

By: Senator(s) Parker, Hill, Hudson, Watson, To: Judiciary, Division A
McDaniel, Dearing

SENATE BILL NO. 2493
(As Sent to Governor)

1 AN ACT TO CREATE THE SUPPORTING AND STRENGTHENING FAMILIES
2 ACT; TO CREATE NEW SECTION 93-31-1, MISSISSIPPI CODE OF 1972, TO
3 CREATE A SHORT TITLE; TO CREATE NEW SECTION 93-31-3, MISSISSIPPI
4 CODE OF 1972, TO CREATE A TEMPORARY POWER OF ATTORNEY TO PROVIDE
5 FOR DELEGATION BY A PARENT OR GUARDIAN OF THE AUTHORITY OF CARE
6 AND CUSTODY OF A CHILD AND TO ENACT A TIME LIMIT, EXCEPTIONS TO
7 THE POWER, AND FOR RESCINDING THE POWER OF ATTORNEY; TO CREATE NEW
8 SECTION 93-31-5, MISSISSIPPI CODE OF 1972, TO SPECIFY A FORM AND
9 MINIMUM REQUIREMENTS FOR THE POWER OF ATTORNEY; TO CREATE NEW
10 SECTION 93-31-7, MISSISSIPPI CODE OF 1972, TO EXEMPT
11 ATTORNEYS-IN-FACT FROM CERTAIN LICENSURE REQUIREMENTS; TO AMEND
12 SECTIONS 43-15-111 AND 43-16-3, MISSISSIPPI CODE OF 1972, TO
13 CONFORM; TO AMEND SECTION 43-21-353, MISSISSIPPI CODE OF 1972, TO
14 REQUIRE CERTAIN INFORMATION BE PROVIDED TO PARENTS AND GUARDIANS
15 IN UNSUBSTANTIATED CASES; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** The following shall be codified as Section
18 93-31-1, Mississippi Code of 1972:

19 93-31-1. Sections 1 through 4 of this act shall be known and
20 may be cited as the Supporting and Strengthening Families Act.

21 **SECTION 2.** The following shall be codified as Section
22 93-31-3, Mississippi Code of 1972:

23 93-31-3. (1) (a) A parent or legal custodian of a child,
24 by means of a properly executed power of attorney as provided in



25 Section 93-31-5, may delegate to another willing person or persons
26 as attorney-in-fact any of the powers regarding the care and
27 custody of the child other than the following:

28 (i) The power to consent to marriage or adoption
29 of the child;

30 (ii) The performance or inducement of an abortion
31 on or for the child; or

32 (iii) The termination of parental rights to the
33 child.

34 (b) A delegation of powers under this section does not:

35 (i) Change or modify any parental or legal rights,
36 obligations, or authority established by an existing court order;

37 (ii) Deprive any custodial or noncustodial parent
38 or legal guardian of any parental or legal rights, obligations, or
39 authority regarding the custody, visitation, or support of the
40 child; or

41 (iii) Affect a court's ability to determine the
42 best interests of a child.

43 (c) If both parents are living and have shared custody
44 as a matter of law or under an existing court order, both parents
45 must execute the power of attorney.

46 (d) A power of attorney under this act must be
47 facilitated by either a child welfare agency that is licensed to
48 place children for adoption and that is operating under the Safe
49 Families for Children model or another charitable organization



50 that is operating under the Safe Families for Children model. A
51 full criminal history and child abuse and neglect background check
52 must be conducted on any person who is not a grandparent, aunt,
53 uncle, or sibling of the child if the person is:

54 (i) Designated or proposed to be designated as the
55 attorney-in-fact; or

56 (ii) Is a person over the age of fifteen (15) who
57 resides in the home of the designated attorney-in-fact.

58 (2) A power of attorney executed under this act shall not be
59 used for the sole purposes of enrolling a child in a school to
60 participate in the academic or interscholastic athletic programs
61 provided by that school or for any other unlawful purposes, except
62 as may be permitted by the federal Every Student Succeeds Act
63 (Public Law 114-95).

64 (3) The parent or legal custodian of the child has the
65 authority to revoke or withdraw the power of attorney authorized
66 by this section at any time. Upon the termination, expiration, or
67 revocation of the power of attorney, the child must be returned to
68 the custody of the parent or legal custodian as soon as reasonably
69 possible.

70 (4) Until the authority expires or is revoked or withdrawn
71 by the parent or legal custodian, the attorney-in-fact shall
72 exercise parental or legal authority on a continuous basis without
73 compensation for the duration of the power of attorney.



74 (5) The execution of a power of attorney by a parent or
75 legal custodian does not, in the absence of other evidence,
76 constitute abandonment, desertion, abuse, neglect, or any evidence
77 of unfitness as a parent unless the parent or legal custodian
78 fails to take custody of the child or execute a new power of
79 attorney after the one-year time limit, or after a longer time
80 period as allowed for a serving parent, has elapsed. Nothing in
81 this subsection prevents the Department of Human Services or law
82 enforcement from investigating allegations of abuse, abandonment,
83 desertion, neglect or other mistreatment of a child.

