

By: Reeves

To: Judiciary A

HOUSE BILL NO. 879

1 AN ACT TO AMEND SECTION 93-5-23 AND 93-11-65, MISSISSIPPI  
2 CODE OF 1972, TO PROVIDE THAT THE APPOINTMENT OF A GUARDIAN AD  
3 LITEM IN CUSTODY CASES WHEN A CHARGE OF CHILD ABUSE OR NEGLECT  
4 ARISES SHALL BE IN THE DISCRETION OF THE COURT; AND FOR RELATED  
5 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. 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. 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 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 Whenever in any proceeding in the chancery court concerning  
45 the custody of a child a party alleges that the child whose  
46 custody is at issue has been the victim of sexual or physical  
47 abuse by the other party, the court may, on its own motion, grant  
48 a continuance in the custody proceeding only until such allegation  
49 has been investigated by the Department of Human Services. At the  
50 time of ordering such continuance the court may direct the party,  
51 and his attorney, making such allegation of child abuse to report  
52 in writing and provide all evidence touching on the allegation of  
53 abuse to the Department of Human Services. The Department of

54 Human Services shall investigate such allegation and take such  
55 action as it deems appropriate and as provided in such cases under  
56 the Youth Court Law (being Chapter 21 of Title 43, Mississippi  
57 Code of 1972) or under the laws establishing family courts (being  
58 Chapter 23 of Title 43, Mississippi Code of 1972).

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

65 The court may investigate, hear and make a determination in a  
66 custody action when a charge of abuse and/or neglect arises in the  
67 course of a custody action as provided in Section 43-21-151, and  
68 in such cases the court may appoint a guardian ad litem for the  
69 child as provided under Section 43-21-121, who shall be an  
70 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 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           SECTION 2. Section 93-11-65, Mississippi Code of 1972, is  
90 amended as follows:

91           93-11-65. (1) (a) In addition to the right to proceed  
92 under Section 93-5-23, Mississippi Code of 1972, and in addition  
93 to the remedy of habeas corpus in proper cases, and other existing  
94 remedies, the chancery court of the proper county shall have  
95 jurisdiction to entertain suits for the custody, care, support and  
96 maintenance of minor children and to hear and determine all such  
97 matters, and shall, if need be, require bond, sureties or other  
98 guarantee to secure any order for periodic payments for the  
99 maintenance or support of a child. In the event a legally  
100 responsible parent has health insurance available to him or her  
101 through an employer or organization that may extend benefits to  
102 the dependents of such parent, any order of support issued against  
103 such parent may require him or her to exercise the option of  
104 additional coverage in favor of such children as he or she is  
105 legally responsible to support. Proceedings may be brought by or  
106 against a resident or nonresident of the State of Mississippi,  
107 whether or not having the actual custody of minor children, for  
108 the purpose of judicially determining the legal custody of a  
109 child. All actions herein authorized may be brought in the county

110 where the child is actually residing, or in the county of the  
111 residence of the party who has actual custody, or of the residence  
112 of the defendant. Process shall be had upon the parties as  
113 provided by law for process in person or by publication, if they  
114 be nonresidents of the state or residents of another jurisdiction  
115 or are not found therein after diligent search and inquiry or are  
116 unknown after diligent search and inquiry; provided that the court  
117 or chancellor in vacation may fix a date in termtime or in  
118 vacation to which process may be returnable and shall have power  
119 to proceed in termtime or vacation. Provided, however, that if  
120 the court shall find that both parties are fit and proper persons  
121 to have custody of the children, and that either party is able to  
122 adequately provide for the care and maintenance of the children,  
123 and that it would be to the best interest and welfare of the  
124 children, then any such child who shall have reached his twelfth  
125 birthday shall have the privilege of choosing the parent with whom  
126 he shall live.

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

132 (c) The court may require the payment to be made to the  
133 custodial parent, or to some person or corporation to be  
134 designated by the court as trustee, but if the child or custodial  
135 parent is receiving public assistance, the Department of Human  
136 Services shall be made the trustee.

137 (d) The noncustodial parent's liabilities for past

138 education and necessary support and maintenance and other expenses  
139 are limited to a period of one (1) year next preceding the  
140 commencement of an action.

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

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

157 (4) When a charge of abuse or neglect of a child first  
158 arises in the course of a custody or maintenance action pending in  
159 the chancery court pursuant to this section, the chancery court  
160 may proceed with the investigation, hearing and determination of  
161 such abuse or neglect charge as a part of its hearing and  
162 determination of the custody or maintenance issue as between the  
163 parents, as provided in Section 43-21-151, notwithstanding the  
164 other provisions of the Youth Court Law. The proceedings in  
165 chancery court on the abuse or neglect charge shall be

166 confidential in the same manner as provided in youth court  
167 proceedings, and the chancery court may appoint a guardian ad  
168 litem in such cases, as provided under Section 43-21-121 for youth  
169 court proceedings, who shall be an attorney. Unless the chancery  
170 court's jurisdiction has been terminated, all disposition orders  
171 in such cases for placement with the Department of Human Services  
172 shall be reviewed by the court or designated authority at least  
173 annually to determine if continued placement with the department  
174 is in the best interest of the child or the public.

175 (5) Each party to a paternity or child support proceeding  
176 shall notify the other within five (5) days after any change of  
177 address. In addition, the noncustodial and custodial parent shall  
178 file and update, with the court and with the state case registry,  
179 information on that party's location and identity, including  
180 Social Security number, residential and mailing addresses,  
181 telephone numbers, photograph, driver's license number, and name,  
182 address and telephone number of the party's employer. This  
183 information shall be required upon entry of an order or within  
184 five (5) days of a change of address.

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

188 (7) In any subsequent child support enforcement action  
189 between the parties, upon sufficient showing that diligent effort  
190 has been made to ascertain the location of a party, due process  
191 requirements for notice and service of process shall be deemed to  
192 be met with respect to the party upon delivery of written notice  
193 to the most recent residential or employer address filed with the

194 state case registry.

195 (8) The duty of support of a child terminates upon the  
196 emancipation of the child. The court may determine that  
197 emancipation has occurred and no other support obligation exists  
198 when the child:

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

200 (b) Marries, or

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

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

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