

By: Representative Perry

To: Judiciary A

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 780

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-11-65, MISSISSIPPI  
2 CODE OF 1972, TO CLARIFY THAT CHILD SUPPORT MAY BE ORDERED  
3 RETROACTIVELY AND TO ENACT LIMITATIONS; 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. (1) (a) When a divorce shall be decreed from the  
8 bonds of matrimony, the court may, in its discretion, having  
9 regard to the circumstances of the parties and the nature of the  
10 case, as may seem equitable and just, make all orders touching the  
11 care, custody and maintenance of the children of the marriage, and  
12 also touching the maintenance and alimony of the wife or the  
13 husband, or any allowance to be made to her or him, and shall, if  
14 need be, require bond, sureties or other guarantee for the payment  
15 of the sum so allowed. Orders touching on the custody of the  
16 children of the marriage may be made in accordance with the  
17 provisions of Section 93-5-24. The court may afterwards, on  
18 petition, change the decree, and make from time to time such new  
19 decrees as the case may require. However, where proof shows that  
20 both parents have separate incomes or estates, the court may  
21 require that each parent contribute to the support and maintenance  
22 of the children of the marriage in proportion to the relative  
23 financial ability of each. In the event a legally responsible  
24 parent has health insurance available to him or her through an  
25 employer or organization that may extend benefits to the  
26 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.

(b) An order of child support shall specify the sum to be paid weekly or otherwise. In addition to providing for support and education, the order shall also provide for the support of the child prior to the making of the order for child support, and such other expenses as the court may deem proper.

(c) The court may require the payment to be made to the custodial parent, or to some person or corporation to be designated by the court as trustee, but if the child is or is likely to become a public charge on a county or the state, the public welfare agent of that county shall be made the trustee. The payment shall be directed to be made to a trustee if the mother does not reside within the jurisdiction of the court. The trustee shall report to the court annually, or as often as directed by the court, the amounts received and paid over. Support shall be directed to a public welfare agent of a county or the Department of Human Services only if the recipient is receiving public assistance.

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

(3) Whenever in any proceeding in the chancery court concerning the custody of a child a party alleges that the child whose custody is at issue has been the victim of sexual or physical abuse by the other party, the court may, on its own motion, grant a continuance in the custody proceeding only until

64 such allegation has been investigated by the Department of Human  
65 Services. At the time of ordering such continuance the court may  
66 direct the party, and his attorney, making such allegation of  
67 child abuse to report in writing and provide all evidence touching  
68 on the allegation of abuse to the Department of Human Services.  
69 The Department of Human Services shall investigate such allegation  
70 and take such action as it deems appropriate and as provided in  
71 such cases under the Youth Court Law (being Chapter 21 of Title  
72 43, Mississippi Code of 1972) or under the laws establishing  
73 family courts (being Chapter 23 of Title 43, Mississippi Code of  
74 1972).

75 If after investigation by the Department of Human Services or  
76 final disposition by the youth court or family court allegations  
77 of child abuse are found to be without foundation, the chancery  
78 court shall order the alleging party to pay all court costs and  
79 reasonable attorney's fees incurred by the defending party in  
80 responding to such allegation.

81 The court may investigate, hear and make a determination in a  
82 custody action when a charge of abuse and/or neglect arises in the  
83 course of a custody action as provided in Section 43-21-151, and  
84 in such cases the court shall appoint a guardian ad litem for the  
85 child as provided under Section 43-21-121, who shall be an  
86 attorney. Unless the chancery court's jurisdiction has been  
87 terminated, all disposition orders in such cases for placement  
88 with the Department of Human Services shall be reviewed by the  
89 court or designated authority at least annually to determine if  
90 continued placement with the department is in the best interest of  
91 the child or public.

92 (4) The duty of support of a child terminates upon the  
93 emancipation of the child. The court may determine that  
94 emancipation has occurred and no other support obligation exists  
95 when the child:

96 (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.

