

By: Representative Reeves

To: Judiciary A

HOUSE BILL NO. 342

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-11-65, MISSISSIPPI  
2 CODE OF 1972, TO PROVIDE THAT THE APPOINTMENT OF A GUARDIAN AD  
3 LITEM SHALL BE DISCRETIONARY IN CASES IN WHICH A CHARGE OF ABUSE  
4 OR NEGLECT ARISES; AND FOR RELATED PURPOSES.

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

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

8 93-5-23. When a divorce shall be decreed from the bonds of  
9 matrimony, the court may, in its discretion, having regard to the  
10 circumstances of the parties and the nature of the case, as may  
11 seem equitable and just, make all orders touching the care,  
12 custody and maintenance of the children of the marriage, and also  
13 touching the maintenance and alimony of the wife or the husband,  
14 or any allowance to be made to her or him, and shall, if need be,  
15 require bond, sureties or other guarantee for the payment of the  
16 sum so allowed. Orders touching on the custody of the children of  
17 the marriage shall be made in accordance with the provisions of  
18 Section 93-5-24. The court may afterwards, on petition, change  
19 the decree, and make from time to time such new decrees as the  
20 case may require. However, where proof shows that both parents  
21 have separate incomes or estates, the court may require that each  
22 parent contribute to the support and maintenance of the children  
23 of the marriage in proportion to the relative financial ability of  
24 each. In the event a legally responsible parent has health  
25 insurance available to him or her through an employer or  
26 organization that may extend benefits to the dependents of such  
27 parent, any order of support issued against such parent may

28 require him or her to exercise the option of additional coverage  
29 in favor of such children as he or she is legally responsible to  
30 support.

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

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

58 If after investigation by the Department of Human Services or  
59 final disposition by the youth court or family court allegations  
60 of child abuse are found to be without foundation, the chancery

61 court shall order the alleging party to pay all court costs and  
62 reasonable attorney's fees incurred by the defending party in  
63 responding to such allegation.

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

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

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

80 (b) Marries, or

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

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

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

90 93-11-65. (1) (a) In addition to the right to proceed  
91 under Section 93-5-23, Mississippi Code of 1972, and in addition  
92 to the remedy of habeas corpus in proper cases, and other existing  
93 remedies, the chancery court of the proper county shall have

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

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

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

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

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

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

156           (4) When a charge of abuse or neglect of a child first  
157 arises in the course of a custody or maintenance action pending in  
158 the chancery court pursuant to this section, the chancery court

159 may proceed with the investigation, hearing and determination of  
160 such abuse or neglect charge as a part of its hearing and  
161 determination of the custody or maintenance issue as between the  
162 parents, as provided in Section 43-21-151, notwithstanding the  
163 other provisions of the Youth Court Law. The proceedings in  
164 chancery court on the abuse or neglect charge shall be  
165 confidential in the same manner as provided in youth court  
166 proceedings, and the chancery court may appoint a guardian ad  
167 litem in such cases, as provided under Section 43-21-121 for youth  
168 court proceedings, who shall be an attorney. Unless the chancery  
169 court's jurisdiction has been terminated, all disposition orders  
170 in such cases for placement with the Department of Human Services  
171 shall be reviewed by the court or designated authority at least  
172 annually to determine if continued placement with the department  
173 is in the best interest of the child or the public.

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

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

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

192 to the most recent residential or employer address filed with the  
193 state case registry.

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

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

199 (b) Marries, or

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

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

207 (9) Upon motion of a party requesting temporary child  
208 support pending a determination of parentage, temporary support  
209 shall be ordered if there is clear and convincing evidence of  
210 paternity on the basis of genetic tests or other evidence, unless  
211 the court makes written findings of fact on the record that the  
212 award of temporary support would be unjust or inappropriate in a  
213 particular case.

214 SECTION 3. This act shall take effect and be in force from  
215 and after July 1, 2001.