

By: Representatives Lamar, Campbell

To: Judiciary A

HOUSE BILL NO. 1240

1 AN ACT TO AMEND SECTION 93-15-101, MISSISSIPPI CODE OF 1972,
2 TO AMEND THE SHORT TITLE OF THE CHAPTER REGARDING TERMINATION OF
3 PARENTAL RIGHTS; TO CREATE NEW SECTION 93-15-103, MISSISSIPPI CODE
4 OF 1972, TO ENACT DEFINITIONS; TO CREATE NEW SECTION 93-15-105,
5 MISSISSIPPI CODE OF 1972, TO SPECIFY JURISDICTION AND VENUE UNDER
6 THE ACT; TO CREATE NEW SECTION 93-15-107, MISSISSIPPI CODE OF
7 1972, TO PROVIDE FOR THE COMMENCEMENT OF PROCEEDINGS, NECESSARY
8 PARTIES AND SUMMONS; TO CREATE NEW SECTION 93-15-109, MISSISSIPPI
9 CODE OF 1972, TO PROVIDE FOR SURRENDER OF A CHILD; TO CREATE NEW
10 SECTION 93-15-111, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
11 TERMINATION BY WRITTEN VOLUNTARY RELEASE; TO CREATE NEW SECTION
12 93-15-113, MISSISSIPPI CODE OF 1972, TO PROVIDE PROCEDURES FOR THE
13 INVOLUNTARY TERMINATION OF PARENTAL RIGHTS; TO CREATE NEW SECTION
14 93-15-115, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR INVOLUNTARY
15 TERMINATION WHERE A REUNIFICATION ATTEMPT IS MANDATORY; TO CREATE
16 NEW SECTION 93-15-117, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
17 INVOLUNTARY TERMINATION WHERE A REUNIFICATION ATTEMPT IS NOT
18 REQUIRED; TO CREATE NEW SECTION 93-15-119, MISSISSIPPI CODE OF
19 1972, TO PROVIDE FOR INVOLUNTARY TERMINATION FOR ABANDONMENT,
20 DESERTION OR UNFITNESS; TO CREATE NEW SECTION 93-15-121,
21 MISSISSIPPI CODE OF 1972, TO SPECIFY GROUNDS FOR TERMINATION; TO
22 CREATE NEW SECTION 93-15-123, MISSISSIPPI CODE OF 1972, TO
23 AUTHORIZE THE COURT TO DECLINE TO TERMINATE PARENTAL RIGHTS WHEN
24 IN THE CHILD'S BEST INTEREST; TO CREATE NEW SECTION 93-15-125,
25 MISSISSIPPI CODE OF 1972, TO REQUIRE COMPLIANCE WITH THE FEDERAL
26 INDIAN CHILD WELFARE ACT; TO CREATE NEW SECTION 93-15-127,
27 MISSISSIPPI CODE OF 1972, TO PROVIDE THE EFFECT OF TERMINATION ON
28 THE OTHER PARENT; TO CREATE NEW SECTION 93-15-129, MISSISSIPPI
29 CODE OF 1972, TO SPECIFY WHEN A TERMINATION IS A PREFERENCE CASE;
30 TO CREATE NEW SECTION 93-15-131, MISSISSIPPI CODE OF 1972, TO
31 PROVIDE FOR POST-JUDGMENT PROCEEDINGS; TO CREATE NEW SECTION
32 93-15-133, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPEALS; TO
33 AMEND SECTIONS 93-17-5, 93-17-6 AND 93-17-7, MISSISSIPPI CODE OF
34 1972, TO REVISE THE ADOPTION LAW TO CONFORM TO THIS ACT; TO REPEAL



35 SECTION 93-17-9, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE
36 SURRENDER OF A CHILD TO AN ORGANIZATION ORGANIZED FOR THE PURPOSE
37 OF CARING FOR OR ADOPTION OF CHILDREN; TO REPEAL SECTIONS
38 93-15-103, 93-15-105, 93-15-107, 93-15-109 AND 93-15-111,
39 MISSISSIPPI CODE OF 1972, WHICH COMPRISE THE SUBSTANTIVE PORTION
40 OF THE TERMINATION OF RIGHTS OF UNFIT PARENTS LAW; AND FOR RELATED
41 PURPOSES.

