURT RECORDS

RELEVANT LAW AND RULES

West's Annotated Mississippi Code
Mississippi Rules of Court State
Uniform Rules of Youth Court Practice

Rules of Youth Ct. Practice, Rule 5

Rule 5. Confidentiality of Records and Proceedings

Currentness

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

(1) Confidential records. Records involving children, as defined under section 43-21-105 of the Mississippi Code, shall not be disclosed except as authorized by Mississippi's Youth Court Law and these rules.

(2) Disclosure of records involving children by court order. The court may order the disclosure of records involving children pursuant to section 43-21-261 (1) of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of section 43-21-261(2) of the Mississippi Code. The procedures set forth in Rule 6 of these rules must be followed whenever any court other than youth court issues a subpoena duces tecum for records involving children.

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

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

(b) Child protection proceedings.

(1) Confidential records. Records involving children, as defined under section 43-21-105 of the Mississippi Code, shall not be disclosed except as authorized by Mississippi's Youth Court Law and these rules.

(2) Disclosure of records involving children by court order. The court may order the disclosure of records involving children pursuant to section 43-21-261(1) of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of section 43-21-261(2) of the Mississippi Code. The procedures set forth in Rule 6 of these rules must be followed whenever any court other than youth court issues a subpoena duces tecum for records involving children.

Rule 5. Confidentiality of Records and Proceedings, MS R YCP Rule 5

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

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

Credits

[Adopted effective January 8, 2009. Amended effective July 17, 2012.]

Editors' Notes

COMMENTS & PROCEDURES

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

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

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

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

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

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

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

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

Rules of Youth Ct. Practice, Rule 5, MS R YCP Rule 5

Rule 5. Confidentiality of Records and Proceedings, MS R YCP Rule 5

Current with amendments received through October 1, 2019

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

West's Annotated Mississippi Code
Mississippi Rules of Court State
Uniform Rules of Youth Court Practice

Rules of Youth Ct. Practice, Rule 6

Rule 6. Subpoena Duces Tecum

Currentness

(a) Procedures for issuing a subpoena duces tecum. No subpoena duces tecum for records involving children, as such records are defined under section 43-21-105 of the Mississippi Code, shall issue from any court other than youth court except upon compliance with the following procedures:

(1) the party shall make an application to the court specifying which records are sought;

(2) the court shall issue a subpoena duces tecum to the youth court for these records;

(3) the youth court, unless a hearing is conducted pursuant to Rule 6(b) of these rules, shall transfer copies of the records to the court;

(4) the court shall conduct an in camera inspection of the records, in accordance with the procedures set forth in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), to determine which records should be disclosed to the party;

(5) the court shall, at all times, protect the confidentiality of the records to the extent required of the youth court under Mississippi's Youth Court Law.

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

Credits

[Adopted effective January 8, 2009. Amended effective July 17, 2012.]

Editors' Notes

COMMENTS & PROCEDURES

Rule 6.

The child's right of confidentiality of youth records is a qualified privilege, not an absolute one. See Daniels v. Wal-Mart Stores, Inc., 634 So. 2d 88, 93 (Miss. 1993). Mississippi has adopted the procedures advanced in Ritchie when there is a request originating in trial court proceedings for disclosure of confidential youth court records. See In re J.E., 726 So. 2d 547, 553

Rule 6. Subpoena Duces Tecum, MS R YCP Rule 6

(Miss. 1998). These procedures require the trial judge to: (1) conduct an in camera review of the requested records and (2) release any information contained therein material to the fairness of the trial. Such is an ongoing duty. See Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987).

Rules of Youth Ct. Practice, Rule 6, MS R YCP Rule 6
Current with amendments received through October 1, 2019

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

West's Annotated Mississippi Code
Mississippi Rules of Court State
Mississippi Rules of Civil Procedure
Chapter VI. Trials

M.R.C.P. Rule 45

Rule 45. Subpoena

Currentness

(a) Form; Issuance.

