

By: Representative Guice

To: Judiciary A

HOUSE BILL NO. 711

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-11-65, MISSISSIPPI
2 CODE OF 1972, TO REQUIRE BOTH PARENTS TO CONTRIBUTE TO CHILD
3 SUPPORT WHEN FINANCIALLY ABLE; 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 shall require that
21 each parent contribute to the support and maintenance of the
22 children of the marriage in proportion to the relative financial
23 ability of each. In the event a legally responsible parent has
24 health 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 SECTION 2. Section 93-11-65, Mississippi Code of 1972, is
88 amended as follows:

89 93-11-65. In addition to the right to proceed under Section
90 93-5-23, Mississippi Code of 1972, and in addition to the remedy
91 of habeas corpus in proper cases, and other existing remedies, the
92 chancery court of the proper county shall have jurisdiction to
93 entertain suits for the custody, care, support and maintenance of
94 minor children and to hear and determine all such matters, and
95 shall, if need be, require bond, sureties or other guarantee to
96 secure any order for periodic payments for the maintenance or

97 support of a child. In the event a legally responsible parent has
98 health insurance available to him or her through an employer or
99 organization that may extend benefits to the dependents of such
100 parent, any order of support issued against such parent may
101 require him or her to exercise the option of additional coverage
102 in favor of such children as he or she is legally responsible to
103 support. Proceedings may be brought by or against a resident or
104 nonresident of the State of Mississippi, whether or not having the
105 actual custody of minor children, for the purpose of judicially
106 determining the legal custody of a child. All actions herein
107 authorized may be brought in the county where the child is
108 actually residing, or in the county of the residence of the party
109 who has actual custody, or of the residence of the defendant.
110 Process shall be had upon the parties as provided by law for
111 process in person or by publication, if they be nonresidents of
112 the state or residents of another jurisdiction or are not found
113 therein after diligent search and inquiry or are unknown after
114 diligent search and inquiry; provided that the court or chancellor
115 in vacation may fix a date in termtime or in vacation to which
116 process may be returnable and shall have power to proceed in
117 termtime or vacation. Provided, however, that if the court shall
118 find that both parties are fit and proper persons to have custody
119 of the children, and that either party is able to adequately
120 provide for the care and maintenance of the children, and that it
121 would be to the best interest and welfare of the children, then
122 any such child who shall have reached his twelfth birthday shall
123 have the privilege of choosing the parent with whom he shall live.

124 Provided further, that where the proof shows that both
125 parents have separate incomes or estates, the court shall require
126 that each parent contribute to the support and maintenance of the
127 children in proportion to the relative financial ability of each.

128 Whenever the court has ordered a party to make periodic
129 payments for the maintenance or support of a child, but no bond,

130 sureties or other guarantee has been required to secure such
131 payments, and whenever such payments as have become due remain
132 unpaid for a period of at least thirty (30) days, the court may,
133 upon petition of the person to whom such payments are owing, or
134 such person's legal representative, enter an order requiring that
135 bond, sureties or other security be given by the person obligated
136 to make such payments, the amount and sufficiency of which shall
137 be approved by the court. The obligor shall, as in other civil
138 actions, be served with process and shall be entitled to a hearing
139 in such case.

140 When a charge of abuse or neglect of a child first arises in
141 the course of a custody or maintenance action pending in the
142 chancery court pursuant to this section, the chancery court may
143 proceed with the investigation, hearing and determination of such
144 abuse or neglect charge as a part of its hearing and determination
145 of the custody or maintenance issue as between the parents, as
146 provided in Section 43-21-151, notwithstanding the other
147 provisions of the Youth Court Law. The proceedings in chancery
148 court on the abuse or neglect charge shall be confidential in the
149 same manner as provided in youth court proceedings, and the
150 chancery court shall appoint a guardian ad litem in such cases, as
151 provided under Section 43-21-121 for youth court proceedings, who
152 shall be an attorney. Unless the chancery court's jurisdiction
153 has been terminated, all disposition orders in such cases for
154 placement with the Department of Human Services shall be reviewed
155 by the court or designated authority at least annually to
156 determine if continued placement with the department is in the
157 best interest of the child or the public.

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

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

163 (b) Marries, or

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

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

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