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

43 **SECTION 1.** Section 93-15-101, Mississippi Code of 1972, is
44 amended as follows:

45 93-15-101. This chapter shall be known and may be cited as
46 the "Mississippi Termination of Parental Rights * * * Law."

47 **SECTION 2.** Sections 3 through 18 of this act shall be
48 codified in Chapter 15, Title 93, Mississippi Code of 1972, as the
49 Mississippi Termination of Parental Rights Law to replace Sections
50 93-15-103 through 93-15-111, which are repealed in Section 23 of
51 this act.

52 **SECTION 3.** The following shall be codified as Section
53 93-15-103, Mississippi Code of 1972:

54 93-15-103. Definitions. For purposes of this chapter,
55 unless a different meaning is plainly expressed by the context,
56 the following definitions apply:

57 (a) "Abandonment" means any conduct by the parent,
58 whether consisting of a single incident or actions over an
59 extended period of time, that evinces a settled purpose to
60 relinquish all parental claims and responsibilities to the child.
61 Abandonment may be established by showing:

62 (i) For a child who is under three (3) years of
63 age on the date that the petition for termination of parental



64 rights was filed, that the parent has deliberately made no contact
65 with the child for six (6) months;

66 (ii) For a child who is three (3) years of age or
67 older on the date that the petition for termination of parental
68 rights was filed, that the parent has deliberately made no contact
69 with the child for at least one (1) year; or

70 (iii) If the child is under six (6) years of age,
71 that the parent has exposed the child in any highway, street,
72 field, outhouse, or elsewhere with the intent to wholly abandon
73 the child.

74 (b) "Child" means a person under eighteen (18) years of
75 age.

76 (c) "Court" means the court having jurisdiction under
77 the Mississippi Termination of Parental Rights Law.

78 (d) "Desertion" means:

79 (i) Any conduct by the parent over an extended
80 period of time that demonstrates a willful neglect or refusal to
81 provide for the support and maintenance of the child; or

82 (ii) That the parent has not demonstrated, within
83 a reasonable period of time after the birth of the child, a full
84 commitment to the responsibilities of parenthood.

85 (e) "Interested person" means any person related to the
86 child by consanguinity or affinity, a custodian or legal guardian
87 of the child, a guardian ad litem representing the child's best
88 interests, or the child.



89 (f) "Home" means any charitable or religious
90 corporation or organization or the superintendent or head of the
91 charitable or religious corporation or organization organized
92 under the laws of the State of Mississippi, any public authority
93 to which has been granted the power to provide care for or procure
94 the adoption of children by any Mississippi statute, and any
95 association or institution engaged in placing children for
96 adoption on July 1, 1955.

97 (g) "Minor parent" means any parent under twenty-one
98 (21) years of age.

99 (h) "Parent" means a natural or adoptive parent of the
100 child.

101 (i) "Permanency outcome" means achieving a permanent or
102 long-term custodial arrangement for the custody and care of the
103 child that ends the supervision of the Department of Human
104 Services.

105 (j) "Qualified health professional" means a licensed or
106 certified professional who is engaged in the delivery of health
107 services and who meets all applicable federal or state
108 requirements to provide professional services.

109 (k) "Qualified mental health professional" means a
110 person with at least a master's degree in mental health or a
111 related field and who has either a professional license or a
112 Department of Mental Health credential as a mental health
113 therapist.



114 (1) "Reunification" means the restoration of the
115 parent's custodial rights in providing for the safety and welfare
116 of the child which ends the supervision of the Department of Human
117 Services.

118 **SECTION 4.** The following shall be codified as Section
119 93-15-105, Mississippi Code of 1972:

120 93-15-105. **Jurisdiction and venue.** (1) The chancery court
121 has original exclusive jurisdiction over all termination of
122 parental rights proceedings except that a county court, when
123 sitting as a youth court with jurisdiction of a child in an abuse
124 or neglect proceeding, has original exclusive jurisdiction to hear
125 a petition for termination of parental rights against a parent of
126 that child.

