

By: Representatives Taylor, Robinson (84th)

To: Judiciary B; Public Health and Welfare

HOUSE BILL NO. 169

1 AN ACT TO PROVIDE THAT HEALTH CARE PROVIDERS SHALL TAKE  
 2 POSSESSION OF CERTAIN CHILDREN WHO ARE VOLUNTARILY DELIVERED TO  
 3 SUCH PROVIDERS; TO PROVIDE NOTICE TO THE DEPARTMENT OF HUMAN  
 4 SERVICES; TO PROVIDE FOR THE ACCEPTANCE OF POSSESSION OF AN  
 5 ABANDONED CHILD; TO AMEND SECTION 93-15-103, MISSISSIPPI CODE OF  
 6 1972, TO PROVIDE THAT SUCH ABANDONMENT SHALL BE GROUNDS FOR THE  
 7 TERMINATION OF PARENTAL RIGHTS; TO AMEND SECTION 97-5-1,  
 8 MISSISSIPPI CODE OF 1972, TO PROVIDE AN AFFIRMATIVE DEFENSE FOR  
 9 SUCH ABANDONMENT; AND FOR RELATED PURPOSES.

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

11 SECTION 1. (1) A licensed health care provider or law  
 12 enforcement officer shall, without a court order, take possession  
 13 of a child who is thirty (30) days old or younger if the child is  
 14 voluntarily delivered to the provider or law enforcement officer  
 15 by the child's parent and the parent did not express an intent to  
 16 return for the child.

17 (2) A health care provider or law enforcement officer who  
 18 takes possession of a child under this section shall perform any  
 19 act necessary to protect the physical health or safety of the  
 20 child.

21 SECTION 2. (1) Not later than the close of the first  
 22 business day after the date on which a health care provider or law  
 23 enforcement officer takes possession of a child under Section 1 of  
 24 this act, the provider or law enforcement officer shall notify the  
 25 Department of Human Services that the provider has taken  
 26 possession of the child.

27 (2) The department shall assume the care, control and  
 28 custody of the child immediately on receipt of notice under  
 29 subsection (1).

30           SECTION 3. A child for whom the Department of Human Services  
31 assumes care, control and custody under Section 2 of this act  
32 shall be treated as a child taken into possession without a court  
33 order, and the department shall take action as required by law  
34 with regard to the child.

35           SECTION 4. Section 93-15-103, Mississippi Code of 1972, is  
36 amended as follows:

37           93-15-103. (1) When a child has been removed from the home  
38 of its natural parents and cannot be returned to the home of his  
39 natural parents within a reasonable length of time because  
40 returning to the home would be damaging to the child or the parent  
41 is unable or unwilling to care for the child, relatives are not  
42 appropriate or are unavailable, and when adoption is in the best  
43 interest of the child, taking into account whether the adoption is  
44 needed to secure a stable placement for the child and the strength  
45 of the child's bonds to his natural parents and the effect of  
46 future contacts between them, the grounds listed in subsections  
47 (2) and (3) of this section shall be considered as grounds for the  
48 termination of parental rights. The grounds may apply singly or  
49 in combination in any given case.

50           (2) The rights of a parent with reference to a child,  
51 including parental rights to control or withhold consent to an  
52 adoption, and the right to receive notice of a hearing on a  
53 petition for adoption, may be relinquished and the relationship of  
54 the parent and child terminated by the execution of a written  
55 voluntary release, signed by the parent, regardless of the age of  
56 the parent.

57           (3) Grounds for termination of parental rights shall be  
58 based on one or more of the following factors:

59           (a) A parent has deserted without means of  
60 identification or abandoned a child as defined in Section 97-5-1;  
61 or

62           (b) A parent has made no contact with a child under the  
63 age of three (3) for six (6) months or a child three (3) years of  
64 age or older for a period of one (1) year; or

65           (c) A parent has been responsible for a series of  
66 abusive incidents concerning one or more children; or

67           (d) When the child has been in the care and custody of  
68 a licensed child caring agency or the Department of Human Services  
69 for at least one (1) year, that agency or the department has made  
70 diligent efforts to develop and implement a plan for return of the  
71 child to its parents, and:

72                 (i) The parent has failed to exercise reasonable  
73 available visitation with the child; or

74                 (ii) The parent, having agreed to a plan to effect  
75 placement of the child with the parent, fails to implement the  
76 plan so that the child caring agency is unable to return the child  
77 to said parent; or

