

By: Senator(s) Carlton

To: Judiciary

SENATE BILL NO. 2629

1 AN ACT TO BRING FORWARD SECTIONS 93-17-5, 93-17-6, 93-17-7,
2 93-17-8, 93-15-103, 93-15-105, 93-15-107, 93-15-109 AND 93-15-111,
3 MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR TERMINATION
4 OF PARENTAL RIGHTS IN CERTAIN CASES; TO REMOVE ANY DISCREPANCIES
5 IN NOTICE PERIODS BETWEEN THE STATUTES AND THE RULES OF CIVIL
6 PROCEDURE; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 93-17-5, Mississippi Code of 1972, is
9 brought forward as follows:

10 93-17-5. (1) There shall be made parties to the proceeding
11 by process or by the filing therein of a consent to the adoption
12 proposed in the petition, which consent shall be duly sworn to or
13 acknowledged and executed only by the following persons, but not
14 before seventy-two (72) hours after the birth of said child: (a)
15 the parents, or parent, if only one (1) parent, though either be
16 under the age of twenty-one (21) years; or, (b) in the event both
17 parents are dead, then any two (2) adult kin of the child within
18 the third degree computed according to the civil law, provided
19 that, if one of such kin is in possession of the child, he or she
20 shall join in the petition or be made a party to the suit; or, (c)
21 the guardian ad litem of an abandoned child, upon petition showing
22 that the names of the parents of such child are unknown after
23 diligent search and inquiry by the petitioners. In addition to
24 the above, there shall be made parties to any proceeding to adopt
25 a child, either by process or by the filing of a consent to the
26 adoption proposed in the petition, the following:

27 (i) Those persons having physical custody of such
28 child, except persons having such child as foster parents as a



29 result of placement with them by the Department of Human Services
30 of the State of Mississippi.

31 (ii) Any person to whom custody of such child may have
32 been awarded by a court of competent jurisdiction of the State of
33 Mississippi.

34 (iii) The agent of the county Department of Human
35 Services of the State of Mississippi that has placed a child in
36 foster care, either by agreement or by court order.

37 (2) Such consent may also be executed and filed by the duly
38 authorized officer or representative of a home to whose care the
39 child has been delivered. The child shall join the petition by
40 its next friend.

41 (3) In the case of a child born out of wedlock, the father
42 shall not have a right to object to an adoption unless he has
43 demonstrated, within the period ending thirty (30) days after the
44 birth of the child, a full commitment to the responsibilities of
45 parenthood. Determination of the rights of the father of a child
46 born out of wedlock may be made in proceedings pursuant to a
47 petition for determination of rights as provided in Section
48 93-17-6.

49 (4) If such consent be not filed, then process shall be had
50 upon the parties as provided by law for process in person or by
51 publication, if they be nonresidents of the state or are not found
52 therein, after diligent search and inquiry, or are unknown after
53 diligent search and inquiry; provided that the court or chancellor
54 in vacation may fix a date in termtime or in vacation to which
55 process may be returnable and shall have power to proceed in
56 termtime or vacation. In any event, if the child is more than
57 fourteen (14) years of age, a consent to the adoption, sworn to or
58 acknowledged by the child, shall also be required or personal
59 service of process shall be had upon the child in the same manner
60 and in the same effect as if it were an adult.



61 **SECTION 2.** Section 93-17-6, Mississippi Code of 1972, is
62 brought forward as follows:

63 93-17-6. (1) Any person who would be a necessary party to
64 an adoption proceeding under this chapter and any person alleged
65 or claiming to be the father of a child born out of wedlock who is
66 proposed for adoption or who has been determined to be such by any
67 administrative or judicial procedure (the "alleged father") may
68 file a petition for determination of rights as a preliminary
69 pleading to a petition for adoption in any court which would have
70 jurisdiction and venue of an adoption proceeding. A petition for
71 determination of rights may be filed at any time after the period
72 ending thirty (30) days after the birth of the child. Should
73 competing petitions be filed in two (2) or more courts having
74 jurisdiction and venue, the court in which the first such petition
75 was properly filed shall have jurisdiction over the whole
76 proceeding until its disposition. The prospective adopting
77 parents need not be a party to such petition. Where the child's
78 biological mother has surrendered the child to a home for
79 adoption, the home may represent the biological mother and her
80 interests in this proceeding.

