

By: Representatives Wells-Smith, Chism,  
Jennings, Montgomery (74th), Moore (60th),  
Robertson

To: Judiciary A

HOUSE BILL NO. 1482

1 AN ACT TO AMEND SECTION 93-11-65, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT WHEN A CHILD AGED 12 YEARS OR OLDER CHOOSES TO  
3 LIVE WITH THE OTHER PARENT SUCH OTHER PARENT SHALL HAVE THE BURDEN  
4 OF PROOF THAT THE CHANGE IN CUSTODY IS IN THE BEST INTEREST OF THE  
5 CHILD; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 93-11-65, Mississippi Code of 1972, is  
8 amended as follows:

9 93-11-65. (1) (a) In addition to the right to proceed  
10 under Section 93-5-23, Mississippi Code of 1972, and in addition  
11 to the remedy of habeas corpus in proper cases, and other existing  
12 remedies, the chancery court of the proper county shall have  
13 jurisdiction to entertain suits for the custody, care, support and  
14 maintenance of minor children and to hear and determine all such  
15 matters, and shall, if need be, require bond, sureties or other  
16 guarantee to secure any order for periodic payments for the  
17 maintenance or support of a child. In the event a legally  
18 responsible parent has health insurance available to him or her  
19 through an employer or organization that may extend benefits to  
20 the dependents of such parent, any order of support issued against  
21 such parent may require him or her to exercise the option of  
22 additional coverage in favor of such children as he or she is  
23 legally responsible to support. Proceedings may be brought by or  
24 against a resident or nonresident of the State of Mississippi,  
25 whether or not having the actual custody of minor children, for  
26 the purpose of judicially determining the legal custody of a  
27 child. All actions herein authorized may be brought in the county  
28 where the child is actually residing, or in the county of the



29 residence of the party who has actual custody, or of the residence  
30 of the defendant. Process shall be had upon the parties as  
31 provided by law for process in person or by publication, if they  
32 be nonresidents of the state or residents of another jurisdiction  
33 or are not found therein after diligent search and inquiry or are  
34 unknown after diligent search and inquiry; provided that the court  
35 or chancellor in vacation may fix a date in termtime or in  
36 vacation to which process may be returnable and shall have power  
37 to proceed in termtime or vacation. Provided, however, that if  
38 the court shall find that both parties are fit and proper persons  
39 to have custody of the children, and that either party is able to  
40 adequately provide for the care and maintenance of the children,  
41 and that it would be to the best interest and welfare of the  
42 children, then any such child who shall have reached his twelfth  
43 birthday shall have the privilege of choosing the parent with whom  
44 he shall live. However, if one (1) of the parents is proposing a  
45 change of custody and such child has chosen to live with that  
46 parent, the burden shall be on that parent to prove that the  
47 change in custody is in the best interest of the child.

48 (b) An order of child support shall specify the sum to  
49 be paid weekly or otherwise. In addition to providing for support  
50 and education, the order shall also provide for the support of the  
51 child prior to the making of the order for child support, and such  
52 other expenses as the court may deem proper.

53 (c) The court may require the payment to be made to the  
54 custodial parent, or to some person or corporation to be  
55 designated by the court as trustee, but if the child or custodial  
56 parent is receiving public assistance, the Department of Human  
57 Services shall be made the trustee.

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



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

66 (3) Whenever the court has ordered a party to make periodic  
67 payments for the maintenance or support of a child, but no bond,  
68 sureties or other guarantee has been required to secure such  
69 payments, and whenever such payments as have become due remain  
70 unpaid for a period of at least thirty (30) days, the court may,  
71 upon petition of the person to whom such payments are owing, or  
72 such person's legal representative, enter an order requiring that  
73 bond, sureties or other security be given by the person obligated  
74 to make such payments, the amount and sufficiency of which shall  
75 be approved by the court. The obligor shall, as in other civil  
76 actions, be served with process and shall be entitled to a hearing  
77 in such case.

78 (4) When a charge of abuse or neglect of a child first  
79 arises in the course of a custody or maintenance action pending in  
80 the chancery court pursuant to this section, the chancery court  
81 may proceed with the investigation, hearing and determination of  
82 such abuse or neglect charge as a part of its hearing and  
83 determination of the custody or maintenance issue as between the  
84 parents, as provided in Section 43-21-151, notwithstanding the  
85 other provisions of the Youth Court Law. The proceedings in  
86 chancery court on the abuse or neglect charge shall be  
87 confidential in the same manner as provided in youth court  
88 proceedings, and the chancery court shall appoint a guardian ad  
89 litem in such cases, as provided under Section 43-21-121 for youth  
90 court proceedings, who shall be an attorney. Unless the chancery  
91 court's jurisdiction has been terminated, all disposition orders  
92 in such cases for placement with the Department of Human Services  
93 shall be reviewed by the court or designated authority at least



94 annually to determine if continued placement with the department  
95 is in the best interest of the child or the public.

96 (5) Each party to a paternity or child support proceeding  
97 shall notify the other within five (5) days after any change of  
98 address. In addition, the noncustodial and custodial parent shall  
99 file and update, with the court and with the state case registry,  
100 information on that party's location and identity, including  
101 social security number, residential and mailing addresses,  
102 telephone numbers, photograph, driver's license number, and name,  
103 address and telephone number of the party's employer. This  
104 information shall be required upon entry of an order or within  
105 five (5) days of a change of address.

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

109 (7) In any subsequent child support enforcement action  
110 between the parties, upon sufficient showing that diligent effort  
111 has been made to ascertain the location of a party, due process  
112 requirements for notice and service of process shall be deemed to  
113 be met with respect to the party upon delivery of written notice  
114 to the most recent residential or employer address filed with the  
115 state case registry.

116 (8) The duty of support of a child terminates upon the  
117 emancipation of the child. The court may determine that  
118 emancipation has occurred and no other support obligation exists  
119 when the child:

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

121 (b) Marries, or

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

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



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

129 (9) Upon motion of a party requesting temporary child  
130 support pending a determination of parentage, temporary support  
131 shall be ordered if there is clear and convincing evidence of  
132 paternity on the basis of genetic tests or other evidence, unless  
133 the court makes written findings of fact on the record that the  
134 award of temporary support would be unjust or inappropriate in a  
135 particular case.

136 **SECTION 2.** This act shall take effect and be in force from  
137 and after July 1, 2002.