127 (2) (a) Venue in a county court sitting as a youth court
128 for termination of parental rights proceedings shall be in the
129 county in which the court has jurisdiction of the child in the
130 abuse or neglect proceedings. Venue in chancery court for
131 termination of parental rights proceedings shall be proper either
132 in the county in which the defendant resides, the child resides or
133 in the county where an agency or institution having custody of the
134 child is located.

135 (b) Transfers of venue shall be governed by the
136 Mississippi Rules of Civil Procedure.

137 **SECTION 5.** The following shall be codified as Section
138 93-15-107, Mississippi Code of 1972:



139 93-15-107. **Commencement of proceedings; parties; summons.**

140 (1) (a) Termination of parental rights proceedings are commenced
141 upon the filing of a petition under this chapter. The petition
142 may be filed by any interested person, or any agency or
143 institution holding custody of the child.

144 (b) The proceeding shall be triable, either in term
145 time or vacation, thirty (30) days after personal service of
146 process to any necessary party or, for a nonresident necessary
147 party whose address is unknown after diligent search, thirty (30)
148 days after the date of the first publication of service of process
149 by publication that complies with the Mississippi Rules of Civil
150 Procedure.

151 (c) Necessary parties to a termination of parental
152 rights action shall include the mother of the child, the legal
153 father of the child, the putative father of the child when known,
154 any agency or institution holding custody of the child, and the
155 child. The absence of a necessary party does not preclude the
156 court from conducting the hearing or rendering a final judgment.

157 (d) The child's best interests shall be represented by
158 a guardian ad litem.

159 (2) In all cases involving termination of parental rights, a
160 minor parent shall be served with process as an adult.

161 (3) The court may waive service of process if an adoptive
162 child was born in a foreign country, put up for adoption in the
163 birth country, and has been legally admitted into this country.



164 **SECTION 6.** The following shall be codified as Section
165 93-15-109, Mississippi Code of 1972:

166 93-15-109. **Surrender of a child to the Department of Human**
167 **Services or a home.** (1) A parent may accomplish the surrender of
168 a child to the Department of Human Services or to a home by:

169 (a) Delivering the child to the Department of Human
170 Services or the home;

171 (b) Executing an affidavit of a written agreement that
172 names the child and which vests in the Department of Human
173 Services or the home the exclusive custody, care and control of
174 the child; and

175 (c) Executing a written voluntary release as set forth
176 in Section 93-15-111(2).

177 (2) If a child has been surrendered to a home or other
178 agency operating under the laws of another state, and the child is
179 delivered into the custody of a petitioner or home within this
180 state, the execution of consent by the nonresident home or agency
181 shall be sufficient.

182 (3) Nothing in this section prohibits the delivery and
183 surrender of a child to an emergency medical services provider
184 pursuant to Sections 43-15-201 through 43-15-209.

185 **SECTION 7.** The following shall be codified as Section
186 93-15-111, Mississippi Code of 1972:

187 93-15-111. **Termination by written voluntary release.** (1) A
188 parent or an interested person may petition the court to accept a



189 parent's written voluntary release that relinquishes all of the
190 parent's parental rights to the child.

191 (2) The court may accept the parent's execution of a written
192 voluntary release if it meets the following minimum requirements:

193 (a) Is signed under oath and dated at least seventy-two
194 (72) hours after the birth of the child;

195 (b) States the parent's full name, the relationship of
196 the parent to the child, and the parent's address for service of
197 process in the proceedings to terminate parental rights;

198 (c) States the child's full name, date and time of
199 birth, and place of birth as indicated on the birth certificate;

200 (d) Identifies the governmental agency or home to which
201 the child has been surrendered, if any;

202 (e) States the parent's consent to adoption of the
203 child and waiver of service of process for any future adoption
204 proceedings;

205 (f) Acknowledges that the termination of the parent's
206 parental rights and that the subsequent adoption of the child may
207 significantly affect, or even eliminate, the parent's right to
208 inherit from the child under the laws of Descent and Distribution
209 (Chapter 1, Title 91, Mississippi Code of 1972);

210 (g) Acknowledges that all provisions of the written
211 voluntary release were entered into knowingly, intelligently, and
212 voluntarily; and



213 (h) Acknowledges that the parent is entitled to consult
214 an attorney regarding the parent's parental rights.

