

By: Representative Clark

To: Judiciary A

HOUSE BILL NO. 949

1 AN ACT TO AMEND SECTIONS 43-21-121 AND 93-11-65, MISSISSIPPI
2 CODE OF 1972, TO CLARIFY THE DUTIES OF A GUARDIAN AD LITEM AND THE
3 WEIGHT THAT THE TESTIMONY OF A GUARDIAN AD LITEM SHALL BE
4 AFFORDED; TO CLARIFY THAT WHEN A COUNTY COURT IS SERVING AS A
5 YOUTH COURT THEN SUCH COURT MAY APPOINT A SUITABLE ATTORNEY OR
6 LAYMAN AS A GUARDIAN AD LITEM; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 43-21-121, Mississippi Code of 1972, is
9 amended as follows:

10 43-21-121. (1) The youth court shall appoint a guardian ad
11 litem for the child:

12 (a) When a child has no parent, guardian or custodian;

13 (b) When the youth court cannot acquire personal
14 jurisdiction over a parent, a guardian or a custodian;

15 (c) When the parent is a minor or a person of unsound
16 mind;

17 (d) When the parent is indifferent to the interest of
18 the child or if the interests of the child and the parent,
19 considered in the context of the cause, appear to conflict;

20 (e) In every case involving an abused or neglected
21 child which results in a judicial proceeding; or

22 (f) In any other instance where the youth court finds
23 appointment of a guardian ad litem to be in the best interest of
24 the child.

25 (2) The guardian ad litem shall be appointed by the court
26 when custody is ordered or at the first judicial hearing regarding
27 the case, whichever occurs first.



28 (3) (a) In addition to all other duties required by law, a
29 guardian ad litem shall have the duty to protect the interest of a
30 child for whom he has been appointed guardian ad litem. The
31 guardian ad litem shall investigate, make recommendations to the
32 court or enter reports as necessary to hold paramount the child's
33 best interest. The guardian ad litem is not an adversary party
34 and the court shall insure that guardians ad litem perform their
35 duties properly and in the best interest of their wards. The
36 guardian ad litem shall be a competent person who has no adverse
37 interest to the minor. The court shall insure that the guardian
38 ad litem is adequately instructed on the proper performance of his
39 duties.

40 (b) The guardian ad litem acts as an arm of the court
41 and is an integral part of the judicial process. Guardian ad
42 litem reports may properly contain hearsay information. A
43 guardian ad litem must fulfill their duty to interview all
44 concerned and they must also be able to testify as to the full
45 extent of their findings. All that is required is that the
46 guardian ad litem be available to testify at trial and that the
47 source of the material be sufficiently identified so that the
48 affected party has an opportunity to rebut any adverse or
49 erroneous material contained therein. The guardian ad litem is
50 free to make recommendations, provided the judge draws his own
51 conclusions and understands that the responsibility of deciding
52 the case is his and not that of the guardian.

53 (4) The court, including a county court serving as a youth
54 court, may appoint either a suitable attorney or a suitable layman
55 as guardian ad litem. In cases where the court appoints a layman
56 as guardian ad litem, the court shall also appoint an attorney to
57 represent the child. From and after January 1, 1999, in order to
58 be eligible for an appointment as a guardian ad litem, such
59 attorney or layperson must have received child protection and
60 juvenile justice training provided by or approved by the



61 Mississippi Judicial College within the year immediately preceding
62 such appointment. The Mississippi Judicial College shall
63 determine the amount of child protection and juvenile justice
64 training which shall be satisfactory to fulfill the requirements
65 of this section. The Administrative Office of Courts shall
66 maintain a roll of all attorneys and laymen eligible to be
67 appointed as a guardian ad litem under this section and shall
68 enforce the provisions of this subsection.

69 (5) Upon appointment of a guardian ad litem, the youth court
70 shall continue any pending proceedings for a reasonable time to
71 allow the guardian ad litem to familiarize himself with the
72 matter, consult with counsel and prepare his participation in the
73 cause.