81 (2) The court shall set this petition for hearing as
82 expeditiously as possible allowing not less than ten (10) days'
83 notice from the service or completion of process on the parties to
84 be served.

85 (3) The sole matter for determination under a petition for
86 determination of rights is whether the alleged father has a right
87 to object to an adoption as set out in Section 93-17-5(3).

88 (4) Proof of an alleged father's full commitment to the
89 responsibilities of parenthood would be shown by proof that, in
90 accordance with his means and knowledge of the mother's pregnancy
91 or the child's birth, that he either:

92 (a) Provided financial support, including, but not
93 limited to, the payment of consistent support to the mother during



94 her pregnancy, contributions to the payment of the medical
95 expenses of pregnancy and birth, and contributions of consistent
96 support of the child after birth; that he frequently and
97 consistently visited the child after birth; and that he is now
98 willing and able to assume legal and physical care of the child;
99 or

100 (b) Was willing to provide such support and to visit
101 the child and that he made reasonable attempts to manifest such a
102 parental commitment, but was thwarted in his efforts by the mother
103 or her agents, and that he is now willing and able to assume legal
104 and physical care of the child.

105 (5) If the court determines that the alleged father has not
106 met his full responsibilities of parenthood, it shall enter an
107 order terminating his parental rights and he shall have no right
108 to object to an adoption under Section 93-17-7.

109 (6) If the court determines that the alleged father has met
110 his full responsibilities of parenthood and that he objects to the
111 child's adoption, the court shall set the matter as a contested
112 adoption in accord with Section 93-17-8.

113 (7) A petition for determination of rights may be used to
114 determine the rights of alleged fathers whose identity is unknown
115 or uncertain. In such cases the court shall determine what, if
116 any, notice can be and is to be given such persons.
117 Determinations of rights under the procedure of this section may
118 also be made under a petition for adoption.

119 (8) Petitions for determination of rights shall be
120 considered adoption cases and all subsequent proceedings such as a
121 contested adoption under Section 93-17-8 and the adoption
122 proceeding itself shall be portions of the same file.

123 **SECTION 3.** Section 93-17-7, Mississippi Code of 1972, is
124 brought forward as follows:

125 93-17-7. (1) No infant shall be adopted to any person if
126 either parent, after having been summoned, shall appear and object



127 thereto before the making of a decree for adoption, unless it
128 shall be made to appear to the court from evidence touching such
129 matters that the parent so objecting had abandoned or deserted
130 such infant or is mentally, or morally, or otherwise unfit to rear
131 and train it, including, but not limited to, those matters set out
132 in subsection (2) of this section, in either of which cases the
133 adoption may be decreed notwithstanding the objection of such
134 parent, first considering the welfare of the child, or children
135 sought to be adopted. Provided, however, the parents shall not be
136 summoned in the adoption proceedings nor have the right to object
137 thereto if the parental rights of the parent or parents have been
138 terminated by the procedure set forth in Sections 93-15-101
139 through 93-15-111, and such termination shall be res judicata on
140 the question of parental abandonment or unfitness in the adoption
141 proceedings.

142 (2) An adoption may be allowed over the objection of a
143 parent where:

144 (a) The parent has abused the child. For purposes of
145 this paragraph, abuse means the infliction of physical or mental
146 injury which causes deterioration to the child, sexual abuse,
147 exploitation or overworking of a child to such an extent that his
148 health or moral or emotional well-being is endangered.

149 (b) The parent has not consistently offered to provide
150 reasonably necessary food, clothing, appropriate shelter and
151 treatment for the child. For purposes of this paragraph,
152 treatment means medical care or other health services provided in
153 accordance with the tenets of a well-recognized religious method
154 of healing with a reasonable, proven record of success.

