

By: Representative Evans (91st)

To: Judiciary A

HOUSE BILL NO. 714

1 AN ACT TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF 1972, TO  
 2 CREATE A REBUTTABLE PRESUMPTION THAT PLACING A CHILD IN THE SOLE  
 3 CUSTODY, JOINT LEGAL CUSTODY, OR JOINT PHYSICAL CUSTODY OF A  
 4 HOMOSEXUAL PARENT OR PERSON IS NOT IN THE BEST INTEREST OF THE  
 5 CHILD; TO BRING FORWARD SECTIONS 43-15-13, 93-5-23, 93-5-34,  
 6 93-11-65, 93-13-3, 93-15-103, 93-15-111, 93-17-9 AND 93-17-27,  
 7 MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENT;  
 8 AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 93-5-24, Mississippi Code of 1972, is  
 11 amended as follows:

12 93-5-24. (1) Custody shall be awarded as follows according  
 13 to the best interests of the child:

14 (a) Physical and legal custody to both parents jointly  
 15 pursuant to subsections (2) through (7).

16 (b) Physical custody to both parents jointly pursuant  
 17 to subsections (2) through (7) and legal custody to either parent.

18 (c) Legal custody to both parents jointly pursuant to  
 19 subsections (2) through (7) and physical custody to either parent.

20 (d) Physical and legal custody to either parent.



21           (e) Upon a finding by the court that both of the  
22 parents of the child have abandoned or deserted such child or that  
23 both such parents are mentally, morally or otherwise unfit to rear  
24 and train the child the court may award physical and legal custody  
25 to:

26                   (i) The person in whose home the child has been  
27 living in a wholesome and stable environment; or

28                   (ii) Physical and legal custody to any other  
29 person deemed by the court to be suitable and able to provide  
30 adequate and proper care and guidance for the child.

31           In making an order for custody to either parent or to both  
32 parents jointly, the court, in its discretion, may require the  
33 parents to submit to the court a plan for the implementation of  
34 the custody order.

35           (2) Joint custody may be awarded where irreconcilable  
36 differences is the ground for divorce, in the discretion of the  
37 court, upon application of both parents.

38           (3) In other cases, joint custody may be awarded, in the  
39 discretion of the court, upon application of one or both parents.

40           (4) There shall be a presumption that joint custody is in  
41 the best interest of a minor child where both parents have agreed  
42 to an award of joint custody.

43           (5) (a) For the purposes of this section, "joint custody"  
44 means joint physical and legal custody.



45           (b) For the purposes of this section, "physical  
46 custody" means those periods of time in which a child resides with  
47 or is under the care and supervision of one (1) of the parents.

48           (c) For the purposes of this section, "joint physical  
49 custody" means that each of the parents shall have significant  
50 periods of physical custody. Joint physical custody shall be  
51 shared by the parents in such a way so as to assure a child of  
52 frequent and continuing contact with both parents.

53           (d) For the purposes of this section, "legal custody"  
54 means the decision-making rights, the responsibilities and the  
55 authority relating to the health, education and welfare of a  
56 child.

57           (e) For the purposes of this section, "joint legal  
58 custody" means that the parents or parties share the  
59 decision-making rights, the responsibilities and the authority  
60 relating to the health, education and welfare of a child. An  
61 award of joint legal custody obligates the parties to exchange  
62 information concerning the health, education and welfare of the  
63 minor child, and to confer with one another in the exercise of  
64 decision-making rights, responsibilities and authority.

65           An award of joint physical and legal custody obligates the  
66 parties to exchange information concerning the health, education  
67 and welfare of the minor child, and unless allocated, apportioned  
68 or decreed, the parents or parties shall confer with one another



69 in the exercise of decision-making rights, responsibilities and  
70 authority.

71 (6) Any order for joint custody may be modified or  
72 terminated upon the petition of both parents or upon the petition  
73 of one (1) parent showing that a material change in circumstances  
74 has occurred.

75 (7) There shall be no presumption that it is in the best  
76 interest of a child that a mother be awarded either legal or  
77 physical custody.

78 (8) Notwithstanding any other provision of law, access to  
79 records and information pertaining to a minor child, including,  
80 but not limited to, medical, dental and school records, shall not  
81 be denied to a parent because the parent is not the child's  
82 custodial parent.

83 (9) (a) (i) In every proceeding where the custody of a  
84 child is in dispute, there shall be a rebuttable presumption that  
85 it is detrimental to the child and not in the best interest of the  
86 child to be placed in sole custody, joint legal custody or joint  
87 physical custody of a parent who has a history of perpetrating  
88 family violence. The court may find a history of perpetrating  
89 family violence if the court finds, by a preponderance of the  
90 evidence, one (1) incident of family violence that has resulted in  
91 serious bodily injury to, or a pattern of family violence against,  
92 the party making the allegation or a family household member of



93 either party. The court shall make written findings to document  
94 how and why the presumption was or was not triggered.

95 (ii) This presumption may only be rebutted by a  
96 preponderance of the evidence.

97 (iii) In determining whether the presumption set  
98 forth in subsection (9) has been overcome, the court shall  
99 consider all of the following factors:

100 1. Whether the perpetrator of family violence  
101 has demonstrated that giving sole or joint physical or legal  
102 custody of a child to the perpetrator is in the best interest of  
103 the child because of the other parent's absence, mental illness,  
104 substance abuse or such other circumstances which affect the best  
105 interest of the child or children;

106 2. Whether the perpetrator has successfully  
107 completed a batterer's treatment program;

108 3. Whether the perpetrator has successfully  
109 completed a program of alcohol or drug abuse counseling if the  
110 court determines that counseling is appropriate;

111 4. Whether the perpetrator has successfully  
112 completed a parenting class if the court determines the class to  
113 be appropriate;

114 5. If the perpetrator is on probation or  
115 parole, whether he or she is restrained by a protective order  
116 granted after a hearing, and whether he or she has complied with  
117 its terms and conditions; and



118                   6. Whether the perpetrator of domestic  
119 violence has committed any further acts of domestic violence.