(1) Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony, or to produce and permit inspection and copying of designated books, documents, electronically stored information, or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified. The clerk shall issue a subpoena signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service. A command to produce or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(2) Subpoenas for attendance at a trial or hearing, for attendance at a deposition, and for production or inspection shall issue from the court in which the action is pending.

(3) In the case of discovery to be taken in foreign litigation, the subpoena shall be issued by a clerk of a court for the county in which the discovery is to be taken. The foreign subpoena shall be submitted to the clerk of court in the county in which discovery is sought to be conducted in this state. When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed. The subpoena under subsection (3) must incorporate the terms used in the foreign subpoena and it must contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and any party not represented by counsel. A subpoena issued by a clerk of court under subsection (3) must otherwise be issued and served in compliance with the rules of this state. An application to the court for a protective order or to enforce, quash or modify a subpoena issued by a clerk of court under subsection (3) must comply with the rules of this state and be submitted to the issuing court in the county in which discovery is to be conducted.

(b) Place of Examination. A resident of the State of Mississippi may be required to attend a deposition, production or inspection only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of the court. A non-resident of this state subpoenaed within this state may be required to attend only in the county wherein he is served, or at such other convenient place as is fixed by an order of the court.

(c) Service.

Rule 45. Subpoena, MS R RCP Rule 45

(1) A subpoena may be served by a sheriff, or by his deputy, or by any other person who is not a party and is not less than 18 years of age, and his return endorsed thereon shall be prima facie proof of service, or the person served may acknowledge service in writing on the subpoena. Service of the subpoena shall be executed upon the witness personally. Except when excused by the court upon a showing of indigence, the party causing the subpoena to issue shall tender to a non-party witness at the time of service the fee for one day's attendance plus mileage allowed by law. When the subpoena is issued on behalf of the State of Mississippi or an officer or agency thereof, fees and mileage need not be tendered in advance.

(2) Proof of service shall be made by filing with the clerk of the court from which the subpoena was issued a statement, certified by the person who made the service, setting forth the date and manner of service, the county in which it was served, the names of the persons served, and the name, address and telephone number of the person making the service.

(d) Protection of Persons Subject to Subpoenas.

(1) In General.

(A) On timely motion, the court from which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time for compliance; (ii) requires disclosure of privileged or other protected matter and no exception or waiver applies, (iii) designates an improper place for examination, or (iv) subjects a person to undue burden or expense.

(B) If a subpoena (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may order appearance or production only upon specified conditions.

(2) Subpoenas for Production or Inspection.

(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents, electronically stored information, or tangible things, or to permit inspection of premises need not appear in person at the place of production or inspection unless commanded by the subpoena to appear for deposition, hearing or trial. Unless for good cause shown the court shortens the time, a subpoena for production or inspection shall allow not less than ten days for the person upon whom it is served to comply with the subpoena. A copy of all such subpoenas shall be served immediately upon each party in accordance with Rule 5. A subpoena commanding production or inspection will be subject to the provisions of Rule 26(d).

(B) The person to whom the subpoena is directed may, within ten days after the service thereof or on or before the time specified in the subpoena for compliance, if such time is less than ten days after service, serve upon the party serving the subpoena written objection to inspection or copying of any or all of the designated materials, or to inspection of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the material except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move at any time upon notice to the person served for an order to compel the production or inspection.

(C) The court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (i) quash or modify the subpoena if it is unreasonable or oppressive, or (ii) condition the denial of the motion upon the advance by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(e) Duties in Responding to Subpoena.

(1) Producing Documents or Electronically Stored Information.

(A) Documents.

A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified.

If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form.

The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information.

The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery, motion for a protective order, or motion to quash, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(5). The court may specify conditions for the discovery, including those listed in Rule 26(b)(5).

(2) Claiming Privilege or Protection

(A) Information Withheld.

When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) Information Produced.