155 (c) The parent suffers from a medical or emotional
156 illness, mental deficiency, behavior or conduct disorder, severe
157 physical disability, substance abuse or chemical dependency which
158 makes him unable or unwilling to provide an adequate permanent
159 home for the child at the present time or in the reasonably near



160 future based upon expert opinion or based upon an established
161 pattern of behavior.

162 (d) Viewed in its entirety, the parent's past or
163 present conduct, including his criminal convictions, would pose a
164 risk of substantial harm to the physical, mental or emotional
165 health of the child.

166 (e) The parent has engaged in acts or omissions
167 permitting termination of parental rights under Section 93-15-103.

168 (f) The enumeration of conduct or omissions in this
169 subsection (2) in no way limits the court's power to such
170 enumerated conduct or omissions in determining a parent's
171 abandonment or desertion of the child or unfitness under
172 subsection (1) of this section.

173 **SECTION 4.** Section 93-17-8, Mississippi Code of 1972, is
174 brought forward as follows:

175 93-17-8. (1) Whenever an adoption becomes a contested
176 matter, whether after a hearing on a petition for determination of
177 rights under Section 93-17-6 or otherwise, the court:

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

184 (b) Shall appoint a guardian ad litem to represent the
185 child. Such guardian ad litem shall be an attorney, however his
186 duties are as guardian ad litem and not as attorney for the child.
187 The reasonable costs of the guardian ad litem shall be taxed as
188 costs of court. Neither the child nor anyone purporting to act on
189 his behalf may waive the appointment of a guardian ad litem.

190 (c) Shall determine first whether or not the objecting
191 parent is entitled to so object under the criteria of Section
192 93-17-7 and then shall determine the custody of the child in



193 accord with the best interests of the child and the rights of the
194 parties as established by the hearings and judgments.

195 (d) Shall schedule all hearings concerning the contested
196 adoption as expeditiously as possible for prompt conclusion of the
197 matter.

198 (2) In determining the custody of the child after a finding
199 that the adoption will not be granted, the fact of the surrender
200 of the child for adoption by a parent shall not be taken as any
201 evidence of that parent's abandonment or desertion of the child or
202 of that parent's unfitness as a parent.

203 (3) In contested adoptions arising through petitions for
204 determination of rights where the prospective adopting parents
205 were not parties to that proceeding, they need not be made parties
206 to the contested adoption until there has been a ruling that the
207 objecting parent is not entitled to enter a valid objection to the
208 adoption. At that point the prospective adopting parents shall be
209 made parties by joinder which shall show their suitability to be
210 adopting parents as would a petition for adoption. The identity
211 and suitability of the prospective adopting parents shall be made
212 known to the court and the guardian ad litem, but shall not be
213 made known to other parties to the proceeding unless the court
214 determines that the interests of justice or the best interests of
215 the child require it.

216 (4) No birth parent or alleged parent shall be permitted to
217 contradict statements given in a proceeding for the adoption of
218 their child in any other proceeding concerning that child or his
219 ancestry.

220 (5) Appointment of a guardian ad litem is not required in any
221 proceeding under this chapter except as provided in subsection
222 (1)(b) above and except for the guardian ad litem needed for an
223 abandoned child. It shall not be necessary for a guardian ad
224 litem to be appointed where the chancery judge presiding in the
225 adoption proceeding deems it unnecessary and no adoption agency is



226 involved in the proceeding. No final decree of adoption
227 heretofore granted shall be set aside or modified because a
228 guardian ad litem was not appointed unless as the result of a
229 direct appeal not now barred.

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

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

240 **SECTION 5.** Section 93-15-103, Mississippi Code of 1972, is
241 brought forward as follows:

242 93-15-103. (1) When a child has been removed from the home
243 of its natural parents and cannot be returned to the home of his
244 natural parents within a reasonable length of time because
245 returning to the home would be damaging to the child or the parent
246 is unable or unwilling to care for the child, relatives are not
247 appropriate or are unavailable, and when adoption is in the best
248 interest of the child, taking into account whether the adoption is
249 needed to secure a stable placement for the child and the strength
250 of the child's bonds to his natural parents and the effect of
251 future contacts between them, the grounds listed in subsections
252 (2) and (3) of this section shall be considered as grounds for the
253 termination of parental rights. The grounds may apply singly or
254 in combination in any given case.

