

By: Representatives Lamar, Campbell

To: Judiciary A

HOUSE BILL NO. 1240  
(As Sent to Governor)

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) "Home" means any charitable or religious  
86 corporation or organization or the superintendent or head of the  
87 charitable or religious corporation or organization organized  
88 under the laws of the State of Mississippi, any public authority



89 to which has been granted the power to provide care for or procure  
90 the adoption of children by any Mississippi statute, and any  
91 association or institution engaged in placing children for  
92 adoption on July 1, 1955.

93 (f) "Interested person" means any person related to the  
94 child by consanguinity or affinity, a custodian or legal guardian  
95 of the child, a guardian ad litem representing the child's best  
96 interests, or an attorney representing the child's preferences  
97 under Rule 13 of the Uniform Rules of Youth Court Practice.

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

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

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

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

110 (k) "Qualified mental health professional" means a  
111 person with at least a master's degree in mental health or a  
112 related field and who has either a professional license or a



113 Department of Mental Health credential as a mental health  
114 therapist.

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

119 **SECTION 4.** The following shall be codified as Section  
120 93-15-105, Mississippi Code of 1972:

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

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

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



138           **SECTION 5.** The following shall be codified as Section  
139 93-15-107, Mississippi Code of 1972:

140           93-15-107.   **Commencement of proceedings; parties; summons.**

141       (1)   (a) Termination of parental rights proceedings are commenced  
142 upon the filing of a petition under this chapter. The petition  
143 may be filed by any interested person, or any agency or  
144 institution holding custody of the child. The simultaneous filing  
145 of a petition for adoption is not a pre-requisite for filing a  
146 petition under this chapter.

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

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

160           (d) A guardian ad litem shall be appointed to protect  
161 the best interest of the child. The guardian ad litem fees shall  
162 be determined and assessed in the discretion of the court.



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

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

168 **SECTION 6.** The following shall be codified as Section  
169 93-15-109, Mississippi Code of 1972:

170 93-15-109. **Surrender of a child to the Department of Human**  
171 **Services or a home.** (1) A parent may accomplish the surrender of  
172 a child to the Department of Human Services or to a home by:

173 (a) Delivering the child to the Department of Human  
174 Services or the home;

175 (b) Executing an affidavit of a written agreement that  
176 names the child and which vests in the Department of Human  
177 Services or the home the exclusive custody, care and control of  
178 the child; and

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

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



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

189 **SECTION 7.** The following shall be codified as Section  
190 93-15-111, Mississippi Code of 1972:

191 93-15-111. **Termination by written voluntary release.** (1) A  
192 parent or an interested person may petition the court to accept a  
193 parent's written voluntary release that relinquishes all of the  
194 parent's parental rights to the child.

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

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

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

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

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

206 (e) States the parent's consent to adoption of the  
207 child and waiver of service of process for any future adoption  
208 proceedings;

209 (f) Acknowledges that the termination of the parent's  
210 parental rights and that the subsequent adoption of the child may





211 significantly affect, or even eliminate, the parent's right to  
212 inherit from the child under the laws of Descent and Distribution  
213 (Chapter 1, Title 91, Mississippi Code of 1972);

214 (g) Acknowledges that all provisions of the written  
215 voluntary release were entered into knowingly, intelligently, and  
216 voluntarily; and

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

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

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



236           **SECTION 8.** The following shall be codified as Section  
237 93-15-113, Mississippi Code of 1972:

238           93-15-113.   **Conduct of hearing for involuntary termination of**  
239 **parental rights; counsel for parent.** (1) A hearing on the  
240 involuntary termination of parental rights shall be conducted  
241 without a jury and in accordance with the Mississippi Rules of  
242 Evidence. The court may exclude the attendance of the child from  
243 the hearing with the consent of the child's guardian ad litem or  
244 legal counsel.

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

- 255                           (i) The right to counsel;
- 256                           (ii) The right to remain silent;
- 257                           (iii) The right to subpoena witnesses;
- 258                           (iv) The right to confront and cross-examine
- 259 witnesses; and



260 (v) The right to appeal, including the right to a  
261 transcript of the proceedings.