74 (6) Upon order of the youth court, the guardian ad litem
75 shall be paid a reasonable fee as determined by the youth court
76 judge or referee out of the county general fund as provided under
77 Section 43-21-123. To be eligible for such fee, the guardian ad
78 litem shall submit an accounting of the time spent in performance
79 of his duties to the court.

80 (7) The court, in its sound discretion, may appoint a
81 volunteer trained layperson to assist children subject to the
82 provisions of this section in addition to the appointment of a
83 guardian ad litem.

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

86 93-11-65. (1) (a) In addition to the right to proceed
87 under Section 93-5-23, Mississippi Code of 1972, and in addition
88 to the remedy of habeas corpus in proper cases, and other existing
89 remedies, the chancery court of the proper county shall have
90 jurisdiction to entertain suits for the custody, care, support and
91 maintenance of minor children and to hear and determine all such
92 matters, and shall, if need be, require bond, sureties or other
93 guarantee to secure any order for periodic payments for the



94 maintenance or support of a child. In the event a legally
95 responsible parent has health insurance available to him or her
96 through an employer or organization that may extend benefits to
97 the dependents of such parent, any order of support issued against
98 such parent may require him or her to exercise the option of
99 additional coverage in favor of such children as he or she is
100 legally responsible to support. Proceedings may be brought by or
101 against a resident or nonresident of the State of Mississippi,
102 whether or not having the actual custody of minor children, for
103 the purpose of judicially determining the legal custody of a
104 child. All actions herein authorized may be brought in the county
105 where the child is actually residing, or in the county of the
106 residence of the party who has actual custody, or of the residence
107 of the defendant. Process shall be had upon the parties as
108 provided by law for process in person or by publication, if they
109 be nonresidents of the state or residents of another jurisdiction
110 or are not found therein after diligent search and inquiry or are
111 unknown after diligent search and inquiry; provided that the court
112 or chancellor in vacation may fix a date in termtime or in
113 vacation to which process may be returnable and shall have power
114 to proceed in termtime or vacation. Provided, however, that if
115 the court shall find that both parties are fit and proper persons
116 to have custody of the children, and that either party is able to
117 adequately provide for the care and maintenance of the children,
118 the chancellor may consider the preference of a child of twelve
119 (12) years of age or older as to the parent with whom the child
120 would prefer to live in determining what would be in the best
121 interest and welfare of the child. The chancellor shall place on
122 the record the reason or reasons for which the award of custody
123 was made and explain in detail why the wishes of any child were or
124 were not honored.

125 (b) An order of child support shall specify the sum to
126 be paid weekly or otherwise. In addition to providing for support



127 and education, the order shall also provide for the support of the
128 child prior to the making of the order for child support, and such
129 other expenses as the court may deem proper.

130 (c) The court may require the payment to be made to the
131 custodial parent, or to some person or corporation to be
132 designated by the court as trustee, but if the child or custodial
133 parent is receiving public assistance, the Department of Human
134 Services shall be made the trustee.

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

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

143 (3) Whenever the court has ordered a party to make periodic
144 payments for the maintenance or support of a child, but no bond,
145 sureties or other guarantee has been required to secure such
146 payments, and whenever such payments as have become due remain
147 unpaid for a period of at least thirty (30) days, the court may,
148 upon petition of the person to whom such payments are owing, or
149 such person's legal representative, enter an order requiring that
150 bond, sureties or other security be given by the person obligated
151 to make such payments, the amount and sufficiency of which shall
152 be approved by the court. The obligor shall, as in other civil
153 actions, be served with process and shall be entitled to a hearing
154 in such case.