120                   (iv) The court shall make written findings to  
121 document how and why the presumption was or was not rebutted.

122                   (b) (i) If custody is awarded to a suitable third  
123 person, it shall not be until the natural grandparents of the  
124 child have been excluded and such person shall not allow access to  
125 a violent parent except as ordered by the court.

126                   (ii) If the court finds that both parents have a  
127 history of perpetrating family violence, but the court finds that  
128 parental custody would be in the best interest of the child,  
129 custody may be awarded solely to the parent less likely to  
130 continue to perpetrate family violence. In such a case, the court  
131 may mandate completion of a treatment program by the custodial  
132 parent.

133                   (c) If the court finds that the allegations of domestic  
134 violence are completely unfounded, the chancery court shall order  
135 the alleging party to pay all court costs and reasonable  
136 attorney's fees incurred by the defending party in responding to  
137 such allegations.

138                   (d) (i) A court may award visitation by a parent who  
139 committed domestic or family violence only if the court finds that  
140 adequate provision for the safety of the child and the parent who  
141 is a victim of domestic or family violence can be made.



142 (ii) In a visitation order, a court may take any  
143 of the following actions:

144 1. Order an exchange of the child to occur in  
145 a protected setting;

146 2. Order visitation supervised in a manner to  
147 be determined by the court;

148 3. Order the perpetrator of domestic or  
149 family violence to attend and complete to the satisfaction of the  
150 court a program of intervention for perpetrators or other  
151 designated counseling as a condition of visitation;

152 4. Order the perpetrator of domestic or  
153 family violence to abstain from possession or consumption of  
154 alcohol or controlled substances during the visitation and for  
155 twenty-four (24) hours preceding the visitation;

156 5. Order the perpetrator of domestic or  
157 family violence to pay a fee to defray the cost of supervised  
158 visitation;

159 6. Prohibit overnight visitation;

160 7. Require a bond from the perpetrator of  
161 domestic or family violence for the return and safety of the  
162 child; or

163 8. Impose any other condition that is deemed  
164 necessary to provide for the safety of the child, the victim of  
165 family or domestic violence, or other family or household member.



166 (iii) Whether or not visitation is allowed, the  
167 court may order the address of the child or the victim of family  
168 or domestic violence to be kept confidential.

169 (e) The court may refer but shall not order an adult  
170 who is a victim of family or domestic violence to attend  
171 counseling relating to the victim's status or behavior as a  
172 victim, individually or with the perpetrator of domestic or family  
173 violence, as a condition of receiving custody of a child or as a  
174 condition of visitation.

175 (f) If a court allows a family or household member to  
176 supervise visitation, the court shall establish conditions to be  
177 followed during visitation.

178 (10) In every proceeding where the custody of a child is in  
179 dispute, there shall be a rebuttable presumption that it is not in  
180 the best interest of the child to be placed in sole custody, joint  
181 legal custody or joint physical custody of a parent or other  
182 person who is a homosexual.

183 **SECTION 2.** Section 43-15-13, Mississippi Code of 1972, is  
184 brought forward as follows:

185 43-15-13. (1) For purposes of this section, "children"  
186 means persons found within the state who are under the age of  
187 twenty-one (21) years, and who were placed in the custody of the  
188 Department of Human Services by the youth court of the appropriate  
189 county.





190           (2) The Department of Human Services shall establish a  
191 foster care placement program for children whose custody lies with  
192 the department, with the following objectives:

193                 (a) Protecting and promoting the health, safety and  
194 welfare of children;

195                 (b) Preventing the unnecessary separation of children  
196 from their families by identifying family problems, assisting  
197 families in resolving their problems and preventing the breakup of  
198 the family where the prevention of child removal is desirable and  
199 possible when the child can be cared for at home without  
200 endangering the child's health and safety;

201                 (c) Remediating or assisting in the solution of problems  
202 that may result in the neglect, abuse, exploitation or delinquency  
203 of children;

204                 (d) Restoring to their families children who have been  
205 removed, by the provision of services to the child and the  
206 families when the child can be cared for at home without  
207 endangering the child's health and safety;

208                 (e) Placing children in suitable adoptive homes  
209 approved by a licensed adoption agency or family protection  
210 specialist, in cases where restoration to the biological family is  
211 not safe, possible or appropriate;

212                 (f) Assuring safe and adequate care of children away  
213 from their homes, in cases where the child cannot be returned home  
214 or cannot be placed for adoption. At the time of placement, the



215 department shall implement concurrent planning, as described in  
216 subsection (8) of this section, so that permanency may occur at  
217 the earliest opportunity. Consideration of possible failure or  
218 delay of reunification should be given, to the end that the  
219 placement made is the best available placement to provide  
220 permanency for the child; and

221 (g) Providing a family protection specialist or worker  
222 or team of such specialists or workers for a family and child  
223 throughout the implementation of their permanent living  
224 arrangement plan. Wherever feasible, the same family protection  
225 specialist or worker or team shall remain on the case until the  
226 child is no longer under the jurisdiction of the youth court.

