



Paying the Price: Restitution in Youth Court



What is restitution?

- Compensating for actual damages or compensatory damages.
 - The point is to make the victim whole
 - Cover the cost to replace or repair the damaged property.
 - It is not to punish, but to make the victim whole.

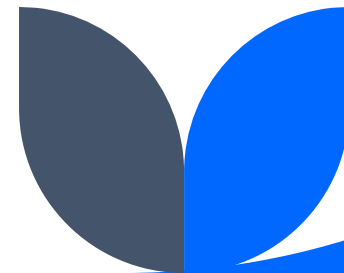
§ 43-21-605(e) Disposition Alternatives in Delinquent cases

Order terms of supervision which may include participation in a constructive program of service or education or civil fines not in excess of five hundred dollars (\$500), or *restitution not in excess of actual damages caused by the child to be paid out of his own assets or by performance of services acceptable to the victims and approved by the youth court and reasonably capable of being performed within one (1) year.*



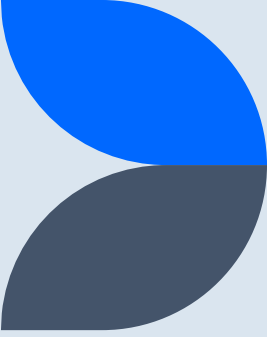
§ 43-21-615(2) Cost of conveying and treatment

Whenever a child is adjudicated delinquent and committed by the youth court to the custody of any person or agency other than the custody of a state training school, the youth court, after giving the responsible parent or guardian a reasonable opportunity to be heard, may order that the parent or guardian pay, upon such terms or conditions as the youth court may direct, such sum or sums as will cover, in whole or in part, the support of the child including any necessary medical treatment.



§ 43-21-615(2) cont.

The parent shall be provided an itemized bill of all costs and shall be given an opportunity to request an adjustment of the costs. If the parent or guardian shall willfully fail or refuse to pay such sum, he may be proceeded against for contempt of court as provided in this chapter.



J.P. v. State, 151 So. 3d 204 (Miss. 2014)



2011, J.P. was arrested for Marijuana

- Required to wear an ankle monitor as a condition of his release
- Was brought back to youth court.
- Held for five (5) days, **although no contempt petition was filed**
- ***Ordered to pay \$550 for detention and \$100 transportation cost***

2012, he was arrested for Marijuana and handgun possession.

- Held for four (4) days until his detention hearing, then held until his adjudication hearing.
- **Prosecution fails to file a petition within five (5) days** as required under § 43-21-451.
- **Parents ordered to pay \$55 per day while in detention.**



***J.P. v. State*, 151 So. 3d 204 (Miss. 2014) cont.**

- The court ordered the parents to pay \$600 monthly to cover the cost of holding J.P. in detention.
- After spending 103 days in detention, he was transferred to Jefferson Davis County Jail upon turning 18.

***J.P. v. State*, 151 So. 3d 204 (Miss. 2014) cont.**

- In October of 2012, he obtained counsel who filed for immediate release
 - Released based on unlawful detention due to constitutional violations of due process and violating several provisions of the Youth Court law.
 - He was finally released afterward.

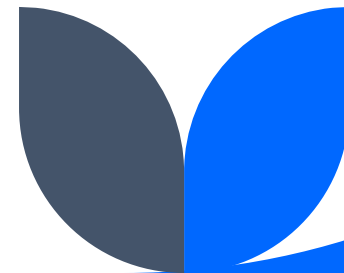
***J.P. v. State*, 151 So. 3d 204 (Miss. 2014) cont.**

- A January 2013 motion to vacate cost was filed
 - The court reduced the amount owed
 - Parents appealed the order assessing \$9,380 against them
 - The father also appealed the \$650 assessed to him from the 2011 detention.
- On appeal, the Mississippi Supreme Court found that J.P.'s parents were not required to bear the cost of his detention because *he was never proven delinquent beyond a reasonable doubt.*

§ 43-21-619(1) Power to order parents to pay child's expenses and restitution or to participate in counseling or family treatment program; orders to constitute civil judgment.

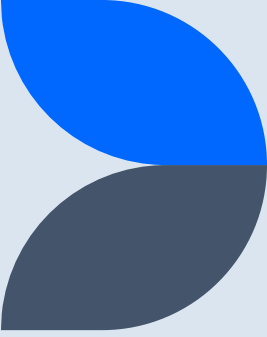
The youth court may order financially able parents to pay for

- court ordered medical and other examinations and treatment of a child
- reasonable attorney's fees and
- court costs
- other expenses found necessary or appropriate in the best interest of the child as determined by the youth court.