215 (3) An adult or minor parent who is mentally competent may
216 relinquish all parental rights to a child, waive service of
217 process, and consent to be voluntarily joined as a co-petitioner
218 in a termination of parental rights proceeding, consistent with
219 Rule 81(a)(9) of the Mississippi Rules of Civil Procedure, by
220 filing with the court, or by authorizing an interested person to
221 file with the court, an affidavit of a written waiver of service
222 of process and a consent to be voluntarily joined as a
223 co-petitioner that is dated and signed by the parent no earlier
224 than ninety (90) days before filing of the petition or at any time
225 after the commencement of the action, thereby allowing the court
226 to fully adjudicate the parent's parental rights in the absence of
227 the parent.

228 (4) The court's order accepting the parent's written
229 voluntary release terminates all of the parent's parental rights
230 to the child, including, but not limited to, the parental right to
231 control or withhold consent to an adoption.

232 **SECTION 8.** The following shall be codified as Section
233 93-15-113, Mississippi Code of 1972:

234 93-15-113. **Conduct of hearing for involuntary termination of**
235 **parental rights; counsel for parent.** (1) A hearing on the
236 involuntary termination of parental rights shall be conducted
237 without a jury and in accordance with the Mississippi Rules of



238 Evidence. The court may exclude the attendance of the child from
239 the hearing with the consent of the child's guardian ad litem or
240 legal counsel.

241 (2) (a) At the beginning of the involuntary termination of
242 parental rights hearing, the court shall determine whether all
243 necessary parties are present and identify all persons
244 participating in the hearing; determine whether the notice
245 requirements have been complied with and, if not, determine
246 whether the affected parties intelligently waived compliance with
247 the notice requirements; explain to the parent the purpose of the
248 hearing, the standard of proof required for terminating parental
249 rights, and the consequences if the parent's parental rights are
250 terminated. The court shall also explain to the parent:

- 251 (i) The right to counsel;
- 252 (ii) The right to remain silent;
- 253 (iii) The right to subpoena witnesses;
- 254 (iv) The right to confront and cross-examine
255 witnesses; and
- 256 (v) The right to appeal, including the right to a
257 transcript of the proceedings.

258 (b) The court shall then determine whether the parent
259 before the court is represented by counsel. If the parent wishes
260 to retain counsel, the court shall continue the hearing for a
261 reasonable time to allow the parent to obtain and consult with
262 counsel of the parent's own choosing. If an indigent parent does



263 not have counsel, the court shall determine whether the parent is
264 entitled to appointed counsel under the Constitution of the United
265 States, the Mississippi Constitution of 1890, or statutory law
266 and, if so, appoint counsel for the parent and then continue the
267 hearing for a reasonable time to allow the parent to consult with
268 the appointed counsel.

269 **SECTION 9.** The following shall be codified as Section
270 93-15-115, Mississippi Code of 1972:

271 93-15-115. **Involuntary termination when child in care and**
272 **custody or under the supervision of the Department of Human**
273 **Services pursuant to youth court proceedings and reasonable**
274 **efforts for reunification are required; standard of proof. (1)**

275 When reasonable efforts for reunification are required for a child
276 who is in the custody of, or under the supervision of, the
277 Department of Human Services pursuant to youth court proceedings,
278 the court hearing a petition under this chapter may terminate the
279 parental rights of a parent if, after conducting an evidentiary
280 hearing, the court finds by clear and convincing evidence that:

281 (a) The child has been adjudicated abused or neglected;

282 (b) The child has been in the custody and care of, or
283 under the supervision of, the Department of Human Services for at
284 least six (6) months, and, in that time period, the Department of
285 Human Services has developed a service plan for the reunification
286 of the parent and the child;



287 (c) A permanency hearing, or a permanency review
288 hearing, has been conducted pursuant to the Uniform Rules of Youth
289 Court Practice and the court has found that the Department of
290 Human Services, or a licensed child caring agency under its
291 supervision, has made reasonable efforts over a reasonable period
292 to diligently assist the parent in complying with the service plan
293 but the parent has failed to substantially comply with the terms
294 and conditions of the plan and that reunification with the abusive
295 or neglectful parent is not in the best interests of the child;
296 and

297 (d) Termination of the parent's parental rights is
298 appropriate because future contacts between the parent and child
299 are not desirable toward obtaining a satisfactory permanency
300 outcome based on one or more of the factors set out in Section
301 93-15-121.