227 (3) The Department of Human Services shall administer a  
228 system of individualized plans and reviews once every six (6)  
229 months for each child under its custody within the State of  
230 Mississippi, each child who has been adjudged a neglected,  
231 abandoned or abused child and whose custody was changed by court  
232 order as a result of that adjudication, and each public or private  
233 facility licensed by the department. The Department of Human  
234 Services administrative review shall be completed on each child  
235 within the first three (3) months and a foster care review once  
236 every six (6) months after the child's initial forty-eight-hour  
237 shelter hearing. That system shall be for the purpose of  
238 enhancing potential family life for the child by the development  
239 of individual plans to return the child to its natural parent or



240 parents, or to refer the child to the appropriate court for  
241 termination of parental rights and placement in a permanent  
242 relative's home, adoptive home or foster/adoptive home. The goal  
243 of the Department of Human Services shall be to return the child  
244 to its natural parent(s) or refer the child to the appropriate  
245 court for termination of parental rights and placement in a  
246 permanent relative's home, adoptive home or foster/adoptive home  
247 within the time periods specified in this subsection or in  
248 subsection (4) of this section. In furthering this goal, the  
249 department shall establish policy and procedures designed to  
250 appropriately place children in permanent homes, the policy to  
251 include a system of reviews for all children in foster care, as  
252 follows: foster care counselors in the department shall make all  
253 possible contact with the child's natural parent(s) and any  
254 interested relative for the first two (2) months following the  
255 child's entry into the foster care system. For any child who has  
256 been in foster care for fifteen (15) of the last twenty-two (22)  
257 months regardless of whether the foster care was continuous for  
258 all of those twenty-two (22) months, the department shall file a  
259 petition to terminate the parental rights of the child's parents.  
260 The time period starts to run from the date the court makes a  
261 finding of abuse and/or neglect or sixty (60) days from when the  
262 child was removed from his or her home, whichever is earlier. The  
263 department can choose not to file a termination of parental rights  
264 petition if the following apply:



265           (a) The child is being cared for by a relative; and/or  
266           (b) The department has documented compelling and  
267 extraordinary reasons why termination of parental rights would not  
268 be in the best interests of the child. Before granting or denying  
269 a request by the department for an extension of time for filing a  
270 termination of parental rights action, the court shall receive a  
271 written report on the progress which a parent of the child has  
272 made in treatment, to be made to the court in writing by a mental  
273 health/substance abuse therapist or counselor.

274           (4) In the case of any child who is placed in foster care on  
275 or after July 1, 1998, except in cases of aggravated circumstances  
276 prescribed in Section 43-21-603(7)(c) or (d), the child's natural  
277 parent(s) will have a reasonable time to be determined by the  
278 court, which shall not exceed a six-month period of time, in which  
279 to meet the service agreement with the department for the benefit  
280 of the child unless the department has documented extraordinary  
281 and compelling reasons for extending the time period in the best  
282 interest of the child. If this agreement has not been  
283 satisfactorily met, simultaneously the child will be referred to  
284 the appropriate court for termination of parental rights and  
285 placement in a permanent relative's home, adoptive home or a  
286 foster/adoptive home. For children under the age of three (3)  
287 years, termination of parental rights shall be initiated within  
288 six (6) months, unless the department has documented compelling  
289 and extraordinary circumstances, and placement in a permanent



290 relative's home, adoptive home or foster/adoptive home within two  
291 (2) months. For children who have been abandoned under the  
292 provisions of Section 97-5-1, termination of parental rights shall  
293 be initiated within thirty (30) days and placement in an adoptive  
294 home shall be initiated without necessity for placement in a  
295 foster home. The department need not initiate termination of  
296 parental rights proceedings where the child has been placed in  
297 durable legal custody or long-term or formalized foster care by a  
298 court of competent jurisdiction.

299 (5) The foster care review once every six (6) months shall  
300 be conducted by the youth court or its designee(s), and/or by  
301 personnel within the Department of Human Services or by a designee  
302 or designees of the department and may include others appointed by  
303 the department, and the review shall include at a minimum an  
304 evaluation of the child based on the following:

305 (a) The extent of the care and support provided by the  
306 parents or parent, while the child is in temporary custody;

307 (b) The extent of communication with the child by  
308 parents, parent or guardian;

309 (c) The degree of compliance by the agency and the  
310 parents with the social service plan established;

311 (d) The methods of achieving the goal and the plan  
312 establishing a permanent home for the child;



313                   (e) Social services offered and/or utilized to  
314 facilitate plans for establishing a permanent home for the child;  
315 and

316                   (f) Relevant testimony and recommendations from the  
317 foster parent of the child, the grandparents of the child, the  
318 guardian ad litem of the child, representatives of any private  
319 care agency that has cared for the child, the family protection  
320 worker or family protection specialist assigned to the case, and  
321 any other relevant testimony pertaining to the case.

322           Each child's review plan once every six (6) months shall be  
323 filed with the court which awarded custody and shall be made  
324 available to natural parents or foster parents upon approval of  
325 the court. The court shall make a finding as to the degree of  
326 compliance by the agency and the parent(s) with the child's social  
327 service plan. The court also shall find that the child's health  
328 and safety are the paramount concern. In the interest of the  
329 child, the court shall, where appropriate, initiate proceedings on  
330 its own motion. The Department of Human Services shall report to  
331 the Legislature as to the number of those children, the findings  
332 of the foster care review board and relevant statistical  
333 information in foster care in a semiannual report to the  
334 Legislature to be submitted to the Joint Oversight Committee of  
335 the Department of Human Services. The report shall not refer to  
336 the specific name of any child in foster care.



337           (6) The Department of Human Services, with the cooperation  
338 and assistance of the State Department of Health, shall develop  
339 and implement a training program for foster care parents to  
340 indoctrinate them as to their proper responsibilities upon a  
341 child's entry into their foster care. The program shall provide a  
342 minimum of twelve (12) clock hours of training. The foster care  
343 training program shall be satisfactorily completed by such foster  
344 care parents before or within ninety (90) days after child  
345 placement with the parent. Record of the foster care parent's  
346 training program participation shall be filed with the court as  
347 part of a foster care child's review plan once every six (6)  
348 months.

349           (7) When the Department of Human Services is considering  
350 placement of a child in a foster home and when the department  
351 deems it to be in the best interest of the child, the department  
352 shall give first priority to placing the child in the home of one  
353 (1) of the child's relatives within the third degree, as computed  
354 by the civil law rule. In placing the child in a relative's home,  
355 the department may waive any rule, regulation or policy applicable  
356 to placement in foster care that would otherwise require the child  
357 to have a separate bed or bedroom or have a bedroom of a certain  
358 size, if placing the child in a relative's home would be in the  
359 best interest of the child and those requirements cannot be met in  
360 the relative's home.