155 (4) When a charge of abuse or neglect of a child first
156 arises in the course of a custody or maintenance action pending in
157 the chancery court pursuant to this section, the chancery court
158 may proceed with the investigation, hearing and determination of
159 such abuse or neglect charge as a part of its hearing and



160 determination of the custody or maintenance issue as between the
161 parents, as provided in Section 43-21-151, notwithstanding the
162 other provisions of the Youth Court Law. The proceedings in
163 chancery court on the abuse or neglect charge shall be
164 confidential in the same manner as provided in youth court
165 proceedings, and the chancery court shall appoint a guardian ad
166 litem in such cases, as provided under Section 43-21-121 for youth
167 court proceedings, who shall be an attorney. The guardian ad
168 litem is an arm of the court as provided in Section 43-21-121. In
169 determining whether any portion of a guardian ad litem's fee shall
170 be assessed against any party or parties as a cost of court for
171 reimbursement to the county, the court shall consider each party's
172 individual ability to pay. Unless the chancery court's
173 jurisdiction has been terminated, all disposition orders in such
174 cases for placement with the Department of Human Services shall be
175 reviewed by the court or designated authority at least annually to
176 determine if continued placement with the department is in the
177 best interest of the child or the public.

178 (5) Each party to a paternity or child support proceeding
179 shall notify the other within five (5) days after any change of
180 address. In addition, the noncustodial and custodial parent shall
181 file and update, with the court and with the state case registry,
182 information on that party's location and identity, including
183 social security number, residential and mailing addresses,
184 telephone numbers, photograph, driver's license number, and name,
185 address and telephone number of the party's employer. This
186 information shall be required upon entry of an order or within
187 five (5) days of a change of address.

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

191 (7) In any subsequent child support enforcement action
192 between the parties, upon sufficient showing that diligent effort



193 has been made to ascertain the location of a party, due process
194 requirements for notice and service of process shall be deemed to
195 be met with respect to the party upon delivery of written notice
196 to the most recent residential or employer address filed with the
197 state case registry.

198 (8) (a) The duty of support of a child terminates upon the
199 emancipation of the child. Unless otherwise provided for in the
200 underlying child support judgment, emancipation shall occur when
201 the child:

202 (i) Attains the age of twenty-one (21) years, or

203 (ii) Marries, or

204 (iii) Joins the military and serves on a full-time
205 basis, or

206 (iv) Is convicted of a felony and is sentenced to
207 incarceration of two (2) or more years for committing such
208 felony; * * *

209 (b) Unless otherwise provided for in the underlying
210 child support judgment, the court may determine that emancipation
211 has occurred and no other support obligation exists when the
212 child:

213 (i) Discontinues full-time enrollment in school
214 having attained the age of eighteen (18) years, unless the child
215 is disabled, or

216 (ii) Voluntarily moves from the home of the
217 custodial parent or guardian, establishes independent living
218 arrangements, obtains full-time employment and discontinues
219 educational endeavors prior to attaining the age of twenty-one
220 (21) years, or

221 (iii) Cohabits with another person without the
222 approval of the parent obligated to pay support; * * *

223 (c) The duty of support of a child who is incarcerated
224 but not emancipated shall be suspended for the period of the
225 child's incarceration.



226 (9) A determination of emancipation does not terminate any
227 obligation of the noncustodial parent to satisfy arrearage
228 existing as of the date of emancipation; the total amount of
229 periodic support due prior to the emancipation plus any periodic
230 amounts ordered paid toward the arrearage shall continue to be
231 owed until satisfaction of the arrearage in full, in addition to
232 the right of the person for whom the obligation is owed to execute
233 for collection as may be provided by law.

234 (10) Upon motion of a party requesting temporary child
235 support pending a determination of parentage, temporary support
236 shall be ordered if there is clear and convincing evidence of
237 paternity on the basis of genetic tests or other evidence, unless
238 the court makes written findings of fact on the record that the
239 award of temporary support would be unjust or inappropriate in a
240 particular case.

241 (11) Custody and visitation upon military temporary duty,
242 deployment or mobilization shall be governed by Section 93-5-34.

243 **SECTION 3.** This act shall take effect and be in force from
244 and after July 1, 2012.