302 **SECTION 10.** The following shall be codified as Section
303 93-15-117, Mississippi Code of 1972:

304 93-15-117. **Involuntary termination when child in care and**
305 **custody or under supervision of the Department of Human Services**
306 **pursuant to youth court proceedings and reasonable efforts for**
307 **reunification are not required; standard of proof.** When
308 reasonable efforts for reunification are not required, a court
309 hearing a petition under this chapter may terminate the parental
310 rights of a parent if, after conducting an evidentiary hearing,
311 the court finds by clear and convincing evidence:



312 (a) That the child has been adjudicated abused or
313 neglected;

314 (b) That the child has been in the custody and care of,
315 or under the supervision of, the Department of Human Services for
316 at least sixty (60) days and the Department of Human Services is
317 not required to make reasonable efforts for the reunification of
318 the parent and the child pursuant to Section 43-21-603(7)(c) of
319 the Mississippi Youth Court Law;

320 (c) That a permanency hearing, or a permanency review
321 hearing, has been conducted pursuant to the Uniform Rules of Youth
322 Court Practice and the court has found that reunification with the
323 abusive or neglectful parent is not in the best interests of the
324 child; and

325 (d) That termination of the parent's parental rights is
326 appropriate because future contacts between the parent and child
327 are not desirable toward obtaining a satisfactory permanency
328 outcome based on one or more of the following grounds:

329 (i) The basis for bypassing the reasonable efforts
330 for reunification of the parent and child under Section
331 43-21-603(7)(c) is established by clear and convincing evidence;
332 or

333 (ii) Any ground listed in Section 93-15-121 is
334 established by clear and convincing evidence.

335 **SECTION 11.** The following shall be codified as Section
336 93-15-119, Mississippi Code of 1972:



337 93-15-119. **Involuntary termination in chancery court for**
338 **reasons of abandonment, desertion, or parental unfitness to raise**
339 **the child; standard of proof.** (1) A chancery court hearing a
340 petition under this chapter may terminate the parental rights of a
341 parent when, after conducting an evidentiary hearing, the court
342 finds by clear and convincing evidence:

343 (a) That the parent has engaged in conduct constituting
344 abandonment or desertion of the child or is mentally, morally, or
345 otherwise unfit to raise the child. Proof that a parent is
346 mentally, morally, or otherwise unfit to raise the child may be
347 established by showing past or present conduct of the parent that
348 demonstrates a substantial risk of compromising or endangering the
349 child's safety and welfare; and

350 (b) That termination of the parent's parental rights is
351 appropriate because future contacts between the parent and child
352 are not desirable toward obtaining a satisfactory permanency
353 outcome based on one or more of the factors set out in Section
354 93-15-121.

355 (2) An allegation of desertion may be fully rebutted by
356 proof that the parent, in accordance with the parent's means and
357 knowledge of the mother's pregnancy or the child's birth, either:

358 (a) Provided financial support, including, but not
359 limited to, the payment of consistent support to the mother during
360 her pregnancy, contributions to the payment of the medical
361 expenses of the pregnancy and birth, and contributions of



362 consistent support of the child after birth; frequently and
363 consistently visited the child after birth; and is now willing and
364 able to assume legal and physical care of the child; or

365 (b) Was willing to provide financial support and to
366 make visitations with the child, but reasonable attempts to do so
367 were thwarted by the mother or her agents, and that the parent is
368 now willing and able to assume legal and physical care of the
369 child.

