

By: Representatives Peranich, Brown, Chaney, To: Judiciary A  
Fredericks, Howell, Read, Simmons

## HOUSE BILL NO. 1064

1 AN ACT TO AMEND SECTIONS 93-5-23, 93-11-65, 93-16-1 AND  
2 93-16-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ORDERS  
3 REGARDING THE VISITATION RIGHTS OF GRANDPARENTS MAY BE MADE WHEN  
4 ORDERS OF CUSTODY OF CHILDREN ARE MADE; AND FOR RELATED PURPOSES.  
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

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

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

29 organization that may extend benefits to the dependents of such  
30 parent, any order of support issued against such parent may  
31 require him or her to exercise the option of additional coverage  
32 in favor of such children as he or she is legally responsible to  
33 support.

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

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

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

66 responding to such allegation.

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

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

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

83             (b) Marries, or

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

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

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

93             93-11-65. In addition to the right to proceed under Section  
94 93-5-23, Mississippi Code of 1972, and in addition to the remedy  
95 of habeas corpus in proper cases, and other existing remedies, the  
96 chancery court of the proper county shall have jurisdiction to  
97 entertain suits for the custody, care, support and maintenance of  
98 minor children and to hear and determine all such matters, and

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

130        Provided further, that where the proof shows that both  
131 parents have separate incomes or estates, the court may require

132 that each parent contribute to the support and maintenance of the  
133 children in proportion to the relative financial ability of each.

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

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

164 The duty of support of a child terminates upon the

165 emancipation of the child. The court may determine that  
166 emancipation has occurred and no other support obligation exists  
167 when the child:

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

169 (b) Marries, or

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

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

177 SECTION 3. Section 93-16-1, Mississippi Code of 1972, is  
178 amended as follows:

179 93-16-1. Any court of this state which is competent to  
180 decide child custody matters shall have jurisdiction to grant  
181 visitation rights with a minor child or children to the  
182 grandparents of such minor child or children as provided in this  
183 chapter, Section 93-5-23 and Section 93-11-65.

184 SECTION 4. Section 93-16-3, Mississippi Code of 1972, is  
185 amended as follows:

186 93-16-3. (1) Whenever a court of this state enters a decree  
187 or order awarding custody of a minor child to one (1) of the  
188 parents of the child or terminating the parental rights of one (1)  
189 of the parents of a minor child, or whenever one (1) of the  
190 parents of a minor child dies, and such order does not address  
191 visitation rights of the grandparents, either parent of the  
192 child's parents who was not awarded custody or whose parental  
193 rights have been terminated or who has died may petition the court  
194 in which the decree or order was rendered or, in the case of the  
195 death of a parent, petition the chancery court in the county in  
196 which the child resides, and seek visitation rights with such  
197 child.

198           (2) Any grandparent who is not authorized to petition for  
199 visitation rights pursuant to subsection (1) of this section may  
200 petition the chancery court and seek visitation rights with his or  
201 her grandchild, and the court may grant visitation rights to the  
202 grandparent, provided the court finds:

203           (a) That the grandparent of the child had established a  
204 viable relationship with the child and the parent or custodian of  
205 the child unreasonably denied the grandparent visitation rights  
206 with the child; and

207           (b) That visitation rights of the grandparent with the  
208 child would be in the best interests of the child.

209           (3) For purposes of subsection (3) of this section, the term  
210 "viable relationship" means a relationship in which the  
211 grandparents or either of them have voluntarily and in good faith  
212 supported the child financially in whole or in part for a period  
213 of not less than six (6) months before filing any petition for  
214 visitation rights with the child or the grandparents have had  
215 frequent visitation including occasional overnight visitation with  
216 said child for a period of not less than one (1) year.

217           (4) Any petition for visitation rights under subsection (2)  
218 of this section shall be filed in the county where an order of  
219 custody as to such child has previously been entered. If no such  
220 custody order has been entered, then the grandparents' petition  
221 shall be filed in the county where the child resides or may be  
222 found. The court shall on motion of the parent or parents direct  
223 the grandparents to pay reasonable attorney's fees to the parent  
224 or parents in advance and prior to any hearing, except in cases in  
225 which the court finds that no financial hardship will be imposed  
226 upon the parents. The court may also direct the grandparents to  
227 pay reasonable attorney's fees to the parent or parents of the  
228 child and court costs regardless of the outcome of the petition.

229           SECTION 5. This act shall take effect and be in force from  
230 and after its passage.