262 (b) The court shall then determine whether the parent  
263 before the court is represented by counsel. If the parent wishes  
264 to retain counsel, the court shall continue the hearing for a  
265 reasonable time to allow the parent to obtain and consult with  
266 counsel of the parent's own choosing. If an indigent parent does  
267 not have counsel, the court shall determine whether the parent is  
268 entitled to appointed counsel under the Constitution of the United  
269 States, the Mississippi Constitution of 1890, or statutory law  
270 and, if so, appoint counsel for the parent and then continue the  
271 hearing for a reasonable time to allow the parent to consult with  
272 the appointed counsel. The setting of fees for court-appointed  
273 counsel and the assessment of those fees are in the discretion of  
274 the court.

275 **SECTION 9.** The following shall be codified as Section  
276 93-15-115, Mississippi Code of 1972:

277 93-15-115. **Involuntary termination when child in care and**  
278 **custody or under the supervision of the Department of Human**  
279 **Services pursuant to youth court proceedings and reasonable**  
280 **efforts for reunification are required; standard of proof.** When  
281 reasonable efforts for reunification are required for a child who  
282 is in the custody of, or under the supervision of, the Department  
283 of Human Services pursuant to youth court proceedings, the court  
284 hearing a petition under this chapter may terminate the parental



285 rights of a parent if, after conducting an evidentiary hearing,  
286 the court finds by clear and convincing evidence that:

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

288 (b) The child has been in the custody and care of, or  
289 under the supervision of, the Department of Human Services for at  
290 least six (6) months, and, in that time period, the Department of  
291 Human Services has developed a service plan for the reunification  
292 of the parent and the child;

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

303 (d) Termination of the parent's parental rights is  
304 appropriate because future contacts between the parent and child  
305 are not desirable toward obtaining a satisfactory permanency  
306 outcome based on one or more of the factors set out in Section  
307 93-15-121.

308 **SECTION 10.** The following shall be codified as Section  
309 93-15-117, Mississippi Code of 1972:



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

318                   (a)   That the child has been adjudicated abused or  
319 neglected;

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

326                   (c)   That a permanency hearing, or a permanency review  
327 hearing, has been conducted pursuant to the Uniform Rules of Youth  
328 Court Practice and the court has found that reunification with the  
329 abusive or neglectful parent is not in the best interests of the  
330 child; and

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



335 (i) The basis for bypassing the reasonable efforts  
336 for reunification of the parent and child under Section  
337 43-21-603(7)(c) is established by clear and convincing evidence;  
338 or

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

341 **SECTION 11.** The following shall be codified as Section  
342 93-15-119, Mississippi Code of 1972:

343 93-15-119. **Involuntary termination in chancery court for**  
344 **reasons of abandonment, desertion, or parental unfitness to raise**  
345 **the child; standard of proof.** (1) A chancery court hearing a  
346 petition under this chapter may terminate the parental rights of a  
347 parent when, after conducting an evidentiary hearing, the court  
348 finds by clear and convincing evidence:

349 (a) That the parent has engaged in conduct constituting  
350 abandonment or desertion of the child or is mentally, morally, or  
351 otherwise unfit to raise the child. The court shall inquire as to  
352 the military status of any absent parent. Proof that a parent is  
353 mentally, morally, or otherwise unfit to raise the child shall be  
354 established by showing past or present conduct of the parent that  
355 demonstrates a substantial risk of compromising or endangering the  
356 child's safety and welfare; and

357 (b) That termination of the parent's parental rights is  
358 appropriate because future contacts between the parent and child  
359 are not desirable toward obtaining a satisfactory permanency



360 outcome based on one or more of the factors set out in Section  
361 93-15-121.

