

By: Representative Jennings

To: Judiciary A

HOUSE BILL NO. 1319

1 AN ACT TO AMEND SECTION 93-9-9, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT A HUSBAND OF A CHILD BORN DURING A MARRIAGE MAY BE
3 DETERMINED TO BE THE FATHER IF SUCH DETERMINATION IS IN THE BEST
4 INTEREST OF THE CHILD; TO AMEND SECTION 93-5-23 AND 93-11-65,
5 MISSISSIPPI CODE OF 1972, TO ALLOW CHILD CUSTODY TO SUCH FATHER;
6 AND FOR RELATED PURPOSES.

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

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

10 93-9-9. (1) Paternity may be determined upon the petition
11 of the mother, or father, the child or any public authority
12 chargeable by law with the support of the child; provided that
13 such an adjudication after the death of the defendant must be made
14 only upon clear and convincing evidence. If paternity has been
15 lawfully determined, or has been acknowledged in writing according
16 to the laws of this state, the liabilities of the noncustodial
17 parent may be enforced in the same or other proceedings by the
18 custodial parent, the child, or any public authority which has
19 furnished or may furnish the reasonable expenses of pregnancy,
20 confinement, education, necessary support and maintenance, and
21 medical or funeral expenses for the custodial parent or the child.
22 The trier of fact shall receive without the need for third-party
23 foundation testimony certified, attested or sworn documentation as
24 evidence of (a) childbirth records; (b) cost of filing fees; (c)
25 court costs; (d) services of process fees; (e) mailing cost; (f)
26 genetic tests and testing fees; (g) the department's attorney's
27 fees; (h) in cases where the state or any of its entities or
28 divisions have provided medical services to the child or the
29 child's mother, all costs of prenatal care, birthing, postnatal



30 care and any other medical expenses incurred by the child or by
31 the mother as a consequence of the mother's pregnancy or delivery;
32 and (i) funeral expenses. However, proceedings hereunder shall
33 not be instituted by the Department of Human Services after the
34 child has reached the age of eighteen (18) years but proceedings
35 may be instituted by a private attorney at any time until such
36 child attains the age of twenty-one (21) years unless the child
37 has been emancipated as provided in Section 93-5-23 and Section
38 93-11-65. In the event of court determined paternity, the surname
39 of the child shall be that of the father, unless the judgment
40 specifies otherwise.

41 (2) If the alleged father in an action to determine
42 paternity to which the Department of Human Services is a party
43 fails to appear for a scheduled hearing after having been served
44 with process or subsequent notice consistent with the Rules of
45 Civil Procedure, his paternity of the child(ren) shall be
46 established by the court if an affidavit sworn to by the mother
47 averring the alleged father's paternity of the child has
48 accompanied the complaint to determine paternity. Said affidavit
49 shall constitute sufficient grounds for the court's finding of the
50 alleged father's paternity without the necessity of the presence
51 or testimony of the mother at the said hearing. The court shall,
52 upon motion by the Department of Human Services, enter a judgment
53 of paternity. Any person who shall willfully and knowingly file a
54 false affidavit shall be subject to a fine of not more than One
55 Thousand Dollars (\$1,000.00).

56 (3) Upon application of both parents to the State Board of
57 Health and receipt by the State Board of Health of a sworn
58 acknowledgement of paternity executed by both parents subsequent
59 to the birth of a child born out of wedlock, the birth certificate
60 of the child shall be amended to show such paternity if paternity
61 is not shown on the birth certificate. Upon request of the
62 parents for the legitimization of a child under this section, the



63 surname of the child shall be changed on the certificate to that
64 of the father.

65 (4) (a) A signed voluntary acknowledgment of paternity is
66 subject to the right of any signatory to rescind the
67 acknowledgment within the earlier of:

68 (i) Sixty (60) days; or

69 (ii) The date of a judicial proceeding relating to
70 the child, including a proceeding to establish a support order, in
71 which the signatory is a party.

72 (b) After the expiration of the sixty-day period
73 specified in subsection (4) (a) (i) of this section, a signed
74 voluntary acknowledgment of paternity may be challenged in court
75 only on the basis of fraud, duress, or material mistake of fact,
76 with the burden of proof upon the challenger; the legal
77 responsibilities, including child support obligations, of any
78 signatory arising from the acknowledgment may not be suspended
79 during the pendency of the challenge, except for good cause shown.

80 (5) The presumption that the husband of a child's mother is
81 the child's father shall be grounds for the court to declare such
82 husband as the legal father if such finding is in the best
83 interest of the child, notwithstanding the fact that blood or
84 genetic testing determines that he is not the biological father.