§ 43-21-105(aa)

“Financially able” means a parent or child who is ineligible for a court-appointed attorney.



§ 43-21-619(2) Power to order parents to pay child's expenses and restitution or to participate in counseling or family treatment program; orders to constitute civil judgment.

The youth court may order the parents, guardians or custodians who exercise parental custody and control of a child to pay for

- Damages or restitution of a child who has willfully or maliciously caused personal injury or damaged or destroyed property
- Payment is made through the court to the victim
- The payment is of an amount not to exceed the actual loss
- Youth Court has the power to enforce payment



§ 43-21-619(2) cont.

The youth court also may order the parents, guardians or custodians of a child who is under the jurisdiction of the youth court and who willfully or maliciously has caused personal injury or damaged or destroyed property to *participate in a counseling program or other suitable family treatment program for the purpose of preventing future occurrences of malicious destruction of property or personal injury.*

In the Interest of B.D., 720 So. 2d 476 (Miss. 1998)

- B.D. was charged with multiple counts of burglary and larceny
- D.S. was summoned to court as his mother and C.D. as his father.
- The child's stepfather, R.S., was not a party to the petition
- The Youth Court determined B.D. to be delinquent after an adjudication hearing
- Immediately, he was ordered to Columbia Training School in a Disposition hearing.

***In the Interest of B.D.*, 720 So. 2d 476 (Miss. 1998) cont.**

At the restitution hearing, counsel for D.S. and R.S. objected to the parents/custodians being held liable for B.D.'s acts and to the parents/custodians being required to repay insurance companies whose insured filed claims due to B.D.'s acts.

***In the Interest of B.D.*, 720 So. 2d 476 (Miss. 1998) cont.**

- The court entered a judgment of restitution for \$19,782.93, including \$10,964 to St. Paul Ins. Co., against B.D., D.S., and R.S
- The judgment was also entered against another involved minor and her mother
- The order required the minor's parents to pay \$200 per month for each minor.

***In the Interest of B.D.*, 720 So. 2d 476 (Miss. 1998) cont.**

- As an issue of 1st impression on appeal the appellants raised that § 43-21-619 was unconstitutional because
 - It allowed restitution against parents without a showing of fault on their part and
 - Without **due process**

***In the Interest of B.D.*, 720 So. 2d 476 (Miss. 1998) cont.**

- The Mississippi Supreme Court found that the restitution statute is rationally related to a legitimate purpose and is a valid expression of the state's police power
- It is the legislature's judgment that parents, guardians, or custodians of the juvenile at fault should be held financially responsible for their acts

However.....

***In the Interest of B.D.*, 720 So. 2d 476 (Miss. 1998) cont.**

- No evidence was offered at trial that R.S., the step-parent, had control or legal attachment over B.D.
- There was no proof presented to the court of parental control, custody, or adoption of B.D. by R.S.
- The MS Supreme Court noted there is a detailed procedure for determining delinquency but little procedure for determining restitution in delinquent cases.

***In the Interest of B.D.*, 720 So. 2d 476 (Miss. 1998) cont.**

- Appellants argued against paying restitution to the victim's insurer, St. Paul
- Appellants urged the insurance company was not a victim under § 43-21-619.
- The Supreme Court found that an insurance company could be a "victim"; however, it was not made a party to the proceeding, and proof of its loss was not part of the record.

***In the Interest of B.D.*, 720 So. 2d 476 (Miss. 1998) cont.**

- Lastly, the Supreme Court barred, due to it being first raised on appeal, the issue that there was no finding by the youth court of the parents having the financial ability to pay restitution.
- It noted that the legislature clearly intended to allow the youth court to impose restitution on parents and custodians for their minor's malicious or willful acts.
- But it declined to question the wisdom of the legislature delineating restitution from another cost "financially able" parents may have to burden.

§ 43-21-619(3) Power to order parents to pay child's expenses and restitution or to participate in counseling or family treatment program; orders to constitute civil judgment.

- Orders under this section shall constitute a civil judgment and
- May be enrolled on the judgment rolls in the office of the circuit clerk of the county where such order was entered
- It may be enforced in any manner provided by law for civil judgments



§ 99-37-23 Restitution in delinquency cases

Disposition order may include, in addition to any other requirement, restitution not in excess of actual damages caused by the child to be paid out of his assets or by performance of services acceptable to the parties and reasonably capable of performance within one (1) year.





Thank you

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