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

365 (a) Provided financial support, including, but not  
366 limited to, the payment of consistent support to the mother during  
367 her pregnancy, contributions to the payment of the medical  
368 expenses of the pregnancy and birth, and contributions of  
369 consistent support of the child after birth; frequently and  
370 consistently visited the child after birth; and is now willing and  
371 able to assume legal and physical care of the child; or

372 (b) Was willing to provide financial support and to  
373 make visitations with the child, but reasonable attempts to do so  
374 were thwarted by the mother or her agents, and that the parent is  
375 now willing and able to assume legal and physical care of the  
376 child.

377 **SECTION 12.** The following shall be codified as Section  
378 93-15-121, Mississippi Code of 1972:

379 93-15-121. **Grounds for termination.** The following factors  
380 if established by clear and convincing evidence may be grounds for  
381 termination of the parent's parental rights if future contacts  
382 between the parent and child are not desirable toward obtaining a  
383 satisfactory permanency outcome:



384 (a) The parent has been medically diagnosed by a  
385 qualified mental health professional with a severe mental illness  
386 or deficiency that is unlikely to change in a reasonable period of  
387 time and which, based upon expert testimony or an established  
388 pattern of behavior, makes the parent unable or unwilling to  
389 provide an adequate permanent home for the child;

390 (b) The parent has been medically diagnosed by a  
391 qualified health professional with an extreme physical  
392 incapacitation that is unlikely to change in a reasonable period  
393 of time and which, based upon expert testimony or an established  
394 pattern of behavior, prevents the parent, despite reasonable  
395 accommodations, from providing minimally acceptable care for the  
396 child;

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

400 (d) The parent is unwilling to provide reasonably  
401 necessary food, clothing, shelter, or medical care for the child;  
402 reasonably necessary medical care does not include recommended or  
403 optional vaccinations against childhood or any other disease;

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

406 (f) The parent's abusive or neglectful conduct has  
407 caused, at least in part, an extreme and deep-seated antipathy by





408 the child toward the parent, or some other substantial erosion of  
409 the relationship between the parent and the child;

410 (g) The parent has committed an abusive act for which  
411 reasonable efforts to maintain the children in the home would not  
412 be required under Section 43-21-603, or a series of physically,  
413 mentally, or emotionally abusive incidents, against the child or  
414 another child, whether related by consanguinity or affinity or  
415 not, making future contacts between the parent and child  
416 undesirable; or

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

- 419 1. Rape of a child under Section 97-3-65;
- 420 2. Sexual battery of a child under Section  
421 97-3-95 (c);
- 422 3. Touching a child for lustful purposes  
423 under Section 97-5-23;
- 424 4. Exploitation of a child under Sections  
425 97-5-31 through 97-5-37;
- 426 5. Felonious abuse or battery of a child  
427 under Section 97-5-39(2); or
- 428 6. Carnal knowledge of a step or adopted  
429 child or a child of a cohabitating partner under Section 97-5-41;  
430 or

431 (ii) The parent has been convicted of:



- 432                   1. Murder or voluntary manslaughter of  
433 another child of the parent;
- 434                   2. Aiding, abetting, attempting, conspiring  
435 or soliciting to commit murder or voluntary manslaughter of the  
436 child or another child of the parent; or
- 437                   3. A felony assault that results in the  
438 serious bodily injury to the child or another child of the parent.

439           **SECTION 13.** The following shall be codified as Section  
440 93-15-123, Mississippi Code of 1972:

441           93-15-123. **Court discretion not to terminate.**

442 Notwithstanding any other provision of this chapter, the court may  
443 exercise its discretion not to terminate the parent's parental  
444 rights in a proceeding under this chapter if the child's safety  
445 and welfare will not be compromised or endangered and terminating  
446 the parent's parental right is not in the child's best interests  
447 based on one or more of the following factors:

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

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

453                   (c) Terminating the parent's parental rights would  
454 inappropriately relieve the parent of the parent's financial or  
455 support obligations to the child; or



456 (d) The child is being cared for by the other parent,  
457 or a relative, guardian, or custodian, in a residence not occupied  
458 by the abusive or neglectful parent and terminating the parent's  
459 parental rights would not expedite the process for obtaining a  
460 satisfactory permanency outcome.