361 (8) The Legislature recognizes that the best interests of  
362 the child require that the child be placed in the most permanent  
363 living arrangement as soon as is practicably possible. To achieve  
364 this goal, the Department of Human Services is directed to conduct  
365 concurrent planning so that a permanent living arrangement may  
366 occur at the earliest opportunity. Permanent living arrangements  
367 may include prevention of placement of a child outside the home of  
368 the family when the child can be cared for at home without  
369 endangering the child's health or safety; reunification with the  
370 family, when safe and appropriate, if temporary placement is  
371 necessary; or movement of the child toward the most permanent  
372 living arrangement and permanent legal status. When a child is  
373 placed in foster care or relative care, the department shall first  
374 ensure and document that reasonable efforts were made to prevent  
375 or eliminate the need to remove the child from the child's home.  
376 The department's first priority shall be to make reasonable  
377 efforts to reunify the family when temporary placement of the  
378 child occurs or shall request a finding from the court that  
379 reasonable efforts are not appropriate or have been unsuccessful.  
380 A decision to place a child in foster care or relative care shall  
381 be made with consideration of the child's health, safety and best  
382 interests. At the time of placement, consideration should also be  
383 given so that if reunification fails or is delayed, the placement  
384 made is the best available placement to provide a permanent living  
385 arrangement for the child. The department shall adopt rules





386 addressing concurrent planning for reunification and a permanent  
387 living arrangement. The department shall consider the following  
388 factors when determining appropriateness of concurrent planning:

389 (a) The likelihood of prompt reunification;

390 (b) The past history of the family;

391 (c) The barriers to reunification being addressed by  
392 the family;

393 (d) The level of cooperation of the family;

394 (e) The foster parents' willingness to work with the  
395 family to reunite;

396 (f) The willingness and ability of the foster family or  
397 relative placement to provide an adoptive home or long-term  
398 placement;

399 (g) The age of the child; and

400 (h) Placement of siblings.

401 (9) If the department has placed a child in foster care or  
402 relative care under a court order, the department may not change  
403 the child's placement unless the department specifically documents  
404 to the court that the current placement is unsafe or unsuitable or  
405 that another placement is in the child's best interests unless the  
406 new placement is in an adoptive home or other permanent placement.  
407 Except in emergency circumstances as determined by the department  
408 or where the court orders placement of the child under Section  
409 43-21-303, the foster parents, grandparents or other relatives of  
410 the child shall be given an opportunity to contest the specific



411 reasons documented by the department at least seventy-two (72)  
412 hours before any such departure, and the court may conduct a  
413 review of that placement unless the new placement is in an  
414 adoptive home or other permanent placement. When a child is  
415 returned to foster care or relative care, the former foster  
416 parents or relative placement shall be given the prior right of  
417 return placement in order to eliminate additional trauma to the  
418 child.

419 (10) The Department of Human Services shall provide the  
420 foster parents, grandparents or other relatives with at least a  
421 seventy-two-hour notice of departure for any child placed in their  
422 foster care or relative care, except in emergency circumstances as  
423 determined by the department or where the court orders placement  
424 of the child under Section 43-21-303. The parent/legal guardian,  
425 grandparents of the child, guardian ad litem and the court  
426 exercising jurisdiction shall be notified in writing when the  
427 child leaves foster care or relative care placement, regardless of  
428 whether the child's departure was planned or unplanned. The only  
429 exceptions to giving a written notice to the parent(s) are when a  
430 parent has voluntarily released the child for adoption or the  
431 parent's legal rights to the child have been terminated through  
432 the appropriate court with jurisdiction.

433 (11) The Department of Human Services shall extend the  
434 following rights to persons who provide foster care and relative  
435 care:



436 (a) A clear understanding of their role while providing  
437 care and the roles of the birth parent(s) and the placement agency  
438 in respect to the child in care;

439 (b) Respect, consideration, trust and value as a family  
440 who is making an important contribution to the agency's  
441 objectives;

442 (c) Involvement in all the agency's crucial decisions  
443 regarding the child as team members who have pertinent information  
444 based on their day-to-day knowledge of the child in care;

445 (d) Support from the family protection worker or the  
446 family protection specialist in efforts to do a better day-to-day  
447 job in caring for the child and in working to achieve the agency's  
448 objectives for the child and the birth family through provision  
449 of:

450 (i) Pertinent information about the child and the  
451 birth family;

452 (ii) Help in using appropriate resources to meet  
453 the child's needs;

454 (iii) Direct interviews between the family  
455 protection worker or specialist and the child, previously  
456 discussed and understood by the foster parents;

457 (e) The opportunity to develop confidence in making  
458 day-to-day decisions in regard to the child;

459 (f) The opportunity to learn and grow in their vocation  
460 through planned education in caring for the child;



461 (g) The opportunity to be heard regarding agency  
462 practices that they may question;

463 (h) Reimbursement for costs of the child's care in the  
464 form of a board payment based on the age of the child as  
465 prescribed in Section 43-15-17; and

466 (i) Reimbursement for property damages caused by  
467 children in the custody of the Department of Human Services in an  
468 amount not to exceed Five Hundred Dollars (\$500.00), as evidenced  
469 by written documentation. The Department of Human Services shall  
470 not incur liability for any damages as a result of providing this  
471 reimbursement.