370 **SECTION 12.** The following shall be codified as Section
371 93-15-121, Mississippi Code of 1972:

372 93-15-121. **Grounds for termination.** The following factors
373 if established by clear and convincing evidence may be grounds for
374 termination of the parent's parental rights if future contacts
375 between the parent and child are not desirable toward obtaining a
376 satisfactory permanency outcome:

377 (a) The parent has been medically diagnosed by a
378 qualified mental health professional with a moderate to severe
379 mental illness that is unlikely to change in a reasonable period
380 of time and which, based upon expert testimony or an established
381 pattern of behavior, is likely to result in significant physical,
382 mental, or emotional harm to the child;

383 (b) The parent has been medically diagnosed by a
384 qualified health professional with an extreme physical
385 incapacitation that is unlikely to change in a reasonable period
386 of time and which, based upon expert testimony or an established



387 pattern of behavior, prevents the parent, despite reasonable
388 accommodations, from providing minimally acceptable care for the
389 child;

390 (c) The parent is suffering from habitual alcoholism or
391 other drug addiction and has failed to successfully complete
392 alcohol or drug treatment as reasonably directed by the court;

393 (d) The parent is unwilling to provide reasonably
394 necessary food, clothing, shelter, or medical care for the child;

395 (e) The parent has failed to exercise reasonable
396 visitation or communication with the child;

397 (f) The parent's abusive or neglectful conduct has
398 caused, at least in part, an extreme and deep-seated antipathy by
399 the child toward the parent, or some other substantial erosion of
400 the relationship between the parent and the child;

401 (g) The parent has committed a physically, mentally, or
402 emotionally abusive incident, or a series of abusive incidents,
403 against the child or another child, whether related by
404 consanguinity or affinity or not, making future contacts between
405 the parent and child undesirable; or

406 (h) (i) The parent has been convicted of any of the
407 following offenses against any child:

- 408 1. Rape of a child under Section 97-3-65;
409 2. Sexual battery of a child under Section
410 97-3-95(c);



- 411 3. Touching a child for lustful purposes
412 under Section 97-5-23;
- 413 4. Exploitation of a child under Section
414 97-5-31;
- 415 5. Felonious abuse or battery of a child
416 under Section 97-5-39(2); or
- 417 6. Carnal knowledge of a step or adopted
418 child or a child of a cohabitating partner under Section 97-5-41;
419 or
- 420 (ii) The parent has been convicted of:
- 421 1. Murder or voluntary manslaughter of
422 another child of the parent;
- 423 2. Aiding, abetting, attempting, conspiring
424 or soliciting to commit murder or voluntary manslaughter of the
425 child or another child of the parent; or
- 426 3. A felony assault that results in the
427 serious bodily injury to the child or another child of the parent.

428 **SECTION 13.** The following shall be codified as Section
429 93-15-123, Mississippi Code of 1972:

430 93-15-123. **Court discretion not to terminate.**

431 Notwithstanding any other provision of this chapter, the court may
432 exercise its discretion not to terminate the parent's parental
433 rights in a proceeding under this chapter if the child's safety
434 and welfare will not be compromised or endangered and terminating



435 the parent's parental right is not in the child's best interests
436 based on one or more of the following factors:

437 (a) The Department of Human Services has documented
438 compelling and extraordinary reasons why terminating the parent's
439 parental rights would not be in the child's best interests;

440 (b) There is a likelihood that continuing reasonable
441 efforts for achieving reunification will be successful;

442 (c) Terminating the parent's parental rights would
443 inappropriately relieve the parent of the parent's financial or
444 support obligations to the child; or

445 (d) The child is being cared for by the other parent,
446 or a relative, guardian, or custodian, in a residence not occupied
447 by the abusive or neglectful parent and terminating the parent's
448 parental rights would not expedite the process for obtaining a
449 satisfactory permanency outcome.

450 **SECTION 14.** The following shall be codified as Section
451 93-15-125, Mississippi Code of 1972:

452 93-15-125. **Compliance with Indian Child Welfare Act.** In any
453 proceeding under this chapter, where the court knows or has reason
454 to know that an Indian child is involved, the court must comply
455 with the Indian Child Welfare Act (25 USCS Section 1901 et seq.)
456 in regard to notice, appointment of counsel, examination of
457 reports or other documents, remedial services and rehabilitation
458 programs, and other protections the act provides. Additionally,
459 no termination of parental rights may be ordered in the proceeding



460 in the absence of a determination, supported by evidence beyond a
461 reasonable doubt, including testimony of qualified expert
462 witnesses, that the continued custody of the Indian child by the
463 parent is likely to result in serious emotional or physical damage
464 to the Indian child.