85 **SECTION 2.** Section 93-5-23, Mississippi Code of 1972, is
86 amended as follows:

87 93-5-23. When a divorce shall be decreed from the bonds of
88 matrimony, the court may, in its discretion, having regard to the
89 circumstances of the parties and the nature of the case, as may
90 seem equitable and just, make all orders touching the care,
91 custody and maintenance of the children of the marriage, and also
92 touching the maintenance and alimony of the wife or the husband,
93 or any allowance to be made to her or him, and shall, if need be,
94 require bond, sureties or other guarantee for the payment of the
95 sum so allowed. Orders touching on the custody of the children of



96 the marriage shall be made in accordance with the provisions of
97 Section 93-5-24. An order of custody may be made in accordance
98 with Section 93-9-9(5). The court may afterwards, on petition,
99 change the decree, and make from time to time such new decrees as
100 the case may require. However, where proof shows that both
101 parents have separate incomes or estates, the court may require
102 that each parent contribute to the support and maintenance of the
103 children of the marriage in proportion to the relative financial
104 ability of each. In the event a legally responsible parent has
105 health insurance available to him or her through an employer or
106 organization that may extend benefits to the dependents of such
107 parent, any order of support issued against such parent may
108 require him or her to exercise the option of additional coverage
109 in favor of such children as he or she is legally responsible to
110 support.

111 Whenever the court has ordered a party to make periodic
112 payments for the maintenance or support of a child, but no bond,
113 sureties or other guarantee has been required to secure such
114 payments, and whenever such payments as have become due remain
115 unpaid for a period of at least thirty (30) days, the court may,
116 upon petition of the person to whom such payments are owing, or
117 such person's legal representative, enter an order requiring that
118 bond, sureties or other security be given by the person obligated
119 to make such payments, the amount and sufficiency of which shall
120 be approved by the court. The obligor shall, as in other civil
121 actions, be served with process and shall be entitled to a hearing
122 in such case.

123 Whenever in any proceeding in the chancery court concerning
124 the custody of a child a party alleges that the child whose
125 custody is at issue has been the victim of sexual or physical
126 abuse by the other party, the court may, on its own motion, grant
127 a continuance in the custody proceeding only until such allegation
128 has been investigated by the Department of Human Services. At the



129 time of ordering such continuance the court may direct the party,
130 and his attorney, making such allegation of child abuse to report
131 in writing and provide all evidence touching on the allegation of
132 abuse to the Department of Human Services. The Department of
133 Human Services shall investigate such allegation and take such
134 action as it deems appropriate and as provided in such cases under
135 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
136 Code of 1972) or under the laws establishing family courts (being
137 Chapter 23 of Title 43, Mississippi Code of 1972).

138 If after investigation by the Department of Human Services or
139 final disposition by the youth court or family court allegations
140 of child abuse are found to be without foundation, the chancery
141 court shall order the alleging party to pay all court costs and
142 reasonable attorney's fees incurred by the defending party in
143 responding to such allegation.

144 The court may investigate, hear and make a determination in a
145 custody action when a charge of abuse and/or neglect arises in the
146 course of a custody action as provided in Section 43-21-151, and
147 in such cases the court shall appoint a guardian ad litem for the
148 child as provided under Section 43-21-121, who shall be an
149 attorney. Unless the chancery court's jurisdiction has been
150 terminated, all disposition orders in such cases for placement
151 with the Department of Human Services shall be reviewed by the
152 court or designated authority at least annually to determine if
153 continued placement with the department is in the best interest of
154 the child or public.

155 The duty of support of a child terminates upon the
156 emancipation of the child. The court may determine that
157 emancipation has occurred and no other support obligation exists
158 when the child:

- 159 (a) Attains the age of twenty-one (21) years, or
160 (b) Marries, or



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

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

168 **SECTION 3.** Section 93-11-65, Mississippi Code of 1972, is
169 amended as follows:

170 93-11-65. (1) (a) In addition to the right to proceed
171 under Section 93-5-23, Mississippi Code of 1972, and in addition
172 to the remedy of habeas corpus in proper cases, and other existing
173 remedies, the chancery court of the proper county shall have
174 jurisdiction to entertain suits for the custody, care, support and
175 maintenance of minor children and to hear and determine all such
176 matters, and shall, if need be, require bond, sureties or other
177 guarantee to secure any order for periodic payments for the
178 maintenance or support of a child. The court may also entertain a
179 custody suit based on a finding under Section 93-9-9(5). In the
180 event a legally responsible parent has health insurance available
181 to him or her through an employer or organization that may extend
182 benefits to the dependents of such parent, any order of support
183 issued against such parent may require him or her to exercise the
184 option of additional coverage in favor of such children as he or
185 she is legally responsible to support. Proceedings may be brought
186 by or against a resident or nonresident of the State of
187 Mississippi, whether or not having the actual custody of minor
188 children, for the purpose of judicially determining the legal
189 custody of a child. All actions herein authorized may be brought
190 in the county where the child is actually residing, or in the
191 county of the residence of the party who has actual custody, or of
192 the residence of the defendant. Process shall be had upon the
193 parties as provided by law for process in person or by



