

By: Representative Guice

To: Judiciary A

HOUSE BILL NO. 466

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-11-65, MISSISSIPPI
2 CODE OF 1972, TO CLARIFY CONTEMPT ORDER PROCEDURES IN CERTAIN
3 DOMESTIC RELATIONS CASES; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 93-5-23, Mississippi Code of 1972, is
6 amended as follows:

7 93-5-23. When a divorce shall be decreed from the bonds of
8 matrimony, the court may, in its discretion, having regard to the
9 circumstances of the parties and the nature of the case, as may
10 seem equitable and just, make all orders touching the care,
11 custody and maintenance of the children of the marriage, and also
12 touching the maintenance and alimony of the wife or the husband,
13 or any allowance to be made to her or him, and shall, if need be,
14 require bond, sureties or other guarantee for the payment of the
15 sum so allowed. Orders touching on the custody of the children of
16 the marriage may be made in accordance with the provisions of
17 Section 93-5-24. The court may afterwards, on petition, change
18 the decree, and make from time to time such new decrees as the
19 case may require. However, where proof shows that both parents
20 have separate incomes or estates, the court may require that each
21 parent contribute to the support and maintenance of the children
22 of the marriage in proportion to the relative financial ability of
23 each. In the event a legally responsible parent has health
24 insurance available to him or her through an employer or
25 organization that may extend benefits to the dependents of such
26 parent, any order of support issued against such parent may

27 require him or her to exercise the option of additional coverage
28 in favor of such children as he or she is legally responsible to
29 support.

30 Whenever the court has ordered a party to make periodic
31 payments for the maintenance or support of a child, but no bond,
32 sureties or other guarantee has been required to secure such
33 payments, and whenever such payments as have become due remain
34 unpaid for a period of at least thirty (30) days, the court may,
35 upon petition of the person to whom such payments are owing, or
36 such person's legal representative, enter an order requiring that
37 bond, sureties or other security be given by the person obligated
38 to make such payments, the amount and sufficiency of which shall
39 be approved by the court. The obligor shall, as in other civil
40 actions, be served with process and shall be entitled to a hearing
41 in such case.

42 Whenever in any proceeding in the chancery court concerning
43 the custody of a child a party alleges that the child whose
44 custody is at issue has been the victim of sexual or physical
45 abuse by the other party, the court may, on its own motion, grant
46 a continuance in the custody proceeding only until such allegation
47 has been investigated by the Department of Human Services. At the
48 time of ordering such continuance the court may direct the party,
49 and his attorney, making such allegation of child abuse to report
50 in writing and provide all evidence touching on the allegation of
51 abuse to the Department of Human Services. The Department of
52 Human Services shall investigate such allegation and take such
53 action as it deems appropriate and as provided in such cases under
54 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
55 Code of 1972) or under the laws establishing family courts (being
56 Chapter 23 of Title 43, Mississippi Code of 1972).

57 If after investigation by the Department of Human Services or
58 final disposition by the youth court or family court allegations
59 of child abuse are found to be without foundation, the chancery
60 court shall order the alleging party to pay all court costs and
61 reasonable attorney's fees incurred by the defending party in
62 responding to such allegation.

63 The court may investigate, hear and make a determination in a

64 custody action when a charge of abuse and/or neglect arises in the
65 course of a custody action as provided in Section 43-21-151, and
66 in such cases the court shall appoint a guardian ad litem for the
67 child as provided under Section 43-21-121, who shall be an
68 attorney. Unless the chancery court's jurisdiction has been
69 terminated, all disposition orders in such cases for placement
70 with the Department of Human Services shall be reviewed by the
71 court or designated authority at least annually to determine if
72 continued placement with the department is in the best interest of
73 the child or public.

74 The duty of support of a child terminates upon the
75 emancipation of the child. The court may determine that
76 emancipation has occurred and no other support obligation exists
77 when the child:

78 (a) Attains the age of twenty-one (21) years, or

79 (b) Marries, or

80 (c) Discontinues full-time enrollment in school and
81 obtains full-time employment prior to attaining the age of
82 twenty-one (21) years, or

83 (d) Voluntarily moves from the home of the custodial
84 parent or guardian and establishes independent living arrangements
85 and obtains full-time employment prior to attaining the age of
86 twenty-one (21) years.

87 When a party brings a contempt of court motion before the
88 chancery court in divorce or domestic matters involving a divorce
89 and/or modification decree and the party against whom the motion
90 is brought is found to have violated the decree, then such party
91 shall be found in contempt of court. An order of contempt must be
92 filed in the court. When one (1) party is found in contempt, that
93 party shall bear the costs of the court and all legal and other
94 expenses of both parties. If both parties are found in contempt,
95 then both parties shall split the costs of the court and pay for
96 their own legal and other expenses.