255 (2) The rights of a parent with reference to a child,
256 including parental rights to control or withhold consent to an
257 adoption, and the right to receive notice of a hearing on a
258 petition for adoption, may be relinquished and the relationship of



259 the parent and child terminated by the execution of a written
260 voluntary release, signed by the parent, regardless of the age of
261 the parent.

262 (3) Grounds for termination of parental rights shall be based
263 on one or more of the following factors:

264 (a) A parent has deserted without means of
265 identification or abandoned a child as defined in Section 97-5-1,
266 or

267 (b) A parent has made no contact with a child under the
268 age of three (3) for six (6) months or a child three (3) years of
269 age or older for a period of one (1) year; or

270 (c) A parent has been responsible for a series of
271 abusive incidents concerning one or more children; or

272 (d) When the child has been in the care and custody of a
273 licensed child caring agency or the Department of Human Services
274 for at least one (1) year, that agency or the department has made
275 diligent efforts to develop and implement a plan for return of the
276 child to its parents, and:

277 (i) The parent has failed to exercise reasonable
278 available visitation with the child; or

279 (ii) The parent, having agreed to a plan to effect
280 placement of the child with the parent, fails to implement the
281 plan so that the child caring agency is unable to return the child
282 to said parent; or

283 (e) The parent exhibits ongoing behavior which would
284 make it impossible to return the child to the parent's care and
285 custody:

286 (i) Because the parent has a diagnosable condition
287 unlikely to change within a reasonable time such as alcohol or
288 drug addiction, severe mental deficiencies or mental illness, or
289 extreme physical incapacitation, which condition makes the parent
290 unable to assume minimally, acceptable care of the child; or



291 (ii) Because the parent fails to eliminate
292 behavior, identified by the child caring agency or the court,
293 which prevents placement of said child with the parent in spite of
294 diligent efforts of the child caring agency to assist the parent;
295 or

296 (f) When there is an extreme and deep-seated antipathy
297 by the child toward the parent or when there is some other
298 substantial erosion of the relationship between the parent and
299 child which was caused at least in part by the parent's serious
300 neglect, abuse, prolonged and unreasonable absence, unreasonable
301 failure to visit or communicate, or prolonged imprisonment; or

302 (g) When a parent has been convicted of any of the
303 following offenses against his natural or adopted child: (i) rape
304 of a child under the provisions of Section 97-3-65, (ii) sexual
305 battery of a child under the provisions of Section 97-3-95(c),
306 (iii) touching a child for lustful purposes under the provisions
307 of Section 97-5-23, (iv) exploitation of a child under the
308 provisions of Section 97-5-31, (v) felonious abuse or battery of a
309 child under the provisions of Section 97-5-39(2), (vi) carnal
310 knowledge of a step or adopted child or a child of a cohabitating
311 partner under the provisions of Section 97-5-41, or (vii) murder
312 of another child of such parent, voluntary manslaughter of another
313 child of such parent, aided or abetted, attempted, conspired or
314 solicited to commit such murder or voluntary manslaughter, or a
315 felony assault that results in the serious bodily injury to the
316 surviving child or another child of such parent; or

317 (h) The child has been adjudicated to have been abused
318 or neglected and custody has been transferred from the child's
319 parent(s) for placement pursuant to Section 43-15-13, and a court
320 of competent jurisdiction has determined that reunification shall
321 not be in the child's best interest.

322 (4) Legal custody and guardianship by persons other than the
323 parent as well as other permanent alternatives which end the



324 supervision by the Department of Human Services should be
325 considered as alternatives to the termination of parental rights,
326 and these alternatives should be selected when, in the best
327 interest of the child, parental contacts are desirable and it is
328 possible to secure such placement without termination of parental
329 rights.