84 (6) When the custody of a child is transferred by a power of
85 attorney under this act, the child is not considered to have been
86 placed in foster care and the attorney-in-fact will not be subject
87 to any of the requirements or licensing regulations for foster
88 care or other regulations relating to out-of-home care for
89 children and will not be subject to any statutes or regulations
90 dealing with the licensing or regulation of foster care homes.

91 (7) (a) "Serving parent" means a parent who is a member of
92 the Armed Forces of the United States, including any reserve
93 component thereof, or the National Oceanic and Atmospheric
94 Administration Commissioned Officer Corps or the Public Health
95 Service of the United States Department of Health and Human
96 Services detailed by proper authority for duty with the Armed
97 Forces of the United States, or who is required to enter or serve
98 in the active military service of the United States under a call



99 or order of the President of the United States or to serve on
100 state active duty.

101 (b) A serving parent may delegate the powers designated
102 in subsection (1) of this section for longer than one (1) year if
103 on active-duty service or if scheduled to be on active-duty
104 service. The term of delegation, however, may not exceed the term
105 of active-duty service plus thirty (30) days.

106 **SECTION 3.** The following shall be codified as Section
107 93-31-5, Mississippi Code of 1972:

108 93-31-5. (1) The following statutory form of power of
109 attorney to delegate parental or legal authority as authorized by
110 Section 93-31-3 is legally sufficient:

111 Statutory Form for Power of Attorney to
112 Delegate Parental or Legal Custodian Powers

113 1. "I certify that I am the parent or legal custodian of:

114 _____
115 (Full name of minor child) (Date of birth)

116 _____
117 (Full name of minor child) (Date of birth)

118 _____
119 (Full name of minor child) (Date of birth)

120 who is/are minor children.

121 2. I designate _____
122 (Full name of attorney-in-fact)

123 _____



124 (Street address, city, state and zip code of attorney-in-fact)

125

126 (Home phone, work phone and cell phone of attorney-in-fact)

127 as the attorney-in-fact of each minor child named above.

128 3. [Complete either Section 3(a) or 3(b)].

129 (a) I delegate to the attorney-in-fact all of my power
130 and authority regarding the care, custody and property of each
131 minor child named above, including, but not limited to, the right
132 to enroll the child in school, inspect and obtain copies of
133 education records and other records concerning the child, the
134 right to attend school activities and other functions concerning
135 the child, and the right to give or withhold any consent or waiver
136 with respect to school activities, medical and dental treatment,
137 and any other activity, function or treatment that may concern the
138 child. This delegation shall not include the power or authority
139 to consent to marriage or adoption of the child, the performance
140 or inducement of an abortion on or for the child, or the
141 termination of parental rights to the child.

142 OR

143 (b) I delegate to the attorney-in-fact the following
144 specific powers and responsibilities (write in):

145

146 [If Section 3(b) is completed, Section 3(a) does not apply.]

147 This delegation shall not include the power or authority to
148 consent to: marriage or adoption of the child, performing or



149 inducing an abortion on or for the child, or the termination of
150 parental rights to the child.

151 [Complete either 4(a) or 4(b)]

152 4. (a) This power of attorney is effective for a period not
153 to exceed one (1) year, beginning, _____, 20____, and
154 ending _____, 20____. I reserve the right to revoke this
155 authority at any time.

156 OR

157 [Complete either 4(a) or 4(b)]

158 (b) I am a serving parent as defined in Section
159 93-31-3, Mississippi Code of 1972. My active-duty service is
160 scheduled to begin on _____, 20____, and is estimated to
161 end on _____, 20____. I reserve the right to revoke this
162 authority at any time. I acknowledge that in no event may this
163 delegation of power last more than one (1) year or the term of my
164 active duty plus thirty (30) days, whichever is longer.

165 By: _____
166 (Parent/Legal Custodian signature)

167 5. I hereby accept my designation as attorney-in-fact for
168 the minor child/children specified in this power of attorney.

169 _____
170 (Attorney-in-fact signature)

171 State of _____

172 County of _____

173 ACKNOWLEDGEMENT



174 Before me, the undersigned, a Notary Public, in and for said
175 county and state on this ____ day of _____, 20____,
176 personally appeared _____ (Name of Parent/Legal
177 Custodian) and _____ (Name of Attorney-in-fact),
178 known to me to be the persons who executed this instrument and who
179 acknowledged to me that each executed the same as his or her free
180 and voluntary act and deed for the uses and purposes set forth in
181 the instrument.

182 Witness my hand and official seal the day and year above
183 written.

184 _____
185 (Signature of notarial officer)

186 (Seal, if any)

187 _____
188 (Title and Rank)

189 My commission expires: _____"

190 (2) A power of attorney that substantially conforms to the
191 form set forth in this section is legally sufficient if the form
192 is properly completed and acknowledged.

193 **SECTION 4.** The following shall be codified as Section
194 93-31-7, Mississippi Code of 1972:

195 93-31-7. When authority is delegated under Section 93-31-3
196 by a parent or guardian, the attorney-in-fact is not subject to
197 the requirements of any other child care facility licensing
198 statutes or foster care licensing statutes, and delivery of



199 custody to the attorney-in-fact will not constitute an out-of-home
200 child placement under Title 43, Mississippi Code of 1972.