78           (e) The parent exhibits ongoing behavior which would  
79 make it impossible to return the child to the parent's care and  
80 custody:

81                 (i) Because the parent has a diagnosable condition  
82 unlikely to change within a reasonable time such as alcohol or  
83 drug addiction, severe mental deficiencies or mental illness, or  
84 extreme physical incapacitation, which condition makes the parent  
85 unable to assume minimally, acceptable care of the child; or

86                 (ii) Because the parent fails to eliminate  
87 behavior, identified by the child caring agency or the court,  
88 which prevents placement of said child with the parent in spite of  
89 diligent efforts of the child caring agency to assist the parent;  
90 or

91           (f) When there is an extreme and deep-seated antipathy  
92 by the child toward the parent or when there is some other  
93 substantial erosion of the relationship between the parent and  
94 child which was caused at least in part by the parent's serious

95 neglect, abuse, prolonged and unreasonable absence, unreasonable  
96 failure to visit or communicate, or prolonged imprisonment; or

97 (g) When a parent has been convicted of any of the  
98 following offenses against his natural or adopted child: (i) rape  
99 of a child under the provisions of Section 97-3-65, (ii) sexual  
100 battery of a child under the provisions of Section 97-3-95(c),  
101 (iii) touching a child for lustful purposes under the provisions  
102 of Section 97-5-23, (iv) exploitation of a child under the  
103 provisions of Section 97-5-31, (v) felonious abuse or battery of a  
104 child under the provisions of Section 97-5-39(2), (vi) carnal  
105 knowledge of a step or adopted child or a child of a cohabitating  
106 partner under the provisions of Section 97-5-41, or (vii) murder  
107 of another child of such parent, voluntary manslaughter of another  
108 child of such parent, aided or abetted, attempted, conspired or  
109 solicited to commit such murder or voluntary manslaughter, or a  
110 felony assault that results in the serious bodily injury to the  
111 surviving child or another child of such parent; or

112 (h) The child has been adjudicated to have been abused  
113 or neglected and custody has been transferred from the child's  
114 parent(s) for placement pursuant to Section 43-15-13, and a court  
115 of competent jurisdiction has determined that reunification shall  
116 not be in the child's best interest; or

117 (i) The child has been voluntarily delivered to a  
118 health care provider or law enforcement officer as provided in  
119 Section 1 of this act without expressing an intent to return for  
120 the child.

121 (4) Legal custody and guardianship by persons other than the  
122 parent as well as other permanent alternatives which end the  
123 supervision by the Department of Human Services should be  
124 considered as alternatives to the termination of parental rights,  
125 and these alternatives should be selected when, in the best  
126 interest of the child, parental contacts are desirable and it is

127 possible to secure such placement without termination of parental  
128 rights.

129 (5) When a parent has been convicted of rape of a child  
130 under the provisions of Section 97-3-65, sexual battery of a child  
131 under the provisions of Section 97-3-95(c), touching a child for  
132 lustful purposes under the provisions of Section 97-5-23,  
133 exploitation of a child under the provisions of Section 97-5-31,  
134 felonious abuse or battery of a child under the provisions of  
135 Section 97-5-39(2), or carnal knowledge of a step or adopted child  
136 or a child of a cohabitating partner under the provisions of  
137 Section 97-5-41, notice of the conviction shall be forwarded by  
138 the circuit clerk of the county in which the conviction occurred  
139 to the Mississippi Department of Human Services, Division of  
140 Social Services.

141 (6) In any case where a child has been removed from the  
142 parent's home due to sexual abuse or serious bodily injury to the  
143 child, the court shall treat such case for termination of parental  
144 rights as a preference case to be determined with all reasonable  
145 expedition.

146 SECTION 5. Section 97-5-1, Mississippi Code of 1972, is  
147 amended as follows:

148 97-5-1. (1) If the father or mother of any child under the  
149 age of six (6) years, or any other person having the lawful  
150 custody of such child, or to whom such child shall have been  
151 confided, shall expose such child in any highway, street, field,  
152 house, outhouse, or elsewhere, with intent wholly to abandon it,  
153 such person shall, upon conviction, be punished by imprisonment in  
154 the Penitentiary not more than seven (7) years, or in the county  
155 jail not more than one (1) year.

156 (2) It is an affirmative defense to prosecution under  
157 subsection (1) of this section that the actor voluntarily  
158 delivered the child to a health care provider or law enforcement  
159 officer under Section 1 of this act.

160 SECTION 6. This act shall take effect and be in force from  
161 and after July 1, 2001.