465 **SECTION 15.** The following shall be codified as Section
466 93-15-127, Mississippi Code of 1972:

467 93-15-127. **Effect on another parent's rights.** Termination
468 under this chapter of a parent's parental rights does not affect
469 the parental rights of another parent.

470 **SECTION 16.** The following shall be codified as Section
471 93-15-129, Mississippi Code of 1972:

472 93-15-129. **Child's removal due to sexual abuse or serious**
473 **bodily injury.** In any case where a child has been removed from
474 the custody and care of the parent due to sexual abuse or serious
475 bodily injury to the child, the court shall treat the petition for
476 termination of parental rights as a preference case to be
477 determined with all reasonable expedition.

478 **SECTION 17.** The following shall be codified as Section
479 93-15-131, Mississippi Code of 1972:

480 93-15-131. **Post-judgment proceedings.** (1) If the court
481 does not terminate the parent's parental rights, the custody and
482 care of the child shall continue with the person, agency, or
483 institution that is holding custody of the child at the time the
484 judgment is rendered. If the Department of Human Services has



485 legal custody of the child, the court must conduct a permanency
486 hearing and permanency review hearings as required under the
487 Mississippi Youth Court Law and the Mississippi Uniform Rules of
488 Youth Court Practice.

489 (2) If the court terminates the parent's parental rights,
490 the court shall place the child in the custody and care of the
491 other parent or some suitable person, agency, or institution until
492 an adoption or some other permanent living arrangement is
493 achieved. No notice of adoption proceedings or any other
494 subsequent proceedings pertaining to the custody and care of the
495 child shall be given to a parent whose rights have been
496 terminated.

497 **SECTION 18.** The following shall be codified as Section
498 93-15-133, Mississippi Code of 1972:

499 93-15-133. **Review by Supreme Court.** Appeal from a final
500 judgment on the termination of parental rights under this chapter
501 shall be to the Supreme Court of Mississippi pursuant to the
502 Mississippi Rules of Appellate Procedure.

503 **SECTION 19.** Section 93-17-5, Mississippi Code of 1972, is
504 amended as follows:

505 93-17-5. (1) There shall be made parties to the proceeding
506 by process or by the filing therein of a consent to the adoption
507 proposed in the petition, which consent shall be duly sworn to or
508 acknowledged and executed only by the following persons, but not
509 before seventy-two (72) hours after the birth of * * * the child:



510 (a) The parents, or parent, if only one (1) parent,
511 though either be under the age of twenty-one (21) years; * * *

512 (b) * * * If both parents are dead, then any two (2)
513 adult kin of the child within the third degree computed according
514 to the civil law * * *; if one of such kin is in possession of the
515 child, he or she shall join in the petition or be made a party to
516 the suit; or

517 (c) The guardian ad litem of an abandoned child, upon
518 petition showing that the names of the parents of * * * the child
519 are unknown after diligent search and inquiry by the petitioners.
520 In addition to the above, there shall be made parties to any
521 proceeding to adopt a child, either by process or by the filing of
522 a consent to the adoption proposed in the petition, the following:

523 (i) Those persons having physical custody of * * *
524 the child, except persons * * * who are acting as foster parents
525 as a result of placement with them by the Department of Human
526 Services of the State of Mississippi.

527 (ii) Any person to whom custody of * * * the child
528 may have been awarded by a court of competent jurisdiction of the
529 State of Mississippi.

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

533 (2) * * * The consent may also be executed and filed by the
534 duly authorized officer or representative of a home to whose care



535 the child has been delivered. The child shall join the petition
536 by * * * the child's next friend.

537 * * *

538 (* * *3) If * * * consent * * * is not filed, * * * process
539 shall be had upon the parties as provided by law for process in
540 person or by publication, if they * * * are nonresidents of the
541 state or are not found therein * * * after diligent search and
542 inquiry, * * * the court or chancellor in vacation may fix a date
543 in termtime or in vacation to which process may be returnable and
544 shall have power to proceed in termtime or vacation. In any
545 event, if the child is more than fourteen (14) years of age, a
546 consent to the adoption, sworn to or acknowledged by the child,
547 shall also be required or personal service of process shall be had
548 upon the child in the same manner and in the same effect as
549 if * * * the child were an adult.

