

By: Representatives Clarke, Brown, Ellis, Flaggs, Fredericks, Frierson, Gadd, Green, Harrison, Huddleston, Mayo, Moak, Montgomery (15th), Moody, Peranich, Reynolds, Rushing, Scott (17th), Straughter, Thomas, Wallace, Watson, Whittington

To: Judiciary B; Public Health and Welfare

HOUSE BILL NO. 853

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 shall,
12 without a court order, take possession of a child who is thirty
13 (30) days old or younger if the child is voluntarily delivered to
14 the provider by the child's parent and the parent did not express
15 an intent to return for the child.

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

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

24 (2) The department shall assume the care, control and
25 custody of the child immediately on receipt of notice under
26 subsection (1).

27 SECTION 3. A child for whom the Department of Human Services
28 assumes care, control and custody under Section 2 of this act
29 shall be treated as a child taken into possession without a court



30 order, and the department shall take action as required by law
31 with regard to the child.

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

34 93-15-103. (1) When a child has been removed from the home
35 of its natural parents and cannot be returned to the home of his
36 natural parents within a reasonable length of time because
37 returning to the home would be damaging to the child or the parent
38 is unable or unwilling to care for the child, relatives are not
39 appropriate or are unavailable, and when adoption is in the best
40 interest of the child, taking into account whether the adoption is
41 needed to secure a stable placement for the child and the strength
42 of the child's bonds to his natural parents and the effect of
43 future contacts between them, the grounds listed in subsections
44 (2) and (3) of this section shall be considered as grounds for the
45 termination of parental rights. The grounds may apply singly or
46 in combination in any given case.

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

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

56 (a) A parent has deserted without means of
57 identification or abandoned a child as defined in Section 97-5-1;
58 or

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



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

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

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

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

75 (e) The parent exhibits ongoing behavior which would
76 make it impossible to return the child to the parent's care and
77 custody:

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

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

88 (f) When there is an extreme and deep-seated antipathy
89 by the child toward the parent or when there is some other
90 substantial erosion of the relationship between the parent and
91 child which was caused at least in part by the parent's serious
92 neglect, abuse, prolonged and unreasonable absence, unreasonable
93 failure to visit or communicate, or prolonged imprisonment; or



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

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

114 (i) The child has been voluntarily delivered to a
115 health care provider as provided in Section 1 of this act without
116 expressing an intent to return for the child.

117 (4) Legal custody and guardianship by persons other than the
118 parent as well as other permanent alternatives which end the
119 supervision by the Department of Human Services should be
120 considered as alternatives to the termination of parental rights,
121 and these alternatives should be selected when, in the best
122 interest of the child, parental contacts are desirable and it is
123 possible to secure such placement without termination of parental
124 rights.

125 (5) When a parent has been convicted of rape of a child
126 under the provisions of Section 97-3-65, sexual battery of a child



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

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

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

144 97-5-1. (1) If the father or mother of any child under the
145 age of six (6) years, or any other person having the lawful
146 custody of such child, or to whom such child shall have been
147 confided, shall expose such child in any highway, street, field,
148 house, outhouse, or elsewhere, with intent wholly to abandon it,
149 such person shall, upon conviction, be punished by imprisonment in
150 the Penitentiary not more than seven (7) years, or in the county
151 jail not more than one (1) year.

152 (2) It is an affirmative defense to prosecution under
153 subsection (1) of this section that the actor voluntarily
154 delivered the child to a health care provider under Section 1 of
155 this act.

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