If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) Sanctions. On motion of a party or of the person upon whom a subpoena for the production of books, papers, documents, electronically stored information, or tangible things is served and upon a showing that the subpoena power is being exercised in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the party or the person upon whom the subpoena is served, the court in which the action is pending shall order that the subpoena be quashed and may enter such further orders as justice may require to curb abuses of the powers granted under this rule. To this end, the court may impose an appropriate sanction.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

Credits

[Amended effective March 13, 1991; July 1, 1997; July 1, 1998; amended effective July 1, 2009 to provide a procedure for foreign subpoenas; amended effective July 1, 2013 to authorize a subpoena for electronically stored information.]

Editors' Notes

ADVISORY COMMITTEE HISTORICAL NOTE

Effective March 13, 1991, Rule 45(c) was amended to require the party causing a subpoena to issue to tender to a non-party witness the fee for one day's attendance plus mileage allowed by law. Rule 45(e) was amended by deleting the provision for tendering the fee for one day's attendance plus the mileage allowed by law to certain witnesses when subpoenaed. Rule 45(d) was amended to provide that when a deposition is to be taken on foreign litigation the subpoena shall be issued by the clerk for the county in which the deposition is to be taken. 574-576 So. 2d XXIV-XXV (West Miss. Cas. 1991).

Effective July 1, 1997 a new Rule 45 was adopted.

Effective July 1, 2013, Rule 45 was amended to specifically authorize a subpoena to command the person to whom it is directed to produce and permit inspection and copying of electronically stored information. The same amendment also established a procedure to be used when privileged or trial-preparation material is inadvertently disclosed.

ADVISORY COMMITTEE NOTES

A "foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction. "Foreign jurisdiction" means a state other than this state. Litigants in a foreign jurisdiction who desire to obtain a subpoena to depose a Mississippi resident, to obtain records within Mississippi, or to inspect premises within Mississippi should follow the procedure established in Mississippi Code Annotated section 11-59-1 et. seq. See the exclusion in M.R.A.P. 46(b)(11)(i) for Admission of Foreign Attorneys Pro Hac Vice.

Rule 45(c)(1) regarding advance payment to non-parties of statutory witness fees and mileage is complementary to Mississippi Code Annotated §§ 25-7-47 through 25-7-59 (1972).

Rule 45. Subpoena, MS R RCP Rule 45

Rule 45(d)(2) is intended to ensure that there be no confusion as to whether a person not a party in control, custody, or possession of discoverable evidence may be compelled to produce such evidence without being sworn as a witness and deposed. The force of a subpoena for production of documentary evidence generally reaches all documents under the control of the person ordered to produce, saving questions of privilege or unreasonableness.

[Advisory Committee Note adopted effective July 1, 2014.]

Notes of Decisions (9)

Rules Civ. Proc., Rule 45, MS R RCP Rule 45
Current with amendments received through October 1, 2019

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

West's Annotated Mississippi Code
Title 43. Public Welfare
Chapter 21. Youth Court (Refs & Annos)
Records

Miss. Code Ann. § 43-21-251

§ 43-21-251. Contents of court records; confidentiality; computer storage

Currentness

(1) The court records of the youth court shall include:

(a) A general docket in which the clerk of the youth court shall enter the names of the parties in each cause, the date of filing the petition, any other pleadings, all other papers in the cause, issuance and return of process, and a reference by the minute book and page to all orders made therein. The general docket shall be duly indexed in the alphabetical order of the names of the parties.

(b) All the papers and pleadings filed in a cause. The papers in every cause shall be marked with the style and number of the cause and the date when filed. All the papers filed in a cause shall be kept in the same file, and all the files shall be kept in numerical order.

(c) All social records of a youth court, which shall include all intake records, social summaries, medical examinations, mental health examinations, transfer studies and all other information obtained and prepared in the discharge of official duty for the youth court.

(i) A "social summary" is an investigation of the personal and family history and the environment of a child who is the subject of a youth court cause. The social summary should describe all reasonable appropriate alternative dispositions. The social summary should contain a specific plan for the care and assistance to the child with a detailed explanation showing the necessity for the proposed plan of disposition.

(ii) A "medical examination" is an examination by a physician of a child who is the subject of a youth court cause or of his parent. The youth court may order a medical examination at any time after the intake unit has received a written complaint. Whenever possible, a medical examination shall be conducted on an outpatient basis. A medical examination of a parent of the child who is the subject of the cause shall not be ordered unless the physical or mental ability of the parent to care for the child is a relevant issue in the particular cause and the parent to be examined consents to the examination.