194 publication, if they be nonresidents of the state or residents of
195 another jurisdiction or are not found therein after diligent
196 search and inquiry or are unknown after diligent search and
197 inquiry; provided that the court or chancellor in vacation may fix
198 a date in termtime or in vacation to which process may be
199 returnable and shall have power to proceed in termtime or
200 vacation. Provided, however, that if the court shall find that
201 both parties are fit and proper persons to have custody of the
202 children, and that either party is able to adequately provide for
203 the care and maintenance of the children, and that it would be to
204 the best interest and welfare of the children, then any such child
205 who shall have reached his twelfth birthday shall have the
206 privilege of choosing the parent with whom he shall live.

207 (b) An order of child support shall specify the sum to
208 be paid weekly or otherwise. In addition to providing for support
209 and education, the order shall also provide for the support of the
210 child prior to the making of the order for child support, and such
211 other expenses as the court may deem proper.

212 (c) The court may require the payment to be made to the
213 custodial parent, or to some person or corporation to be
214 designated by the court as trustee, but if the child or custodial
215 parent is receiving public assistance, the Department of Human
216 Services shall be made the trustee.

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

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

225 (3) Whenever the court has ordered a party to make periodic
226 payments for the maintenance or support of a child, but no bond,



227 sureties or other guarantee has been required to secure such
228 payments, and whenever such payments as have become due remain
229 unpaid for a period of at least thirty (30) days, the court may,
230 upon petition of the person to whom such payments are owing, or
231 such person's legal representative, enter an order requiring that
232 bond, sureties or other security be given by the person obligated
233 to make such payments, the amount and sufficiency of which shall
234 be approved by the court. The obligor shall, as in other civil
235 actions, be served with process and shall be entitled to a hearing
236 in such case.

237 (4) When a charge of abuse or neglect of a child first
238 arises in the course of a custody or maintenance action pending in
239 the chancery court pursuant to this section, the chancery court
240 may proceed with the investigation, hearing and determination of
241 such abuse or neglect charge as a part of its hearing and
242 determination of the custody or maintenance issue as between the
243 parents, as provided in Section 43-21-151, notwithstanding the
244 other provisions of the Youth Court Law. The proceedings in
245 chancery court on the abuse or neglect charge shall be
246 confidential in the same manner as provided in youth court
247 proceedings, and the chancery court shall appoint a guardian ad
248 litem in such cases, as provided under Section 43-21-121 for youth
249 court proceedings, who shall be an attorney. Unless the chancery
250 court's jurisdiction has been terminated, all disposition orders
251 in such cases for placement with the Department of Human Services
252 shall be reviewed by the court or designated authority at least
253 annually to determine if continued placement with the department
254 is in the best interest of the child or the public.

255 (5) Each party to a paternity or child support proceeding
256 shall notify the other within five (5) days after any change of
257 address. In addition, the noncustodial and custodial parent shall
258 file and update, with the court and with the state case registry,
259 information on that party's location and identity, including



260 social security number, residential and mailing addresses,
261 telephone numbers, photograph, driver's license number, and name,
262 address and telephone number of the party's employer. This
263 information shall be required upon entry of an order or within
264 five (5) days of a change of address.

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

268 (7) In any subsequent child support enforcement action
269 between the parties, upon sufficient showing that diligent effort
270 has been made to ascertain the location of a party, due process
271 requirements for notice and service of process shall be deemed to
272 be met with respect to the party upon delivery of written notice
273 to the most recent residential or employer address filed with the
274 state case registry.

275 (8) The duty of support of a child terminates upon the
276 emancipation of the child. The court may determine that
277 emancipation has occurred and no other support obligation exists
278 when the child:

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

280 (b) Marries, or

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

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

288 (9) Upon motion of a party requesting temporary child
289 support pending a determination of parentage, temporary support
290 shall be ordered if there is clear and convincing evidence of
291 paternity on the basis of genetic tests or other evidence, unless
292 the court makes written findings of fact on the record that the



293 award of temporary support would be unjust or inappropriate in a
294 particular case.

295 **SECTION 4.** This act shall take effect and be in force from
296 and after July 1, 2003.