SECTION 2. Section 93-11-65, Mississippi Code of 1972, is amended as follows:

93-11-65. In addition to the right to proceed under Section 93-5-23, Mississippi Code of 1972, and in addition to the remedy of habeas corpus in proper cases, and other existing remedies, the chancery court of the proper county shall have jurisdiction to entertain suits for the custody, care, support and maintenance of minor children and to hear and determine all such matters, and shall, if need be, require bond, sureties or other guarantee to secure any order for periodic payments for the maintenance or support of a child. In the event a legally responsible parent has health insurance available to him or her through an employer or organization that may extend benefits to the dependents of such parent, any order of support issued against such parent may require him or her to exercise the option of additional coverage in favor of such children as he or she is legally responsible to support. Proceedings may be brought by or against a resident or nonresident of the State of Mississippi, whether or not having the actual custody of minor children, for the purpose of judicially determining the legal custody of a child. All actions herein authorized may be brought in the county where the child is actually residing, or in the county of the residence of the party who has actual custody, or of the residence of the defendant. Process shall be had upon the parties as provided by law for process in person or by publication, if they be nonresidents of the state or residents of another jurisdiction or are not found therein after diligent search and inquiry or are unknown after diligent search and inquiry; provided that the court or chancellor in vacation may fix a date in termtime or in vacation to which process may be returnable and shall have power to proceed in termtime or vacation. Provided, however, that if the court shall find that both parties are fit and proper persons to have custody of the children, and that either party is able to adequately

130 provide for the care and maintenance of the children, and that it
131 would be to the best interest and welfare of the children, then
132 any such child who shall have reached his twelfth birthday shall
133 have the privilege of choosing the parent with whom he shall live.

134 Provided further, that where the proof shows that both
135 parents have separate incomes or estates, the court may require
136 that each parent contribute to the support and maintenance of the
137 children in proportion to the relative financial ability of each.

138 Whenever the court has ordered a party to make periodic
139 payments for the maintenance or support of a child, but no bond,
140 sureties or other guarantee has been required to secure such
141 payments, and whenever such payments as have become due remain
142 unpaid for a period of at least thirty (30) days, the court may,
143 upon petition of the person to whom such payments are owing, or
144 such person's legal representative, enter an order requiring that
145 bond, sureties or other security be given by the person obligated
146 to make such payments, the amount and sufficiency of which shall
147 be approved by the court. The obligor shall, as in other civil
148 actions, be served with process and shall be entitled to a hearing
149 in such case.

150 When a charge of abuse or neglect of a child first arises in
151 the course of a custody or maintenance action pending in the
152 chancery court pursuant to this section, the chancery court may
153 proceed with the investigation, hearing and determination of such
154 abuse or neglect charge as a part of its hearing and determination
155 of the custody or maintenance issue as between the parents, as
156 provided in Section 43-21-151, notwithstanding the other
157 provisions of the Youth Court Law. The proceedings in chancery
158 court on the abuse or neglect charge shall be confidential in the
159 same manner as provided in youth court proceedings, and the
160 chancery court shall appoint a guardian ad litem in such cases, as
161 provided under Section 43-21-121 for youth court proceedings, who
162 shall be an attorney. Unless the chancery court's jurisdiction

has been terminated, all disposition orders in such cases for placement with the Department of Human Services shall be reviewed by the court or designated authority at least annually to determine if continued placement with the department is in the best interest of the child or the public.

The duty of support of a child terminates upon the emancipation of the child. The court may determine that emancipation has occurred and no other support obligation exists when the child:

- (a) Attains the age of twenty-one (21) years, or
- (b) Marries, or
- (c) Discontinues full-time enrollment in school and obtains full-time employment prior to attaining the age of twenty-one (21) years, or
- (d) Voluntarily moves from the home of the custodial parent or guardian and establishes independent living arrangements and obtains full-time employment prior to attaining the age of twenty-one (21) years.

When a party brings a contempt of court motion before the chancery court in divorce or domestic matters involving a divorce and/or modification decree and the party against whom the motion is brought is found to have violated the decree, then such party shall be found in contempt of court. An order of contempt must be filed in the court. When one (1) party is found in contempt, that party shall bear the costs of the court and all legal and other expenses of both parties. If both parties are found in contempt, then both parties shall split the costs of the court and pay for their own legal and other expenses.

SECTION 3. This act shall take effect and be in force from and after July 1, 1999.