(iii) A "mental health examination" is an examination by a psychiatrist or psychologist of a child who is the subject of a youth court cause or of his parent. The youth court may order a mental health examination at any time after the intake unit has received a written complaint. Whenever possible, a mental health examination shall be conducted on an outpatient basis. A mental health examination of a parent of the child who is the subject of a cause shall not be ordered unless the physical or mental ability of the parent to care for the child is a relevant issue in the particular cause and the parent to be examined consents to the examination.

(iv) A “transfer study” is a social summary which addresses the factors set forth in Section 43-21-157(5). A transfer study shall not be admissible evidence nor shall it be considered by the court at any adjudicatory hearing. It shall be admissible evidence at a transfer or disposition hearing.

(d) A minute book in which the clerk shall record all the orders of the youth court.

(e) Proceedings of the youth court and evidence.

(f) All information obtained by the youth court from the Administrative Office of Courts pursuant to a request under Section 43-21-261(15).

(2) The records of the youth court and the contents thereof shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

(3) The court records of the youth court may be kept on computer in the manner provided for storing circuit court records and dockets as provided in Section 9-7-171. The Administrative Office of Courts shall recommend to the youth courts a uniform format to maintain the records of such courts.

Credits

Laws 1979, Ch. 506, § 23; Laws 1994, Ch. 458, § 9; Laws 1997, Ch. 440, § 6, eff. July 1, 1997. Amended by Laws 2014, Ch. 375 (H.B. No. 593), § 1, eff. July 1, 2014.

Notes of Decisions (9)

Miss. Code Ann. § 43-21-251, MS ST § 43-21-251

The Statutes and Constitution are current through the 2019 Regular Session.

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

West's Annotated Mississippi Code
Title 43. Public Welfare
Chapter 21. Youth Court (Refs & Annos)
Records

Miss. Code Ann. § 43-21-261

§ 43-21-261. Disclosure of records in general

Effective: July 1, 2019

Currentness

(1) Except as otherwise provided in this section, records involving children shall not be disclosed, other than to necessary staff or officials of the youth court, a guardian ad litem appointed to a child by the court, or a Court-Appointed Special Advocate (CASA) volunteer who may be assigned in an abuse and neglect case, except pursuant to an order of the youth court specifying the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Such court orders for disclosure shall be limited to those instances in which the youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety, the functioning of the youth court, or to identify a person who knowingly made a false allegation of child abuse or neglect, and then only to the following persons:

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

(h) A person who was the subject of a knowingly made false allegation of child abuse or neglect which has resulted in a conviction of a perpetrator in accordance with Section 97-35-47 or which allegation was referred by the Department of Child Protection Services to a prosecutor or law enforcement official in accordance with the provisions of Section 43-21-353(4).

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

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

(3) Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to inspect any record, report or investigation relevant to a matter to be heard by a youth court, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person. The attorney for the parent, guardian or custodian of the child, upon request, shall be provided a copy of any record, report or investigation relevant to a matter to be heard by a youth court, but the identity of the reporter must be redacted and the name of any other person must also be redacted if the person or agency making the information available finds that disclosure of the information would be likely to endanger the life, safety or well-being of the person. A record provided to the attorney under this section must remain in the attorney's control and the attorney may not provide copies or access to another person or entity without prior consent of a court with appropriate jurisdiction.

(4) Upon request, the child who is the subject of a youth court cause shall have the right to have his counsel inspect and copy any record, report or investigation which is filed with the youth court or which is to be considered by the youth court at a hearing.

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

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

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

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

(6) Information concerning an investigation into a report of child abuse or child neglect may be disclosed by the Department of Child Protection Services without order of the youth court to any attorney, physician, dentist, intern, resident, nurse,

psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, or a public or private school employee making that report pursuant to Section 43-21-353(1) if the reporter has a continuing professional relationship with the child and a need for such information in order to protect or treat the child.