550 **SECTION 20.** Section 93-17-6, Mississippi Code of 1972, is
551 amended as follows:

552 93-17-6. (1) Any person who would be a necessary party to
553 an adoption proceeding under this chapter and any person alleged
554 or claiming to be the father of a child born out of wedlock who is
555 proposed for adoption or who has been determined to be such by any
556 administrative or judicial procedure (the "alleged father") may
557 file a petition for determination of rights as a preliminary
558 pleading to a petition for adoption in any court which would have
559 jurisdiction and venue of an adoption proceeding. A petition for



560 determination of rights may be filed at any time after the period
561 ending thirty (30) days after the birth of the child. Should
562 competing petitions be filed in two (2) or more courts having
563 jurisdiction and venue, the court in which the first such petition
564 was properly filed shall have jurisdiction over the whole
565 proceeding until its disposition. The prospective adopting
566 parents need not be a party to * * * the petition. Where the
567 child's biological mother has surrendered the child to a home for
568 adoption, the home may represent the biological mother and her
569 interests in this proceeding.

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

574 (3) The sole matter for determination under a petition for
575 determination of rights is whether the alleged father * * * is the
576 natural father of the child based on Mississippi law governing
577 paternity or other relevant evidence.

578 * * *

579 (* * *4) If the court determines that the alleged
580 father * * * is not the natural father of the child, he shall have
581 no right to object to an adoption under Section 93-17-7.

582 (* * *5) If the court determines that the alleged
583 father * * * is the child's natural father and that he objects to
584 the child's adoption, the court shall stay the adoption



585 proceedings to allow the filing of a petition to determine whether
586 the father's parental rights should be terminated pursuant to
587 Section 93-15-115.

588 (6) If a petition for the termination of parental rights is
589 filed and, after an evidentiary hearing, the court does not
590 terminate the father's parental rights, the court shall set the
591 matter as a contested adoption as provided in * * * Section
592 93-17-8.

593 (7) A petition for determination of rights may be used to
594 determine the rights of alleged fathers whose identity is unknown
595 or uncertain. In such cases the court shall determine what, if
596 any, notice can be and is to be given * * * those persons.
597 Determinations of rights under the procedure of this section may
598 also be made under a petition for adoption.

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

603 (9) Service of process in the adoption of a foreign born
604 child shall be governed by Section 93-15-105(5).

605 **SECTION 21.** Section 93-17-7, Mississippi Code of 1972, is
606 amended as follows:

607 93-17-7. (1) No infant shall be adopted to any person
608 if * * * a parent whose parental rights have not been terminated
609 under the Mississippi Termination of Parental Rights Law, after



610 having been summoned, shall appear and object thereto before the
611 making of a decree for adoption * * *. A parent shall not be
612 summoned in the adoption proceedings nor have the right to object
613 thereto if the parental rights of the parent * * * have been
614 terminated by the procedure set forth in * * * the Mississippi
615 Termination of Parental Rights Law (Section 93-15-101 et seq.),
616 and * * * the termination shall be res judicata on the question of
617 parental abandonment or unfitness in the adoption proceedings.

618 (2) * * * No person, whether claiming to be the parent of
619 the child or not, has standing to object to the adoption if:

620 (a) A final judgment for adoption that comports with
621 all applicable state and federal laws has been entered by a court;
622 and

623 (b) Notice to the parties of the action, whether known
624 or unknown, has been made in compliance with Section 93-17-5.

625 **SECTION 22.** Section 93-17-9, Mississippi Code of 1972, which
626 provides for the surrender of a child to an organization organized
627 for the purpose of caring for or adoption of children, is
628 repealed.

629 **SECTION 23.** Sections 93-15-103, 93-15-105, 93-15-107,
630 93-15-109 and 93-15-111, Mississippi Code of 1972, which comprise
631 the substantive portion of the Termination of Rights of Unfit
632 Parents Law that was first adopted in 1980, are repealed to be
633 replaced as directed in Section 2 of this act.



634 **SECTION 24.** This act shall take effect and be in force from
635 and after its passage.