461 **SECTION 14.** The following shall be codified as Section  
462 93-15-125, Mississippi Code of 1972:

463 93-15-125. **Compliance with Indian Child Welfare Act.** In any  
464 proceeding under this chapter, where the court knows or has reason  
465 to know that an Indian child is involved, the court must comply  
466 with the Indian Child Welfare Act (25 USCS Section 1901 et seq.)  
467 in regard to notice, appointment of counsel, examination of  
468 reports or other documents, remedial services and rehabilitation  
469 programs, and other protections the act provides. Additionally,  
470 no termination of parental rights may be ordered in the proceeding  
471 in the absence of a determination, supported by evidence beyond a  
472 reasonable doubt, including testimony of qualified expert  
473 witnesses, that the continued custody of the Indian child by the  
474 parent is likely to result in serious emotional or physical damage  
475 to the Indian child.

476 **SECTION 15.** The following shall be codified as Section  
477 93-15-127, Mississippi Code of 1972:

478 93-15-127. **Effect on another parent's rights.** Termination  
479 under this chapter of a parent's parental rights does not affect  
480 the parental rights of another parent.



481           **SECTION 16.** The following shall be codified as Section  
482 93-15-129, Mississippi Code of 1972:

483           93-15-129.   **Petitions involving sexual abuse or serious**  
484 **bodily injury treated as preference case.** In any case where a  
485 child has been removed from the custody and care of the parent due  
486 to sexual abuse or serious bodily injury to the child, or is not  
487 living in the home of the offending parent, the court shall treat  
488 the petition for termination of parental rights as a preference  
489 case to be determined with all reasonable expedition.

490           **SECTION 17.** The following shall be codified as Section  
491 93-15-131, Mississippi Code of 1972:

492           93-15-131.   **Post-judgment proceedings.** (1) If the court  
493 does not terminate the parent's parental rights, the custody and  
494 care of the child shall continue with the person, agency, or  
495 institution that is holding custody of the child at the time the  
496 judgment is rendered, or the court may grant custody to the parent  
497 whose rights were sought to be terminated if that is in the best  
498 interest of the child. If the Department of Human Services has  
499 legal custody of the child, the court must conduct a permanency  
500 hearing and permanency review hearings as required under the  
501 Mississippi Youth Court Law and the Mississippi Uniform Rules of  
502 Youth Court Practice.

503           (2) If the court terminates the parent's parental rights,  
504 the court shall place the child in the custody and care of the  
505 other parent or some suitable person, agency, or institution until



506 an adoption or some other permanent living arrangement is  
507 achieved. No notice of adoption proceedings or any other  
508 subsequent proceedings pertaining to the custody and care of the  
509 child shall be given to a parent whose rights have been  
510 terminated.

511 **SECTION 18.** The following shall be codified as Section  
512 93-15-133, Mississippi Code of 1972:

513 93-15-133. **Review by Supreme Court.** Appeal from a final  
514 judgment on the termination of parental rights under this chapter  
515 shall be to the Supreme Court of Mississippi pursuant to the  
516 Mississippi Rules of Appellate Procedure.

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

519 93-17-5. (1) There shall be made parties to the proceeding  
520 by process or by the filing therein of a consent to the adoption  
521 proposed in the petition, which consent shall be duly sworn to or  
522 acknowledged and executed only by the following persons, but not  
523 before seventy-two (72) hours after the birth of \* \* \* the child:

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

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



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

537 (i) Those persons having physical custody of \* \* \*  
538 the child, except persons \* \* \* who are acting as foster parents  
539 as a result of placement with them by the Department of Human  
540 Services of the State of Mississippi.

541 (ii) Any person to whom custody of \* \* \* the child  
542 may have been awarded by a court of competent jurisdiction of the  
543 State of Mississippi.

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

547 (2) \* \* \* The consent may also be executed and filed by the  
548 duly authorized officer or representative of a home to whose care  
549 the child has been delivered. The child shall join the petition  
550 by \* \* \* the child's next friend.