472 (12) The Department of Human Services shall require the  
473 following responsibilities from participating persons who provide  
474 foster care and relative care:

475 (a) Understanding the department's function in regard  
476 to the foster care and relative care program and related social  
477 service programs;

478 (b) Sharing with the department any information which  
479 may contribute to the care of children;

480 (c) Functioning within the established goals and  
481 objectives to improve the general welfare of the child;

482 (d) Recognizing the problems in home placement that  
483 will require professional advice and assistance and that such help  
484 should be utilized to its full potential;



485 (e) Recognizing that the family who cares for the child  
486 will be one of the primary resources for preparing a child for any  
487 future plans that are made, including return to birth parent(s),  
488 termination of parental rights or reinstitutionalization;

489 (f) Expressing their view of agency practices which  
490 relate to the child with the appropriate staff member;

491 (g) Understanding that all information shared with the  
492 persons who provide foster care or relative care about the child  
493 and his/her birth parent(s) must be held in the strictest of  
494 confidence;

495 (h) Cooperating with any plan to reunite the child with  
496 his birth family and work with the birth family to achieve this  
497 goal; and

498 (i) Attending dispositional review hearings and  
499 termination of parental rights hearings conducted by a court of  
500 competent jurisdiction, or providing their recommendations to the  
501 court in writing.

502 **SECTION 3.** Section 93-5-23, Mississippi Code of 1972, is  
503 brought forward as follows:

504 93-5-23. When a divorce shall be decreed from the bonds of  
505 matrimony, the court may, in its discretion, having regard to the  
506 circumstances of the parties and the nature of the case, as may  
507 seem equitable and just, make all orders touching the care,  
508 custody and maintenance of the children of the marriage, and also  
509 touching the maintenance and alimony of the wife or the husband,



510 or any allowance to be made to her or him, and shall, if need be,  
511 require bond, sureties or other guarantee for the payment of the  
512 sum so allowed. Orders touching on the custody of the children of  
513 the marriage shall be made in accordance with the provisions of  
514 Section 93-5-24. For the purposes of orders touching the  
515 maintenance and alimony of the wife or husband, "property" and "an  
516 asset of a spouse" shall not include any interest a party may have  
517 as an heir at law of a living person or any interest under a  
518 third-party will, nor shall any such interest be considered as an  
519 economic circumstance or other factor. The court may afterwards,  
520 on petition, change the decree, and make from time to time such  
521 new decrees as the case may require. However, where proof shows  
522 that both parents have separate incomes or estates, the court may  
523 require that each parent contribute to the support and maintenance  
524 of the children of the marriage in proportion to the relative  
525 financial ability of each. In the event a legally responsible  
526 parent has health insurance available to him or her through an  
527 employer or organization that may extend benefits to the  
528 dependents of such parent, any order of support issued against  
529 such parent may require him or her to exercise the option of  
530 additional coverage in favor of such children as he or she is  
531 legally responsible to support.

532 Whenever the court has ordered a party to make periodic  
533 payments for the maintenance or support of a child, but no bond,  
534 sureties or other guarantee has been required to secure such



535 payments, and whenever such payments as have become due remain  
536 unpaid for a period of at least thirty (30) days, the court may,  
537 upon petition of the person to whom such payments are owing, or  
538 such person's legal representative, enter an order requiring that  
539 bond, sureties or other security be given by the person obligated  
540 to make such payments, the amount and sufficiency of which shall  
541 be approved by the court. The obligor shall, as in other civil  
542 actions, be served with process and shall be entitled to a hearing  
543 in such case.

544 At the discretion of the court, any person found in contempt  
545 for failure to pay child support and imprisoned therefor may be  
546 referred for placement in a state, county or municipal  
547 restitution, house arrest or restorative justice center or  
548 program, provided such person meets the qualifications prescribed  
549 in Section 99-37-19.

550 Whenever in any proceeding in the chancery court concerning  
551 the custody of a child a party alleges that the child whose  
552 custody is at issue has been the victim of sexual or physical  
553 abuse by the other party, the court may, on its own motion, grant  
554 a continuance in the custody proceeding only until such allegation  
555 has been investigated by the Department of Human Services. At the  
556 time of ordering such continuance, the court may direct the party  
557 and his attorney making such allegation of child abuse to report  
558 in writing and provide all evidence touching on the allegation of  
559 abuse to the Department of Human Services. The Department of



560 Human Services shall investigate such allegation and take such  
561 action as it deems appropriate and as provided in such cases under  
562 the Youth Court Law (being Chapter 21 of Title 43, Mississippi  
563 Code of 1972) or under the laws establishing family courts (being  
564 Chapter 23 of Title 43, Mississippi Code of 1972).

565 If after investigation by the Department of Human Services or  
566 final disposition by the youth court or family court allegations  
567 of child abuse are found to be without foundation, the chancery  
568 court shall order the alleging party to pay all court costs and  
569 reasonable attorney's fees incurred by the defending party in  
570 responding to such allegation.

571 The court may investigate, hear and make a determination in a  
572 custody action when a charge of abuse and/or neglect arises in the  
573 course of a custody action as provided in Section 43-21-151, and  
574 in such cases the court shall appoint a guardian ad litem for the  
575 child as provided under Section 43-21-121, who shall be an  
576 attorney. Unless the chancery court's jurisdiction has been  
577 terminated, all disposition orders in such cases for placement  
578 with the Department of Human Services shall be reviewed by the  
579 court or designated authority at least annually to determine if  
580 continued placement with the department is in the best interest of  
581 the child or public.

582 The duty of support of a child terminates upon the  
583 emancipation of the child. The court may determine that  
584 emancipation has occurred pursuant to Section 93-11-65.





585 Custody and visitation upon military temporary duty,  
586 deployment or mobilization shall be governed by Section 93-5-34.

587 **SECTION 4.** Section 93-5-34, Mississippi Code of 1972, is  
588 brought forward as follows:

589 93-5-34. (1) It is the purpose of this section to provide a  
590 means by which to facilitate a fair, efficient and swift process  
591 to resolve matters regarding custody and visitation when a parent  
592 receives temporary duty, deployment or mobilization orders from  
593 the military. It is also the purpose of this section to  
594 facilitate continued communication between military parents and  
595 their minor children when the parent is on temporary duty or under  
596 deployment or mobilization orders.

597 (2) As used in this section:

598 (a) The term "deployment" means the temporary transfer  
599 of a service member serving in an active-duty status to another  
600 location in support of combat or some other military operation.

