

By: Representative Denny (By Request)

To: Judiciary A

HOUSE BILL NO. 1097

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-11-65, MISSISSIPPI  
2 CODE OF 1972, TO CLARIFY THE USE OF EXPERT WITNESSES AND ABUSE  
3 ALLEGATIONS IN CHILD CUSTODY 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 The court shall be required to accept the findings of the  
58 court-appointed expert witnesses when allegations of physical or  
59 sexual abuse by the noncustodial parent against a minor child is  
60 determined to be either definitively false or inconclusive. The



61 court shall consider in all child physical or sexual abuse  
62 allegations made against the noncustodial parent by the custodial  
63 parent the behavior of the custodial parent in making or promoting  
64 the allegations so as to alienate the child from the noncustodial  
65 parent.

66 If after investigation by the Department of Human Services or  
67 final disposition by the youth court or family court allegations  
68 of child abuse are found to be without foundation, the chancery  
69 court shall order the alleging party to pay all court costs and  
70 reasonable attorney's fees incurred by the defending party in  
71 responding to such allegation.

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

83 The duty of support of a child terminates upon the  
84 emancipation of the child. The court may determine that  
85 emancipation has occurred and no other support obligation exists  
86 when the child:

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

88 (b) Marries, or

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

92 (d) Voluntarily moves from the home of the custodial  
93 parent or guardian and establishes independent living arrangements



94 and obtains full-time employment prior to attaining the age of  
95 twenty-one (21) years.

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

98 93-11-65. (1) (a) In addition to the right to proceed  
99 under Section 93-5-23, Mississippi Code of 1972, and in addition  
100 to the remedy of habeas corpus in proper cases, and other existing  
101 remedies, the chancery court of the proper county shall have  
102 jurisdiction to entertain suits for the custody, care, support and  
103 maintenance of minor children and to hear and determine all such  
104 matters, and shall, if need be, require bond, sureties or other  
105 guarantee to secure any order for periodic payments for the  
106 maintenance or support of a child. In the event a legally  
107 responsible parent has health insurance available to him or her  
108 through an employer or organization that may extend benefits to  
109 the dependents of such parent, any order of support issued against  
110 such parent may require him or her to exercise the option of  
111 additional coverage in favor of such children as he or she is  
112 legally responsible to support. Proceedings may be brought by or  
113 against a resident or nonresident of the State of Mississippi,  
114 whether or not having the actual custody of minor children, for  
115 the purpose of judicially determining the legal custody of a  
116 child. All actions herein authorized may be brought in the county  
117 where the child is actually residing, or in the county of the  
118 residence of the party who has actual custody, or of the residence  
119 of the defendant. Process shall be had upon the parties as  
120 provided by law for process in person or by publication, if they  
121 be nonresidents of the state or residents of another jurisdiction  
122 or are not found therein after diligent search and inquiry or are  
123 unknown after diligent search and inquiry; provided that the court  
124 or chancellor in vacation may fix a date in termtime or in  
125 vacation to which process may be returnable and shall have power  
126 to proceed in termtime or vacation. Provided, however, that if



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

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

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

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

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

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



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

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

182 (b) The court shall be required to accept the findings  
183 of the court-appointed expert witnesses when allegations of  
184 physical or sexual abuse by the noncustodial parent against a  
185 minor child is determined to be either definitively false or  
186 inconclusive. The court shall consider in all child physical or  
187 sexual abuse allegations made against the noncustodial parent by  
188 the custodial parent the behavior of the custodial parent in  
189 making or promoting the allegations so as to alienate the child  
190 from the noncustodial parent.

191 (5) Each party to a paternity or child support proceeding  
192 shall notify the other within five (5) days after any change of



193 address. In addition, the noncustodial and custodial parent shall  
194 file and update, with the court and with the state case registry,  
195 information on that party's location and identity, including  
196 social security number, residential and mailing addresses,  
197 telephone numbers, photograph, driver's license number, and name,  
198 address and telephone number of the party's employer. This  
199 information shall be required upon entry of an order or within  
200 five (5) days of a change of address.

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

204 (7) In any subsequent child support enforcement action  
205 between the parties, upon sufficient showing that diligent effort  
206 has been made to ascertain the location of a party, due process  
207 requirements for notice and service of process shall be deemed to  
208 be met with respect to the party upon delivery of written notice  
209 to the most recent residential or employer address filed with the  
210 state case registry.

211 (8) The duty of support of a child terminates upon the  
212 emancipation of the child. The court may determine that  
213 emancipation has occurred and no other support obligation exists  
214 when the child:

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

216 (b) Marries, or

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

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

224 (9) Upon motion of a party requesting temporary child  
225 support pending a determination of parentage, temporary support



226 shall be ordered if there is clear and convincing evidence of  
227 paternity on the basis of genetic tests or other evidence, unless  
228 the court makes written findings of fact on the record that the  
229 award of temporary support would be unjust or inappropriate in a  
230 particular case.

231         **SECTION 3.** This act shall take effect and be in force from  
232 and after July 1, 2002.