551 \* \* \*

552 ( \* \* \*3) If \* \* \* consent \* \* \* is not filed, \* \* \* process  
553 shall be had upon the parties as provided by law for process in  
554 person or by publication, if they \* \* \* are nonresidents of the  
555 state or are not found therein \* \* \* after diligent search and



556 inquiry, \* \* \* the court or chancellor in vacation may fix a date  
557 in termtime or in vacation to which process may be returnable and  
558 shall have power to proceed in termtime or vacation. In any  
559 event, if the child is more than fourteen (14) years of age, a  
560 consent to the adoption, sworn to or acknowledged by the child,  
561 shall also be required or personal service of process shall be had  
562 upon the child in the same manner and in the same effect as  
563 if \* \* \* the child were an adult.

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

566       93-17-6. (1) Any person who would be a necessary party to  
567 an adoption proceeding under this chapter and any person alleged  
568 or claiming to be the father of a child born out of wedlock who is  
569 proposed for adoption or who has been determined to be such by any  
570 administrative or judicial procedure (the "alleged father") may  
571 file a petition for determination of rights as a preliminary  
572 pleading to a petition for adoption in any court which would have  
573 jurisdiction and venue of an adoption proceeding. A petition for  
574 determination of rights may be filed at any time after the period  
575 ending thirty (30) days after the birth of the child. Should  
576 competing petitions be filed in two (2) or more courts having  
577 jurisdiction and venue, the court in which the first such petition  
578 was properly filed shall have jurisdiction over the whole  
579 proceeding until its disposition. The prospective adopting  
580 parents need not be a party to \* \* \* the petition. Where the



581 child's biological mother has surrendered the child to a home for  
582 adoption, the home may represent the biological mother and her  
583 interests in this proceeding.

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

588 (3) The sole matter for determination under a petition for  
589 determination of rights is whether the alleged father \* \* \* is the  
590 natural father of the child based on Mississippi law governing  
591 paternity or other relevant evidence.

592 \* \* \*

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

596 ( \* \* \*5) If the court determines that the alleged  
597 father \* \* \* is the child's natural father and that he objects to  
598 the child's adoption, the court shall stay the adoption  
599 proceedings to allow the filing of a petition to determine whether  
600 the father's parental rights should be terminated pursuant to  
601 Section 93-15-119, or other applicable provision of the  
602 Mississippi Termination of Parental Rights Law.

603 (6) If a petition for the termination of parental rights is  
604 filed and, after an evidentiary hearing, the court does not  
605 terminate the father's parental rights, the court shall set the





606 matter as a contested adoption as provided in \* \* \* Section  
607 93-17-8.

608 (7) A petition for determination of rights may be used to  
609 determine the rights of alleged fathers whose identity is unknown  
610 or uncertain. In such cases the court shall determine what, if  
611 any, notice can be and is to be given \* \* \* those persons.  
612 Determinations of rights under the procedure of this section may  
613 also be made under a petition for adoption.

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

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

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

622 93-17-7. (1) No infant shall be adopted to any person  
623 if \* \* \* a parent whose parental rights have not been terminated  
624 under the Mississippi Termination of Parental Rights Law, after  
625 having been summoned, shall appear and object thereto before the  
626 making of a decree for adoption \* \* \*. A parent shall not be  
627 summoned in the adoption proceedings nor have the right to object  
628 thereto if the parental rights of the parent \* \* \* have been  
629 terminated by the procedure set forth in \* \* \* the Mississippi  
630 Termination of Parental Rights Law (Section 93-15-101 et seq.),



631 and \* \* \* the termination shall be res judicata on the question of  
632 parental abandonment or unfitness in the adoption proceedings.

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

635 (a) A final judgment for adoption that comports with  
636 all applicable state and federal laws has been entered by a court;  
637 and

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

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

644 **SECTION 23.** Sections 93-15-103, 93-15-105, 93-15-107,  
645 93-15-109 and 93-15-111, Mississippi Code of 1972, which comprise  
646 the substantive portion of the Termination of Rights of Unfit  
647 Parents Law that was first adopted in 1980, are repealed to be  
648 replaced as directed in Section 2 of this act.

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