601 (b) The term "mobilization" means the call-up of a  
602 National Guard or Reserve service member to extended active duty  
603 status. For purposes of this definition, "mobilization" does not  
604 include National Guard or Reserve annual training.

605 (c) The term "temporary duty" means the transfer of a  
606 service member from one military base to a different location,  
607 usually another base, for a limited period of time to accomplish  
608 training or to assist in the performance of a noncombat mission.



609           (d) The term "family member" means a person related by  
610 blood or marriage and may include, for purposes of this statute, a  
611 step-parent, grandparent, aunt, uncle, adult sibling or other  
612 person related by blood or marriage.

613           (3) When a parent who has custody, or has joint custody with  
614 primary physical custody, receives temporary duty, deployment or  
615 mobilization orders from the military that involve moving a  
616 substantial distance from the parent's residence having a material  
617 effect on the parent's ability to exercise custody  
618 responsibilities:

619           (a) Any temporary custody order for the child during  
620 the parent's absence shall end no later than ten (10) days after  
621 the parent returns, but shall not impair the discretion of the  
622 court to conduct a hearing for emergency custody upon return of  
623 the parent and within ten (10) days of the filing of a verified  
624 motion for emergency custody alleging an immediate danger of  
625 irreparable harm to the child; and

626           (b) The temporary duty, mobilization or deployment of  
627 the service member and the temporary disruption to the child's  
628 schedule shall not be factors in a determination of change of  
629 circumstances if a motion is filed to transfer custody from the  
630 service member.

631           (c) Any order entered under this section shall require  
632 that:



633                   (i) The nondeployed parent shall make the child or  
634 children reasonably available to the deployed parent when the  
635 latter parent has leave;

636                   (ii) The nondeployed parent shall facilitate  
637 opportunities for telephonic, "webcam" and electronic mail contact  
638 between the deployed parent and the child or children during  
639 deployment; and

640                   (iii) The deployed parent shall provide timely  
641 information regarding the parent's leave schedule to the  
642 nondeployed parent.

643           (4) If the parent with visitation rights receives military  
644 temporary duty, deployment or mobilization orders that involve  
645 moving a substantial distance from the parent's residence or  
646 otherwise have a material effect on the parent's ability to  
647 exercise rights, the court otherwise may delegate the parent's  
648 visitation rights, or a portion thereof, to a family member with a  
649 close and substantial relationship to the service member's minor  
650 child for the duration of the parent's absence, if delegating  
651 visitation rights is in the child's best interest.

652           (5) Upon motion of a parent who has received military  
653 temporary duty, deployment or mobilization orders, the court  
654 shall, for a good cause shown, hold an expedited hearing in  
655 custody and visitation matters instituted under this section when  
656 the military duties of the parent have a material effect on the



657 parent's ability, or anticipated ability, to appear in person at a  
658 regularly scheduled hearing.

659 (6) Upon motion of a parent who has received military  
660 temporary duty, deployment or mobilization orders, the court  
661 shall, upon reasonable advance notice and for good cause shown,  
662 allow the parent to present testimony and evidence by affidavit or  
663 electronic means in custody and visitation matters instituted  
664 under this section when the military duties of the parent have a  
665 material effect on the parent's ability to appear in person at a  
666 regularly scheduled teleconference, or the Internet.

667 (7) Nothing in this section shall alter the duty of the  
668 court to consider the best interest of the child in deciding  
669 custody or visitation matters.

670 (8) Any hearing pursuant to this section shall take  
671 precedence over all other causes not involving the public  
672 interest, to the end that these cases may be expedited.

673 **SECTION 5.** Section 93-11-65, Mississippi Code of 1972, is  
674 brought forward as follows:

675 93-11-65. (1) (a) In addition to the right to proceed  
676 under Section 93-5-23, Mississippi Code of 1972, and in addition  
677 to the remedy of habeas corpus in proper cases, and other existing  
678 remedies, the chancery court of the proper county shall have  
679 jurisdiction to entertain suits for the custody, care, support and  
680 maintenance of minor children and to hear and determine all such  
681 matters, and shall, if need be, require bond, sureties or other



682 guarantee to secure any order for periodic payments for the  
683 maintenance or support of a child. In the event a legally  
684 responsible parent has health insurance available to him or her  
685 through an employer or organization that may extend benefits to  
686 the dependents of such parent, any order of support issued against  
687 such parent may require him or her to exercise the option of  
688 additional coverage in favor of such children as he or she is  
689 legally responsible to support. Proceedings may be brought by or  
690 against a resident or nonresident of the State of Mississippi,  
691 whether or not having the actual custody of minor children, for  
692 the purpose of judicially determining the legal custody of a  
693 child. All actions herein authorized may be brought in the county  
694 where the child is actually residing, or in the county of the  
695 residence of the party who has actual custody, or of the residence  
696 of the defendant. Process shall be had upon the parties as  
697 provided by law for process in person or by publication, if they  
698 be nonresidents of the state or residents of another jurisdiction  
699 or are not found therein after diligent search and inquiry or are  
700 unknown after diligent search and inquiry; provided that the court  
701 or chancellor in vacation may fix a date in termtime or in  
702 vacation to which process may be returnable and shall have power  
703 to proceed in termtime or vacation. Provided, however, that if  
704 the court shall find that both parties are fit and proper persons  
705 to have custody of the children, and that either party is able to  
706 adequately provide for the care and maintenance of the children,



707 the chancellor may consider the preference of a child of twelve  
708 (12) years of age or older as to the parent with whom the child  
709 would prefer to live in determining what would be in the best  
710 interest and welfare of the child. The chancellor shall place on  
711 the record the reason or reasons for which the award of custody  
712 was made and explain in detail why the wishes of any child were or  
713 were not honored.

714 (b) An order of child support shall specify the sum to  
715 be paid weekly or otherwise. In addition to providing for support  
716 and education, the order shall also provide for the support of the  
717 child prior to the making of the order for child support, and such  
718 other expenses as the court may deem proper.