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

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

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

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

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

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

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

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

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

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

(17) The youth courts of the state shall disclose to the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose. The disclosure prescribed in this subsection shall not require a court order and shall be made in sortable, electronic format where possible. The PEER Committee may seek the assistance of the Administrative Office of Courts in seeking this information. The PEER Committee shall not disclose the identities of any youth who have been adjudicated in the youth courts of the state and shall only use the disclosed information for the purpose of monitoring the effectiveness and efficiency of programs established to assist adjudicated youth, and to ascertain the incidence of adjudicated youth who become adult offenders.

(18) In every case where an abuse or neglect allegation has been made, the confidentiality provisions of this section shall not apply to prohibit access to a child's records by any state regulatory agency, any state or local prosecutorial agency or law enforcement agency; however, no identifying information concerning the child in question may be released to the public by such agency except as otherwise provided herein.

(19) In every case of child abuse or neglect, if a child's physical condition is medically labeled as medically "serious" or "critical" or a child dies, the confidentiality provisions of this section shall not apply. In such cases, the following information may be released by the Mississippi Department of Child Protection Services: the cause of the circumstances regarding the fatality or medically serious or critical physical condition; the age and gender of the child; information describing any previous reports of child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or medically serious or critical physical condition; the result of any such investigations; and the services provided by and actions of the state on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or medically serious or critical physical condition.

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

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

(22) The Department of Child Protection Services may disclose records involving children to the following:

(a) A foster home, residential child-caring agency or child-placing agency to the extent necessary to provide such care and services to a child;

(b) An individual, agency or organization that provides services to a child or the child's family in furtherance of the child's permanency plan to the extent necessary in providing those services;

• **§ 43-21-261. Disclosure of records in general, MS ST § 43-21-261**

(c) Health and mental health care providers of a child to the extent necessary for the provider to properly treat and care for the child;

(d) An educational institution or educational services provider where the child is enrolled or where enrollment is anticipated to the extent necessary for the school to provide appropriate services to the child; and

(e) Any other state agency if the disclosure is necessary to the department in fulfilling its statutory responsibilities in protecting the best interests of the child.

Credits

Laws 1979, Ch. 506, § 28; Laws 1980, Ch. 550, § 4; Laws 1986, Ch. 422, § 1; Laws 1988, Ch. 459, § 1; Laws 1989, Ch. 433, § 1; Laws 1991, Ch. 468, § 6; Laws 1994, Ch. 591, § 2; Laws 1994, Ch. 595, § 5; Laws 1995, Ch. 547, § 3; Laws 1997, Ch. 440, § 8; Laws 1998, Ch. 447, § 1; Laws 1998, Ch. 516, § 19, eff. July 1, 1998; Laws 2000, Ch. 436, § 2, eff. July 1, 2000; Laws 2000, Ch. 499, § 23, eff. July 1, 2000; Laws 2001, Ch. 360, § 1, eff. July 1, 2001; Laws 2001, Ch. 393, § 12, eff. July 1, 2001; Laws 2004, Ch. 489, § 2, eff. July 1, 2004; Laws 2006, Ch. 600, § 3, eff. July 1, 2006; Laws 2007, Ch. 478, § 1, eff. July 1, 2007; Laws 2007, Ch. 587, § 11, eff. July 1, 2007. Amended by Laws 2010, Ch. 349, § 1, eff. July 1, 2010; Laws 2013, Ch. 531 (S.B. 2388), § 1, eff. July 1, 2013; Laws 2014, Ch. 375 (H.B. 593), § 2, eff. July 1, 2014; Laws 2017, Ch. 420 (H.B. 1213), § 2, eff. July 1, 2017; Laws 2019, Ch. 473 (S.B. 2576), § 3, eff. July 1, 2019; Laws 2019, Ch. 464 (S.B. 2840), § 2, eff. July 1, 2019.

Notes of Decisions (33)

Miss. Code Ann. § 43-21-261, MS ST § 43-21-261

The Statutes and Constitution are current through the 2019 Regular Session.

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.