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

93-11-65. (1) (a) 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

130 be nonresidents of the state or residents of another jurisdiction  
131 or are not found therein after diligent search and inquiry or are  
132 unknown after diligent search and inquiry; provided that the court  
133 or chancellor in vacation may fix a date in termtime or in  
134 vacation to which process may be returnable and shall have power  
135 to proceed in termtime or vacation. Provided, however, that if  
136 the court shall find that both parties are fit and proper persons  
137 to have custody of the children, and that either party is able to  
138 adequately provide for the care and maintenance of the children,  
139 and that it would be to the best interest and welfare of the  
140 children, then any such child who shall have reached his twelfth  
141 birthday shall have the privilege of choosing the parent with whom  
142 he shall live.

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

147        (b) An order of child support shall specify the sum to  
148 be paid weekly or otherwise. In addition to providing for support  
149 and education, the order shall also provide for the support of the  
150 child prior to the making of the order for child support, and such  
151 other expenses as the court may deem proper.

152        (c) The court may require the payment to be made to the  
153 custodial parent, or to some person or corporation to be  
154 designated by the court as trustee, but if the child is or is  
155 likely to become a public charge on a county or the state, the  
156 public welfare agent of that county shall be made the trustee.  
157 The payment shall be directed to be made to a trustee if the  
158 mother does not reside within the jurisdiction of the court. The  
159 trustee shall report to the court annually, or as often as  
160 directed by the court, the amounts received and paid over.  
161 Support shall be directed to a public welfare agent of a county or  
162 the Department of Human Services only if the recipient is

163 receiving public assistance.

164       (2) Whenever the court has ordered a party to make periodic  
165 payments for the maintenance or support of a child, but no bond,  
166 sureties or other guarantee has been required to secure such  
167 payments, and whenever such payments as have become due remain  
168 unpaid for a period of at least thirty (30) days, the court may,  
169 upon petition of the person to whom such payments are owing, or  
170 such person's legal representative, enter an order requiring that  
171 bond, sureties or other security be given by the person obligated  
172 to make such payments, the amount and sufficiency of which shall  
173 be approved by the court. The obligor shall, as in other civil  
174 actions, be served with process and shall be entitled to a hearing  
175 in such case.

176       (3) When a charge of abuse or neglect of a child first  
177 arises in the course of a custody or maintenance action pending in  
178 the chancery court pursuant to this section, the chancery court  
179 may proceed with the investigation, hearing and determination of  
180 such abuse or neglect charge as a part of its hearing and  
181 determination of the custody or maintenance issue as between the  
182 parents, as provided in Section 43-21-151, notwithstanding the  
183 other provisions of the Youth Court Law. The proceedings in  
184 chancery court on the abuse or neglect charge shall be  
185 confidential in the same manner as provided in youth court  
186 proceedings, and the chancery court shall appoint a guardian ad  
187 litem in such cases, as provided under Section 43-21-121 for youth  
188 court proceedings, who shall be an attorney. Unless the chancery  
189 court's jurisdiction has been terminated, all disposition orders  
190 in such cases for placement with the Department of Human Services  
191 shall be reviewed by the court or designated authority at least  
192 annually to determine if continued placement with the department  
193 is in the best interest of the child or the public.

194       (4) The duty of support of a child terminates upon the  
195 emancipation of the child. The court may determine that

196 emancipation has occurred and no other support obligation exists  
197 when the child:

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

199               (b) Marries, or

200               (c) Discontinues full-time enrollment in school and

201 obtains full-time employment prior to attaining the age of

202 twenty-one (21) years, or

203               (d) Voluntarily moves from the home of the custodial

204 parent or guardian and establishes independent living arrangements

205 and obtains full-time employment prior to attaining the age of

206 twenty-one (21) years.

207       SECTION 3. This act shall take effect and be in force from

208 and after July 1, 1999.