

By: Representative Guice

To: Judiciary A

HOUSE BILL NO. 350

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-11-65, MISSISSIPPI  
2 CODE OF 1972, TO CLARIFY CONTEMPT ORDER PROCEDURES IN CERTAIN  
3 DOMESTIC RELATIONS CASES; AND FOR RELATED PURPOSES.

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

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

7 93-5-23. When a divorce shall be decreed from the bonds of  
8 matrimony, the court may, in its discretion, having regard to the  
9 circumstances of the parties and the nature of the case, as may  
10 seem equitable and just, make all orders touching the care,  
11 custody and maintenance of the children of the marriage, and also  
12 touching the maintenance and alimony of the wife or the husband,  
13 or any allowance to be made to her or him, and shall, if need be,  
14 require bond, sureties or other guarantee for the payment of the  
15 sum so allowed. Orders touching on the custody of the children of  
16 the marriage shall be made in accordance with the provisions of  
17 Section 93-5-24. The court may afterwards, on petition, change  
18 the decree, and make from time to time such new decrees as the  
19 case may require. However, where proof shows that both parents  
20 have separate incomes or estates, the court may require that each  
21 parent contribute to the support and maintenance of the children  
22 of the marriage in proportion to the relative financial ability of  
23 each. In the event a legally responsible parent has health  
24 insurance available to him or her through an employer or  
25 organization that may extend benefits to the dependents of such  
26 parent, any order of support issued against such parent may  
27 require him or her to exercise the option of additional coverage



28 in favor of such children as he or she is legally responsible to  
29 support.

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

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

57 If after investigation by the Department of Human Services or  
58 final disposition by the youth court or family court allegations  
59 of child abuse are found to be without foundation, the chancery  
60 court shall order the alleging party to pay all court costs and



61 reasonable attorney's fees incurred by the defending party in  
62 responding to such allegation.

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

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

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

79 (b) Marries, or

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

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

87 When a party brings a contempt of court motion before the  
88 chancery court in divorce or domestic matters involving a divorce  
89 and/or modification decree and the party against whom the motion  
90 is brought is found to have violated the decree, then such party  
91 shall be found in contempt of court. An order of contempt must be  
92 filed in the court. When one (1) party is found in contempt, that  
93 party shall bear the costs of the court and all legal and other



94 expenses of both parties. If both parties are found in contempt,  
95 then both parties shall split the costs of the court and pay for  
96 their own legal and other expenses.

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

99 93-11-65. (1) (a) In addition to the right to proceed  
100 under Section 93-5-23, Mississippi Code of 1972, and in addition  
101 to the remedy of habeas corpus in proper cases, and other existing  
102 remedies, the chancery court of the proper county shall have  
103 jurisdiction to entertain suits for the custody, care, support and  
104 maintenance of minor children and to hear and determine all such  
105 matters, and shall, if need be, require bond, sureties or other  
106 guarantee to secure any order for periodic payments for the  
107 maintenance or support of a child. In the event a legally  
108 responsible parent has health insurance available to him or her  
109 through an employer or organization that may extend benefits to  
110 the dependents of such parent, any order of support issued against  
111 such parent may require him or her to exercise the option of  
112 additional coverage in favor of such children as he or she is  
113 legally responsible to support. Proceedings may be brought by or  
114 against a resident or nonresident of the State of Mississippi,  
115 whether or not having the actual custody of minor children, for  
116 the purpose of judicially determining the legal custody of a  
117 child. All actions herein authorized may be brought in the county  
118 where the child is actually residing, or in the county of the  
119 residence of the party who has actual custody, or of the residence  
120 of the defendant. Process shall be had upon the parties as  
121 provided by law for process in person or by publication, if they  
122 be nonresidents of the state or residents of another jurisdiction  
123 or are not found therein after diligent search and inquiry or are  
124 unknown after diligent search and inquiry; provided that the court  
125 or chancellor in vacation may fix a date in termtime or in  
126 vacation to which process may be returnable and shall have power



127 to proceed in termtime or vacation. Provided, however, that if  
128 the court shall find that both parties are fit and proper persons  
129 to have custody of the children, and that either party is able to  
130 adequately provide for the care and maintenance of the children,  
131 and that it would be to the best interest and welfare of the  
132 children, then any such child who shall have reached his twelfth  
133 birthday shall have the privilege of choosing the parent with whom  
134 he shall live.