330 (5) When a parent has been convicted of rape of a child under
331 the provisions of Section 97-3-65, sexual battery of a child under
332 the provisions of Section 97-3-95(c), touching a child for lustful
333 purposes under the provisions of Section 97-5-23, exploitation of
334 a child under the provisions of Section 97-5-31, felonious abuse
335 or battery of a child under the provisions of Section 97-5-39(2),
336 or carnal knowledge of a step or adopted child or a child of a
337 cohabitating partner under the provisions of Section 97-5-41,
338 notice of the conviction shall be forwarded by the circuit clerk
339 of the county in which the conviction occurred to the Mississippi
340 Department of Human Services, Division of Social Services.

341 (6) In any case where a child has been removed from the
342 parent's home due to sexual abuse or serious bodily injury to the
343 child, the court shall treat such case for termination of parental
344 rights as a preference case to be determined with all reasonable
345 expedition.

346 **SECTION 6.** Section 93-15-105, Mississippi Code of 1972, is
347 brought forward as follows:

348 93-15-105. (1) Any person, agency or institution may file
349 for termination of parental rights in the chancery court or the
350 family or county court sitting as the youth court of the county in
351 which a defendant or the child resides, or in the county where an
352 agency or institution holding custody of the child is located.
353 The chancery court, or the chancellor in vacation, or the family
354 court, or the family court judge in vacation, or the county court
355 when sitting as the youth court, or such county court judge in
356 vacation, may set the cause for hearing in termtime or in



357 vacation. The petition shall be triable either in termtime or in
358 vacation, after personal service of process for thirty (30) days,
359 and in case of nonresident defendants, or defendants whose
360 addresses are unknown after diligent search, thirty (30) days
361 after completion of publication; such publication shall be
362 governed by Sections 13-3-19 and 13-3-21.

363 (2) In all cases involving termination of parental rights,
364 minor parents may be served with process as an adult.

365 (3) In the event that one (1) parent voluntarily releases his
366 child for adoption a copy of the summons served on the child shall
367 not be required to be served on the releasing parent.

368 **SECTION 7.** Section 93-15-107, Mississippi Code of 1972, is
369 brought forward as follows:

370 93-15-107. (1) In an action to terminate parental rights,
371 the mother of the child, the legal father of the child, and the
372 putative father of the child, when known, shall be parties
373 defendant. A guardian ad litem shall be appointed to protect the
374 interest of the child in the termination of parental rights. A
375 child may be made party plaintiff, and any agency holding custody
376 of a minor shall act as party plaintiff.

377 (2) The Department of Human Services shall initiate
378 proceedings to terminate parental rights in accordance with
379 Section 93-15-101 et seq. in cases where a child has been placed
380 in the physical custody of a relative and the department has been
381 given legal custody of the child. The department may provide
382 necessary funds to defray the costs and attorney fees for any
383 adoption proceedings brought by the relative of such child in
384 cases where the relative is unable to pay such costs and fees
385 based on criteria established by the department in compliance with
386 federal law and the availability of funds to the department to pay
387 such costs and fees.

388 **SECTION 8.** Section 93-15-109, Mississippi Code of 1972, is
389 brought forward as follows:



390 93-15-109. After hearing all the evidence in regard to such
391 petition, if the chancellor, family court judge or county court
392 judge is satisfied by clear and convincing proof that the parent
393 or parents are within the grounds requiring termination of
394 parental rights as set forth in this chapter, then the court may
395 terminate all the parental rights of the parent or parents
396 regarding the child, and terminate the right of the child to
397 inherit from such parent or parents. The termination of the
398 parental rights of one (1) parent may be made without affecting
399 the parental rights of the other parent, should circumstances and
400 evidence ever so warrant.

401 **SECTION 9.** Section 93-15-111, Mississippi Code of 1972, is
402 brought forward as follows:

403 93-15-111. Should the court terminate the parental rights of
404 the parents or only one (1) of the parents (if they both be
405 living), then the court shall place the child in the custody of
406 some suitable person, agency or institution, and such person,
407 agency or institution shall have full power to enter a petition
408 under section 93-17-5, consenting to adoption, and no further
409 notice shall be given in the adoption proceeding to such parent or
410 parents.

411 **SECTION 10.** This act shall take effect and be in force from
412 and after July 1, 2003.