719 (c) The court may require the payment to be made to the  
720 custodial parent, or to some person or corporation to be  
721 designated by the court as trustee, but if the child or custodial  
722 parent is receiving public assistance, the Department of Human  
723 Services shall be made the trustee.

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

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



732 (3) Whenever the court has ordered a party to make periodic  
733 payments for the maintenance or support of a child, but no bond,  
734 sureties or other guarantee has been required to secure such  
735 payments, and whenever such payments as have become due remain  
736 unpaid for a period of at least thirty (30) days, the court may,  
737 upon petition of the person to whom such payments are owing, or  
738 such person's legal representative, enter an order requiring that  
739 bond, sureties or other security be given by the person obligated  
740 to make such payments, the amount and sufficiency of which shall  
741 be approved by the court. The obligor shall, as in other civil  
742 actions, be served with process and shall be entitled to a hearing  
743 in such case.

744 (4) When a charge of abuse or neglect of a child first  
745 arises in the course of a custody or maintenance action pending in  
746 the chancery court pursuant to this section, the chancery court  
747 may proceed with the investigation, hearing and determination of  
748 such abuse or neglect charge as a part of its hearing and  
749 determination of the custody or maintenance issue as between the  
750 parents, as provided in Section 43-21-151, notwithstanding the  
751 other provisions of the Youth Court Law. The proceedings in  
752 chancery court on the abuse or neglect charge shall be  
753 confidential in the same manner as provided in youth court  
754 proceedings, and the chancery court shall appoint a guardian ad  
755 litem in such cases, as provided under Section 43-21-121 for youth  
756 court proceedings, who shall be an attorney. In determining



757 whether any portion of a guardian ad litem's fee shall be assessed  
758 against any party or parties as a cost of court for reimbursement  
759 to the county, the court shall consider each party's individual  
760 ability to pay. Unless the chancery court's jurisdiction has been  
761 terminated, all disposition orders in such cases for placement  
762 with the Department of Human Services shall be reviewed by the  
763 court or designated authority at least annually to determine if  
764 continued placement with the department is in the best interest of  
765 the child or the public.

766 (5) Each party to a paternity or child support proceeding  
767 shall notify the other within five (5) days after any change of  
768 address. In addition, the noncustodial and custodial parent shall  
769 file and update, with the court and with the state case registry,  
770 information on that party's location and identity, including  
771 social security number, residential and mailing addresses,  
772 telephone numbers, photograph, driver's license number, and name,  
773 address and telephone number of the party's employer. This  
774 information shall be required upon entry of an order or within  
775 five (5) days of a change of address.

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

779 (7) In any subsequent child support enforcement action  
780 between the parties, upon sufficient showing that diligent effort  
781 has been made to ascertain the location of a party, due process





782 requirements for notice and service of process shall be deemed to  
783 be met with respect to the party upon delivery of written notice  
784 to the most recent residential or employer address filed with the  
785 state case registry.

786 (8) (a) The duty of support of a child terminates upon the  
787 emancipation of the child. Unless otherwise provided for in the  
788 underlying child support judgment, emancipation shall occur when  
789 the child:

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

791 (ii) Marries, or

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

794 (iv) Is convicted of a felony and is sentenced to  
795 incarceration of two (2) or more years for committing such felony;  
796 or

797 (b) Unless otherwise provided for in the underlying  
798 child support judgment, the court may determine that emancipation  
799 has occurred and no other support obligation exists when the  
800 child:

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

804 (ii) Voluntarily moves from the home of the  
805 custodial parent or guardian, establishes independent living  
806 arrangements, obtains full-time employment and discontinues



807 educational endeavors prior to attaining the age of twenty-one  
808 (21) years, or

809 (iii) Cohabits with another person without the  
810 approval of the parent obligated to pay support; and

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

814 (9) A determination of emancipation does not terminate any  
815 obligation of the noncustodial parent to satisfy arrearage  
816 existing as of the date of emancipation; the total amount of  
817 periodic support due prior to the emancipation plus any periodic  
818 amounts ordered paid toward the arrearage shall continue to be  
819 owed until satisfaction of the arrearage in full, in addition to  
820 the right of the person for whom the obligation is owed to execute  
821 for collection as may be provided by law.

822 (10) Upon motion of a party requesting temporary child  
823 support pending a determination of parentage, temporary support  
824 shall be ordered if there is clear and convincing evidence of  
825 paternity on the basis of genetic tests or other evidence, unless  
826 the court makes written findings of fact on the record that the  
827 award of temporary support would be unjust or inappropriate in a  
828 particular case.

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



831           **SECTION 6.** Section 93-13-3, Mississippi Code of 1972, is  
832 brought forward as follows:

833           93-13-3. In case the father and mother live apart the court  
834 may award the guardianship of a minor to either parent, and the  
835 state where the parent having the lawful custody resides, shall  
836 have jurisdiction to determine questions concerning the minor's  
837 guardianship: Provided that the provisions of this section shall  
838 not in any manner impose upon the mother any greater liability  
839 than is now imposed by law to support, maintain and educate her  
840 children.

841           **SECTION 7.** Section 93-15-103, Mississippi Code of 1972, is  
842 brought forward as follows:

843           93-15-103. (1) When a child has been removed from the home  
844 of its natural parents and cannot be returned to the home of his  
845 natural parents within a reasonable length of time because  
846 returning to the home would be damaging to the child or the parent  
847 is unable or unwilling to care for the child, relatives are not  
848 appropriate or are unavailable, and when adoption is in the best  
849 interest of the child, taking into account whether the adoption is  
850 needed to secure a stable placement for the child and the strength  
851 of the child's bonds to his natural parents and the effect of  
852 future contacts between them, the grounds listed in subsections  
853 (2) and (3) of this section shall be considered as grounds for the  
854 termination of parental rights. The grounds may apply singly or  
855 in combination in any given case.



