

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

Senate Bill NO. 2493

By Representative(s) Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

6 **SECTION 1.** Section 93-5-23, Mississippi Code of 1972, is
7 amended as follows:
8 93-5-23. (1) When a divorce shall be decreed from the bonds
9 of matrimony, the court may, in its discretion, having regard to
10 the circumstances of the parties and the nature of the case, as
11 may seem equitable and just, make all orders touching the care,
12 custody and maintenance of the children of the marriage, and also
13 touching the maintenance and alimony of the wife or the husband,
14 or any allowance to be made to her or him, and shall, if need be,
15 require bond, sureties or other guarantee for the payment of the
16 sum so allowed. Orders touching on the custody of the children of
17 the marriage shall be made in accordance with the provisions of
18 Section 93-5-24. The court may afterwards, on petition, change
19 the decree, and make from time to time such new decrees as the
20 case may require. However, where proof shows that both parents
21 have separate incomes or estates, the court may require that each
22 parent contribute to the support and maintenance of the children
23 of the marriage in proportion to the relative financial ability of
24 each. In the event a legally responsible parent has health
25 insurance available to him or her through an employer or

26 organization that may extend benefits to the dependents of such
27 parent, any order of support issued against such parent may
28 require him or her to exercise the option of additional coverage
29 in favor of such children as he or she is legally responsible to
30 support.

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

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

59 (4) If after investigation by the Department of Human
60 Services or final disposition by the youth court or family court

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

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

76 (6) (a) The duty of support of a child terminates upon the
77 emancipation of the child. The court may determine that
78 emancipation has occurred and no other support obligation exists
79 when the child:

80 (i) Attains the age of twenty-one (21) years; or

81 (ii) Marries; or

82 (iii) Discontinues full-time enrollment in school
83 and obtains full-time employment prior to attaining the age of
84 twenty-one (21) years; or

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

89 (d) In child support orders where the current child
90 support obligation has terminated and there exists an arrearage
91 for unpaid child support, then the amount that is currently
92 ordered to be paid (current and arrearage obligation) shall
93 continue, until further order of the court, to be paid by the
94 obligor or withheld by the obligor's employer. Said payments
95 shall be applied to the child support arrearage until paid in full

96 without further order of the court.

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) (a) 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 (i) Attains the age of twenty-one (21) years; or

208 (ii) Marries; or

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

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

216 (d) In child support orders where the current child
217 support obligation has terminated and there exists an arrearage
218 for unpaid child support, then the amount that is currently
219 ordered to be paid (current and arrearage obligation) shall
220 continue, until further order of the court, to be paid by the
221 obligor or withheld by the obligor's employer. Said payments
222 shall be applied to the child support arrearage until paid in full
223 without further order of the court.

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.