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To: Judiciary A

HOUSE BILL NO. 562

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-11-65, MISSISSIPPI  
2 CODE OF 1972, TO MAKE FAMILY VIOLENCE A FACTOR USED IN THE  
3 DETERMINATION OF CHILD CUSTODY AND CHILD VISITATION; TO PROHIBIT  
4 MEDIATION IN ANY JUDICIAL PROCEEDING WHERE A PARTY HAS BEEN THE  
5 VICTIM OF FAMILY VIOLENCE; AND FOR 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) When a divorce shall be decreed from the bonds  
10 of matrimony, the court may, in its discretion, having regard to  
11 the circumstances of the parties and the nature of the case, as  
12 may 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. Orders touching on the custody of the children of  
18 the marriage may be made in accordance with the provisions of  
19 Section 93-5-24. The court may afterwards, on petition, change  
20 the decree, and make from time to time such new decrees as the  
21 case may require. However, where proof shows that both parents  
22 have separate incomes or estates, the court may require that each

23 parent contribute to the support and maintenance of the children  
24 of the marriage in proportion to the relative financial ability of  
25 each. In the event a legally responsible parent has health  
26 insurance available to him or her through an employer or  
27 organization that may extend benefits to the dependents of such  
28 parent, any order of support issued against such parent may  
29 require him or her to exercise the option of additional coverage  
30 in favor of such children as he or she is legally responsible to  
31 support.

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

44 (3) Whenever in any proceeding in the chancery court  
45 concerning the custody of a child a party alleges that the child  
46 whose custody is at issue has been the victim of sexual, emotional  
47 or physical abuse or of neglect by the other party, the court may,  
48 on its own motion, grant a continuance in the custody proceeding  
49 only until such allegation has been investigated by the Department  
50 of Human Services. At the time of ordering such continuance the  
51 court may direct the party, and his attorney, making such  
52 allegation of child abuse or neglect to report in writing and  
53 provide all evidence touching on the allegation of abuse to the

54 Department of Human Services. The Department of Human Services  
55 shall investigate such allegation and take such action as it deems  
56 appropriate and as provided in such cases under the Youth Court  
57 Law (being Chapter 21 of Title 43, Mississippi Code of  
58 1972) \* \* \*.

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

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

76 (6) The duty of support of a child terminates upon the  
77 emancipation of the child. The court may determine that  
78 emancipation has occurred and no other support obligation exists  
79 when the child:

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

81 (b) Marries, or

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

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

89 (7) (a) In any separation, divorce, child custody, child  
90 visitation, child support or alimony proceeding, no spouse or  
91 parent shall be ordered by the chancery court to participate in  
92 mediation if a spouse or parent alleges that he or she, or any of  
93 the children of one or both of the parties, is the victim of  
94 family violence perpetrated by the other party or if a protective  
95 order entered against the other party pursuant to the Protection  
96 from Domestic Abuse Law, Section 93-21-1 et seq., Mississippi Code  
97 of 1972, is in effect.

98 (b) For purposes of subsections (7), (8), (9), (10),  
99 (11), (12) and (13) of this section, "family violence" is defined  
100 as physical harm, bodily injury, sexual activity compelled by  
101 physical force, simple or aggravated assault, or the intentional  
102 infliction of reasonable fear of imminent physical harm, bodily  
103 injury, sexual activity compelled by physical force, or simple or  
104 aggravated assault committed by one (1) parent against the other  
105 parent, the child(ren) of either or both of the parents, or the  
106 perpetrator's current spouse or cohabiting intimate partner.  
107 "Family violence" does not include reasonable acts of self-defense  
108 used by one (1) spouse or parent to protect himself or herself or  
109 a child in the family from violence of the other person.