856           (2) The rights of a parent with reference to a child,  
857 including parental rights to control or withhold consent to an  
858 adoption, and the right to receive notice of a hearing on a  
859 petition for adoption, may be relinquished and the relationship of  
860 the parent and child terminated by the execution of a written  
861 voluntary release, signed by the parent, regardless of the age of  
862 the parent.

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

865                   (a) A parent has deserted without means of  
866 identification or abandoned a child as defined in Section 97-5-1,  
867 or

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

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

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

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



880 (ii) The parent, having agreed to a plan to effect  
881 placement of the child with the parent, fails to implement the  
882 plan so that the child caring agency is unable to return the child  
883 to said parent; or

884 (e) The parent exhibits ongoing behavior which would  
885 make it impossible to return the child to the parent's care and  
886 custody:

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

892 (ii) Because the parent fails to eliminate  
893 behavior, identified by the child caring agency or the court,  
894 which prevents placement of said child with the parent in spite of  
895 diligent efforts of the child caring agency to assist the parent;  
896 or

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

903 (g) When a parent has been convicted of any of the  
904 following offenses against any child: (i) rape of a child under



905 the provisions of Section 97-3-65, (ii) sexual battery of a child  
906 under the provisions of Section 97-3-95(c), (iii) touching a child  
907 for lustful purposes under the provisions of Section 97-5-23, (iv)  
908 exploitation of a child under the provisions of Section 97-5-31,  
909 (v) felonious abuse or battery of a child under the provisions of  
910 Section 97-5-39(2), (vi) carnal knowledge of a step or adopted  
911 child or a child of a cohabitating partner under the provisions of  
912 Section 97-5-41, or (vii) murder of another child of such parent,  
913 voluntary manslaughter of another child of such parent, aided or  
914 abetted, attempted, conspired or solicited to commit such murder  
915 or voluntary manslaughter, or a felony assault that results in the  
916 serious bodily injury to the surviving child or another child of  
917 such parent; or

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

923 (4) Legal custody and guardianship by persons other than the  
924 parent as well as other permanent alternatives which end the  
925 supervision by the Department of Human Services should be  
926 considered as alternatives to the termination of parental rights,  
927 and these alternatives should be selected when, in the best  
928 interest of the child, parental contacts are desirable and it is



929 possible to secure such placement without termination of parental  
930 rights.

931 (5) When a parent has been convicted of rape of a child  
932 under the provisions of Section 97-3-65, sexual battery of a child  
933 under the provisions of Section 97-3-95(c), touching a child for  
934 lustful purposes under the provisions of Section 97-5-23,  
935 exploitation of a child under the provisions of Section 97-5-31,  
936 felonious abuse or battery of a child under the provisions of  
937 Section 97-5-39(2), or carnal knowledge of a step or adopted child  
938 or a child of a cohabitating partner under the provisions of  
939 Section 97-5-41, notice of the conviction shall be forwarded by  
940 the circuit clerk of the county in which the conviction occurred  
941 to the Mississippi Department of Human Services, Division of  
942 Social Services.

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

948 **SECTION 8.** Section 93-15-111, Mississippi Code of 1972, is  
949 brought forward as follows:

950 93-15-111. Should the court terminate the parental rights of  
951 the parents or only one (1) of the parents (if they both be  
952 living), then the court shall place the child in the custody of  
953 some suitable person, agency or institution, and such person,



954 agency or institution shall have full power to enter a petition  
955 under Section 93-17-5, consenting to adoption, and no further  
956 notice shall be given in the adoption proceeding to such parent or  
957 parents.

958         **SECTION 9.** Section 93-17-9, Mississippi Code of 1972, is  
959 brought forward as follows:

960         93-17-9. As used in this chapter the word "home" shall be  
961 construed to include any charitable or religious corporation or  
962 organization or the superintendent or head of such charitable or  
963 religious corporation or organization organized under the laws of  
964 the State of Mississippi, or any public authority to which has  
965 been granted the power to provide care for or procure the adoption  
966 of children by any statute or statutes of this state, and any  
967 association or institution engaged in placing children for  
968 adoption on July 1, 1955. Any person required to be a party to an  
969 adoption proceeding by Section 93-17-5 may execute the surrender  
970 of a child to a home by sworn or acknowledged instrument which  
971 shall include the following: the name of the child and the home;  
972 that there is thereby vested in the home the exclusive custody,  
973 care and control of such child; that all parental rights to such  
974 child including the right of inheritance are relinquished by such  
975 person; provided, the rights of inheritance of the natural parents  
976 and the child shall not be affected until entry of a final decree  
977 of adoption; that the home is authorized to execute a consent to  
978 adoption as provided by this chapter and that process in any





979 adoption proceeding is waived; that such surrender shall be  
980 irrevocable and that such person will not, in any manner,  
981 interfere with the custody of such child thus vested in the home.  
982 Said instrument shall not be executed until seventy-two (72) hours  
983 after the birth of the child and shall effectually vest in the  
984 home all rights thus surrendered and all powers thus created, with  
985 the right and power to execute the consent to adoption as required  
986 in this chapter authorizing the court to vest in the child and the  
987 adopting parent or parents the rights herein provided.

988         Where a child has been surrendered to a home or other agency  
989 operating under the laws of another state, and the child is  
990 delivered into the custody of a petitioner or home within this  
991 state, the execution of such consent by such nonresident home or  
992 agency shall be accepted in lieu of the execution of such consent  
993 by a home.

994         **SECTION 10.** Section 93-17-27, Mississippi Code of 1972, is  
995 brought forward as follows:

996         93-17-27. No reference shall be required to be made to the  
997 marital status of the natural parents of the child nor shall any  
998 allegation or recital be made therein that the child was born out  
999 of wedlock in any petition filed or decree entered upon consent.

1000         **SECTION 11.** This act shall take effect and be in force from  
1001 and after July 1, 2015.

