

By: Senator(s) Turner

To: Judiciary

SENATE BILL NO. 2341

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; TO AMEND SECTION 93-3-29,  
4 MISSISSIPPI CODE OF 1972, TO MAKE A TECHNICAL CORRECTION; AND FOR  
5 RELATED PURPOSES.

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

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

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

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

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

37 (c) The court may require the payment to be made to the  
38 custodial parent, or to some person or corporation to be  
39 designated by the court as trustee, but if the child is or is  
40 likely to become a public charge on a county or the state, the  
41 Department of Human Services shall be made the trustee. The  
42 payment shall be directed to be made to a trustee if the mother  
43 does not reside within the jurisdiction of the court. The trustee  
44 shall report to the court annually, or more often as directed by  
45 the court, the amounts received and paid over.

46 (d) The noncustodial parent's liabilities for past  
47 education and necessary support and maintenance and other expenses  
48 are limited to a period of one (1) year next preceding the  
49 commencement of an action.

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

62 (3) Whenever in any proceeding in the chancery court  
63 concerning the custody of a child a party alleges that the child  
64 whose custody is at issue has been the victim of sexual or

65 physical abuse by the other party, the court may, on its own  
66 motion, grant a continuance in the custody proceeding only until  
67 such allegation has been investigated by the Department of Human  
68 Services. At the time of ordering such continuance the court may  
69 direct the party, and his attorney, making such allegation of  
70 child abuse to report in writing and provide all evidence touching  
71 on the allegation of abuse to the Department of Human Services.  
72 The Department of Human Services shall investigate such allegation  
73 and take such action as it deems appropriate and as provided in  
74 such cases under the Youth Court Law (being Chapter 21 of Title  
75 43, Mississippi Code of 1972) or under the laws establishing  
76 family courts (being Chapter 23 of Title 43, Mississippi Code of  
77 1972).

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

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

95 (4) The duty of support of a child terminates upon the  
96 emancipation of the child. The court may determine that  
97 emancipation has occurred and no other support obligation exists

98 when the child:

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

100 (b) Marries, or

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

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

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

110 93-11-65. (1) (a) In addition to the right to proceed  
111 under Section 93-5-23, Mississippi Code of 1972, and in addition  
112 to the remedy of habeas corpus in proper cases, and other existing  
113 remedies, the chancery court of the proper county shall have  
114 jurisdiction to entertain suits for the custody, care, support and  
115 maintenance of minor children and to hear and determine all such  
116 matters, and shall, if need be, require bond, sureties or other  
117 guarantee to secure any order for periodic payments for the  
118 maintenance or support of a child. In the event a legally  
119 responsible parent has health insurance available to him or her  
120 through an employer or organization that may extend benefits to  
121 the dependents of such parent, any order of support issued against  
122 such parent may require him or her to exercise the option of  
123 additional coverage in favor of such children as he or she is  
124 legally responsible to support. Proceedings may be brought by or  
125 against a resident or nonresident of the State of Mississippi,  
126 whether or not having the actual custody of minor children, for  
127 the purpose of judicially determining the legal custody of a  
128 child. All actions herein authorized may be brought in the county  
129 where the child is actually residing, or in the county of the  
130 residence of the party who has actual custody, or of the residence

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

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

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

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

164           (d) The noncustodial parent's liabilities for past  
165 education and necessary support and maintenance and other expenses  
166 are limited to a period of one (1) year next preceding the  
167 commencement of an action.

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

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

197 is in the best interest of the child or the public.

198       (4) The duty of support of a child terminates upon the  
199 emancipation of the child. The court may determine that  
200 emancipation has occurred and no other support obligation exists  
201 when the child:

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

203           (b) Marries, or

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

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

211       SECTION 3. Section 93-9-29, Mississippi Code of 1972, is  
212 amended as follows:

213       93-9-29. (1) If the finding be against the defendant, the  
214 court shall make an order of filiation, declaring paternity and  
215 for the support and education of the child.

216       (2) The order of filiation shall specify the sum to be paid  
217 weekly or otherwise. In addition to providing for the support and  
218 education, the order shall also provide for the funeral expenses  
219 if the child has died; for the support of the child prior to the  
220 making of the order of filiation; and such other expenses as the  
221 court may deem proper. In the event the defendant has health  
222 insurance available to him through an employer or organization  
223 that may extend benefits to the dependents of such defendant, the  
224 order of filiation may require the defendant to exercise the  
225 option of additional coverage in favor of the child he is legally  
226 responsible to support.

227       (3) The court may require the payment to be made to the  
228 mother, or to some person or corporation to be designated by the  
229 court as trustee, but if the child is or is likely to become a

230 public charge on a county or the state, the Department of Human  
231 Services shall be made the trustee. The payment shall be directed  
232 to be made to a trustee if the mother does not reside within the  
233 jurisdiction of the court. The trustee shall report to the court  
234 annually, or more often as directed by the court, the amounts  
235 received and paid over.

236 SECTION 4. This act shall take effect and be in force from  
237 and after July 1, 1999.