110       (8) In addition to other factors that the court must  
111 consider in a proceeding in which the custody or visitation by a  
112 parent is at issue, the court shall consider whether either parent  
113 has perpetrated family violence, as defined in Section  
114 93-5-23(7)(b), against the other parent, the child(ren) of either  
115 or both of the parents, or the perpetrator's current spouse or  
116 cohabiting intimate partner. If the court finds that both parents  
117 have a history of perpetrating family violence, the court shall  
118 consider which parent is less likely to continue to perpetrate any  
119 acts of family violence in determining custody.

120       (9) As a part of the determination of the best interest of  
121 the child, the court shall consider the physical safety and  
122 emotional well-being of the child and of the parent who is the  
123 victim of family violence. A noncustodial parent who has  
124 perpetrated family violence shall not be granted unsupervised  
125 child visitation unless there is a showing by clear and convincing  
126 evidence that unsupervised visitation would not endanger the  
127 child(ren)'s physical, mental, or emotional health. The court  
128 shall order that a parent who has perpetrated family violence have  
129 supervised visitation with or exchange visitation of his or her  
130 child(ren) under conditions which prevent any physical abuse,  
131 sexual abuse, emotional abuse, threats, intimidation or abduction  
132 of the child(ren) and the other parent. The parent who  
133 perpetrated family violence shall pay any and all costs incurred  
134 in the supervision of visitation.

135       (10) In determining custody or visitation, the court shall  
136 not consider the absence or relocation of a parent as a factor  
137 that weighs against that parent if that parent is absent or

138 relocated to protect himself or herself or his or her child(ren)  
139 because of an act or acts of family violence perpetrated by the  
140 other parent.

141 (11) The fact that the parent who has been the victim of  
142 family violence suffers from the psychological and emotional  
143 effects of the family violence shall not be grounds for denying  
144 that parent custody or visitation. The court may refer the victim  
145 parent to receive individual or group counseling services  
146 specifically designed for victims of domestic abuse. However, the  
147 court shall not order the victim to attend counseling or other  
148 treatment together with the perpetrator of family violence.

149 (12) Any mental health professional appointed by the court  
150 to provide a custody evaluation in a case where family violence  
151 has been alleged shall have current and demonstrable training and  
152 experience working with perpetrators and victims of family  
153 violence.

154 (13) All court costs, attorneys' fees, evaluation fees, and  
155 expert witness fees, in a divorce, child custody, or child  
156 visitation action involving allegations of family violence shall  
157 be paid by the party whom the court finds is the perpetrator of  
158 the family violence.

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

161 93-11-65. (1) (a) In addition to the right to proceed  
162 under Section 93-5-23, Mississippi Code of 1972, and in addition  
163 to the remedy of habeas corpus in proper cases, and other existing  
164 remedies, the chancery court of the proper county shall have  
165 jurisdiction to entertain suits for the custody, care, support and

166 maintenance of minor children and to hear and determine all such  
167 matters, and shall, if need be, require bond, sureties or other  
168 guarantee to secure any order for periodic payments for the  
169 maintenance or support of a child. In the event a legally  
170 responsible parent has health insurance available to him or her  
171 through an employer or organization that may extend benefits to  
172 the dependents of such parent, any order of support issued against  
173 such parent may require him or her to exercise the option of  
174 additional coverage in favor of such children as he or she is  
175 legally responsible to support. Proceedings may be brought by or  
176 against a resident or nonresident of the State of Mississippi,  
177 whether or not having the actual custody of minor children, for  
178 the purpose of judicially determining the legal custody of a  
179 child. All actions herein authorized may be brought in the county  
180 where the child is actually residing, or in the county of the  
181 residence of the party who has actual custody, or of the residence  
182 of the defendant. Process shall be had upon the parties as  
183 provided by law for process in person or by publication, if they  
184 be nonresidents of the state or residents of another jurisdiction  
185 or are not found therein after diligent search and inquiry or are  
186 unknown after diligent search and inquiry; provided that the court  
187 or chancellor in vacation may fix a date in termtime or in  
188 vacation to which process may be returnable and shall have power  
189 to proceed in termtime or vacation. Provided, however, that if  
190 the court shall find that both parties are fit and proper persons  
191 to have custody of the children, and that either party is able to  
192 adequately provide for the care and maintenance of the children,  
193 and that it would be to the best interest and welfare of the

194 children, then any such child who shall have reached his twelfth  
195 birthday shall have the privilege of choosing the parent with whom  
196 he shall live.

