

By: Representative Reeves

To: Judiciary A

HOUSE BILL NO. 15

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; TO AMEND SECTIONS 93-15-107 AND 93-17-8,
5 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE APPOINTMENT OF A
6 GUARDIAN AD LITEM SHALL BE DISCRETIONARY IN TERMINATION OF
7 PARENTAL RIGHTS AND ADOPTION CASES; AND FOR RELATED PURPOSES.

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

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

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



30 parent, any order of support issued against such parent may
31 require him or her to exercise the option of additional coverage
32 in favor of such children as he or she is legally responsible to
33 support.

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

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

61 If after investigation by the Department of Human Services or
62 final disposition by the youth court or family court allegations



63 of child abuse are found to be without foundation, the chancery
64 court shall order the alleging party to pay all court costs and
65 reasonable attorney's fees incurred by the defending party in
66 responding to such allegation.

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

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

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

83 (b) Marries, or

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

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

91 **SECTION 2.** Section 93-11-65, Mississippi Code of 1972, is
92 amended as follows:

93 93-11-65. (1) (a) In addition to the right to proceed
94 under Section 93-5-23, Mississippi Code of 1972, and in addition
95 to the remedy of habeas corpus in proper cases, and other existing



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



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

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

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

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

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

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



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

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

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

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



195 to the most recent residential or employer address filed with the
196 state case registry.

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

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

202 (b) Marries, or

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

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

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

217 **SECTION 3.** Section 93-15-107, Mississippi Code of 1972, is
218 amended as follows:

219 93-15-107. (1) In an action to terminate parental rights,
220 the mother of the child, the legal father of the child, and the
221 putative father of the child, when known, shall be parties
222 defendant. A guardian ad litem may be appointed to protect the
223 interest of the child in the termination of parental rights. A
224 child may be made party plaintiff, and any agency holding custody
225 of a minor shall act as party plaintiff.

226 (2) The Department of Human Services shall initiate
227 proceedings to terminate parental rights in accordance with



228 Section 93-15-101 et seq. in cases where a child has been placed
229 in the physical custody of a relative and the department has been
230 given legal custody of the child. The department may provide
231 necessary funds to defray the costs and attorney fees for any
232 adoption proceedings brought by the relative of such child in
233 cases where the relative is unable to pay such costs and fees
234 based on criteria established by the department in compliance with
235 federal law and the availability of funds to the department to pay
236 such costs and fees.

237 **SECTION 4.** Section 93-17-8, Mississippi Code of 1972, is
238 amended as follows:

239 93-17-8. (1) Whenever an adoption becomes a contested
240 matter, whether after a hearing on a petition for determination of
241 rights under Section 92-17-6 or otherwise, the court:

242 (a) Shall, on motion of any party or on its own motion,
243 issue an order for immediate blood or tissue sampling in
244 accordance with the provisions of Section 93-9-21 et seq., if
245 paternity is at issue. The court shall order an expedited report
246 of such testing and shall hold the hearing resolving this matter
247 at the earliest time possible.

248 (b) May appoint a guardian ad litem to represent the
249 child. Such guardian ad litem shall be an attorney, however his
250 duties are as guardian ad litem and not as attorney for the child.
251 The reasonable costs of the guardian ad litem shall be taxed as
252 costs of court. Neither the child nor anyone purporting to act on
253 his behalf may waive the appointment of a guardian ad litem.

254 (c) Shall determine first whether or not the objecting
255 parent is entitled to so object under the criteria of Section
256 93-17-7 and then shall determine the custody of the child in
257 accord with the best interests of the child and the rights of the
258 parties as established by the hearings and judgments.



259 (d) Shall schedule all hearings concerning the
260 contested adoption as expeditiously as possible for prompt
261 conclusion of the matter.

262 (2) In determining the custody of the child after a finding
263 that the adoption will not be granted, the fact of the surrender
264 of the child for adoption by a parent shall not be taken as any
265 evidence of that parent's abandonment or desertion of the child or
266 of that parent's unfitness as a parent.

267 (3) In contested adoptions arising through petitions for
268 determination of rights where the prospective adopting parents
269 were not parties to that proceeding, they need not be made parties
270 to the contested adoption until there has been a ruling that the
271 objecting parent is not entitled to enter a valid objection to the
272 adoption. At that point the prospective adopting parents shall be
273 made parties by joinder which shall show their suitability to be
274 adopting parents as would a petition for adoption. The identity
275 and suitability of the prospective adopting parents shall be made
276 known to the court and the guardian ad litem, but shall not be
277 made known to other parties to the proceeding unless the court
278 determines that the interests of justice or the best interests of
279 the child require it.

280 (4) No birth parent or alleged parent shall be permitted to
281 contradict statements given in a proceeding for the adoption of
282 their child in any other proceeding concerning that child or his
283 ancestry.

284 (5) Appointment of a guardian ad litem is not required in
285 any proceeding under this chapter except * * * for the guardian ad
286 litem needed for an abandoned child. It shall not be necessary
287 for a guardian ad litem to be appointed where the chancery judge
288 presiding in the adoption proceeding deems it unnecessary and no
289 adoption agency is involved in the proceeding. No final decree of
290 adoption heretofore granted shall be set aside or modified because



291 a guardian ad litem was not appointed unless as the result of a
292 direct appeal not now barred.

293 (6) The provisions of Chapter 15 of this Title 93,
294 Mississippi Code of 1972, are not applicable to proceedings under
295 this chapter except as specifically provided by reference herein.

296 (7) The court may order a child's birth father, identified
297 as such in the proceedings, to reimburse the Department of Human
298 Services, the foster parents, the adopting parents, the home, any
299 other agency or person who has assumed liability for such child,
300 all or part of the costs of the medical expenses incurred for the
301 mother and the child in connection with the birth of the child, as
302 well as reasonable support for the child after his birth.

303 **SECTION 5.** This act shall take effect and be in force from
304 and after July 1, 2002.