135 (b) An order of child support shall specify the sum to  
136 be paid weekly or otherwise. In addition to providing for support  
137 and education, the order shall also provide for the support of the  
138 child prior to the making of the order for child support, and such  
139 other expenses as the court may deem proper.

140 (c) The court may require the payment to be made to the  
141 custodial parent, or to some person or corporation to be  
142 designated by the court as trustee, but if the child or custodial  
143 parent is receiving public assistance, the Department of Human  
144 Services shall be made the trustee.

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

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

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



160 bond, sureties or other security be given by the person obligated  
161 to make such payments, the amount and sufficiency of which shall  
162 be approved by the court. The obligor shall, as in other civil  
163 actions, be served with process and shall be entitled to a hearing  
164 in such case.

165 (4) When a charge of abuse or neglect of a child first  
166 arises in the course of a custody or maintenance action pending in  
167 the chancery court pursuant to this section, the chancery court  
168 may proceed with the investigation, hearing and determination of  
169 such abuse or neglect charge as a part of its hearing and  
170 determination of the custody or maintenance issue as between the  
171 parents, as provided in Section 43-21-151, notwithstanding the  
172 other provisions of the Youth Court Law. The proceedings in  
173 chancery court on the abuse or neglect charge shall be  
174 confidential in the same manner as provided in youth court  
175 proceedings, and the chancery court shall appoint a guardian ad  
176 litem in such cases, as provided under Section 43-21-121 for youth  
177 court proceedings, who shall be an attorney. Unless the chancery  
178 court's jurisdiction has been terminated, all disposition orders  
179 in such cases for placement with the Department of Human Services  
180 shall be reviewed by the court or designated authority at least  
181 annually to determine if continued placement with the department  
182 is in the best interest of the child or the public.

183 (5) Each party to a paternity or child support proceeding  
184 shall notify the other within five (5) days after any change of  
185 address. In addition, the noncustodial and custodial parent shall  
186 file and update, with the court and with the state case registry,  
187 information on that party's location and identity, including  
188 social security number, residential and mailing addresses,  
189 telephone numbers, photograph, driver's license number, and name,  
190 address and telephone number of the party's employer. This  
191 information shall be required upon entry of an order or within  
192 five (5) days of a change of address.



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

196           (7) In any subsequent child support enforcement action  
197 between the parties, upon sufficient showing that diligent effort  
198 has been made to ascertain the location of a party, due process  
199 requirements for notice and service of process shall be deemed to  
200 be met with respect to the party upon delivery of written notice  
201 to the most recent residential or employer address filed with the  
202 state case registry.

203           (8) The duty of support of a child terminates upon the  
204 emancipation of the child. The court may determine that  
205 emancipation has occurred and no other support obligation exists  
206 when the child:

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

208                   (b) Marries, or

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

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

216           (9) Upon motion of a party requesting temporary child  
217 support pending a determination of parentage, temporary support  
218 shall be ordered if there is clear and convincing evidence of  
219 paternity on the basis of genetic tests or other evidence, unless  
220 the court makes written findings of fact on the record that the  
221 award of temporary support would be unjust or inappropriate in a  
222 particular case.

223           (10) When a party brings a contempt of court motion before  
224 the chancery court in divorce or domestic matters involving a  
225 divorce and/or modification decree and the party against whom the



226 motion is brought is found to have violated the decree, then such  
227 party shall be found in contempt of court. An order of contempt  
228 must be filed in the court. When one (1) party is found in  
229 contempt, that party shall bear the costs of the court and all  
230 legal and other expenses of both parties. If both parties are  
231 found in contempt, then both parties shall split the costs of the  
232 court and pay for their own legal and other expenses.

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