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

202 (c) The court may require the payment to be made to the  
203 custodial parent, or to some person or corporation to be  
204 designated by the court as trustee, but if the child or custodial  
205 parent is receiving public assistance, the Department of Human  
206 Services shall be made the trustee.

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

211 (2) Provided further, that where the proof shows that both  
212 parents have separate incomes or estates, the court may require  
213 that each parent contribute to the support and maintenance of the  
214 children in proportion to the relative financial ability of each.

215 (3) Whenever the court has ordered a party to make periodic  
216 payments for the maintenance or support of a child, but no bond,  
217 sureties or other guarantee has been required to secure such  
218 payments, and whenever such payments as have become due remain  
219 unpaid for a period of at least thirty (30) days, the court may,  
220 upon petition of the person to whom such payments are owing, or  
221 such person's legal representative, enter an order requiring that

222 bond, sureties or other security be given by the person obligated  
223 to make such payments, the amount and sufficiency of which shall  
224 be approved by the court. The obligor shall, as in other civil  
225 actions, be served with process and shall be entitled to a hearing  
226 in such case.

227 (4) When a charge of abuse or neglect of a child first  
228 arises in the course of a custody or maintenance action pending in  
229 the chancery court pursuant to this section, the chancery court  
230 may proceed with the investigation, hearing and determination of  
231 such abuse or neglect charge as a part of its hearing and  
232 determination of the custody or maintenance issue as between the  
233 parents, as provided in Section 43-21-151, notwithstanding the  
234 other provisions of the Youth Court Law. The proceedings in  
235 chancery court on the abuse or neglect charge shall be  
236 confidential in the same manner as provided in youth court  
237 proceedings, and the chancery court shall appoint a guardian ad  
238 litem in such cases, as provided under Section 43-21-121 for youth  
239 court proceedings, who shall be an attorney. Unless the chancery  
240 court's jurisdiction has been terminated, all disposition orders  
241 in such cases for placement with the Department of Human Services  
242 shall be reviewed by the court or designated authority at least  
243 annually to determine if continued placement with the department  
244 is in the best interest of the child or the public.

245 (5) Each party to a paternity or child support proceeding  
246 shall notify the other within five (5) days after any change of  
247 address. In addition, the noncustodial and custodial parent shall  
248 file and update, with the court and with the state case registry,  
249 information on that party's location and identity, including

250 Social Security number, residential and mailing addresses,  
251 telephone numbers, photograph, driver's license number, and name,  
252 address and telephone number of the party's employer. This  
253 information shall be required upon entry of an order or within  
254 five (5) days of a change of address.

255 (6) In any case subsequently enforced by the Department of  
256 Human Services pursuant to Title IV-D of the Social Security Act,  
257 the court shall have continuing jurisdiction.

258 (7) In any subsequent child support enforcement action  
259 between the parties, upon sufficient showing that diligent effort  
260 has been made to ascertain the location of a party, due process  
261 requirements for notice and service of process shall be deemed to  
262 be met with respect to the party upon delivery of written notice  
263 to the most recent residential or employer address filed with the  
264 state case registry.

265 (8) The duty of support of a child terminates upon the  
266 emancipation of the child. The court may determine that  
267 emancipation has occurred and no other support obligation exists  
268 when the child:

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

270 (b) Marries, or

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

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

278       (9) Family violence as defined in Section 93-5-23 shall be a  
279 factor used to determine child custody and visitation rights.  
280 Mediation shall be prohibited in any judicial proceeding where a  
281 party has been the victim of family violence as provided in  
282 Section 93-5-23.

283       SECTION 3. This act shall take effect and be in force from  
284 and after July 1, 2000.