201 **SECTION 5.** Section 43-15-111, Mississippi Code of 1972, is
202 amended as follows:

203 43-15-111. The provisions of this article do not apply to:

204 (* * *a) A facility or program owned or operated by an
205 agency of the State of Mississippi or United States government;

206 (* * *b) A facility or program operated by or under an
207 exclusive contract with the Department of Corrections;

208 (* * *c) Schools and educational programs and
209 facilities, the primary purpose of which is to provide a regular
210 course of study necessary for advancement to a higher educational
211 level or completion of a prescribed course of study, and which
212 may, incident to such educational purposes, provide boarding
213 facilities to the students of such programs.

214 (* * *d) Any residential child-caring agency and/or
215 child-placing agency operated or conducted under the auspices of a
216 religious institution and meeting the requirements or conditions
217 of this section shall be exempt from the licensure requirements of
218 this article under the following conditions: (* * *i) such
219 religious institution must have a tax-exempt status as a nonprofit
220 religious institution in accordance with Section 501(c) of the
221 Internal Revenue Code of 1954, as amended, or the real property
222 owned and exclusively occupied by the religious institution must
223 be exempt from location taxation, and (* * *ii) the agency or



224 institution must be in compliance with the requirements of the
225 Child Residential Home Notification Act, Section 43-16-1 et seq.,
226 Mississippi Code of 1972, and must not be in violation of Section
227 43-16-21(c) regarding the abuse and/or neglect of any child served
228 by such home who has been adjudicated by the youth court as an
229 abused and/or neglected child. Nothing in this subsection shall
230 prohibit a residential child-caring agency or child-placing agency
231 operated by or conducted under the auspices of a religious
232 institution from obtaining a license pursuant to this article.

233 (e) Placement of custody under a power of attorney
234 executed under Section 93-31-1 et seq.

235 **SECTION 6.** Section 43-16-3, Mississippi Code of 1972, is
236 amended as follows:

237 43-16-3. As used in this chapter, the following definitions
238 shall apply unless the context clearly provides otherwise:

239 (a) "Child" means a person who has not reached the age
240 of eighteen (18) years or who has not otherwise been legally
241 emancipated.

242 (b) "Child residential home" means any place, facility
243 or home operated by any person which receives children who are not
244 related to the operators and whose parents or guardians are not
245 residents of the same facility for supervision, care, lodging and
246 maintenance for twenty-four (24) hours a day, with or without
247 transfer of custody. This term * * * does not include:



248 (i) Residential homes * * * licensed by the * * *
249 Department of Human Services under * * * Section 43-15-5 * * *
250 (ii) Any public school * * *
251 (iii) Any * * * home operated by a state
252 agency * * *
253 (iv) Child care facilities as defined in Section
254 43-20-5 * * *
255 (v) Youth camps as defined in Section
256 75-74-3 * * *
257 (vi) Health care facilities licensed by the State
258 Department of Health * * *; or
259 (vii) The home of an attorney-in-fact operating
260 under a power of attorney executed under Section 93-31-1 et seq.

261 (c) "Department" shall mean the State Department of
262 Health.

263 (d) "Person" shall include an individual, partnership,
264 organization, association or corporation.

265 **SECTION 7.** Section 43-21-353, Mississippi Code of 1972, is
266 amended as follows:

267 43-21-353. (1) Any attorney, physician, dentist, intern,
268 resident, nurse, psychologist, social worker, family protection
269 worker, family protection specialist, child caregiver, minister,
270 law enforcement officer, public or private school employee or any
271 other person having reasonable cause to suspect that a child is a
272 neglected child or an abused child, shall cause an oral report to



273 be made immediately by telephone or otherwise and followed as soon
274 thereafter as possible by a report in writing to the Department of
275 Human Services, and immediately a referral shall be made by the
276 Department of Human Services to the youth court intake unit, which
277 unit shall promptly comply with Section 43-21-357. In the course
278 of an investigation, at the initial time of contact with the
279 individual(s) about whom a report has been made under this Youth
280 Court Act or with the individual(s) responsible for the health or
281 welfare of a child about whom a report has been made under this
282 chapter, the Department of Human Services shall inform the
283 individual of the specific complaints or allegations made against
284 the individual. Consistent with subsection (4), the identity of
285 the person who reported his or her suspicion shall not be
286 disclosed. Where appropriate, the Department of Human Services
287 shall additionally make a referral to the youth court prosecutor.

288 Upon receiving a report that a child has been sexually
289 abused, or burned, tortured, mutilated or otherwise physically
290 abused in such a manner as to cause serious bodily harm, or upon
291 receiving any report of abuse that would be a felony under state
292 or federal law, the Department of Human Services shall immediately
293 notify the law enforcement agency in whose jurisdiction the abuse
294 occurred and shall notify the appropriate prosecutor within
295 forty-eight (48) hours, and the Department of Human Services shall
296 have the duty to provide the law enforcement agency all the names
297 and facts known at the time of the report; this duty shall be of a



298 continuing nature. The law enforcement agency and the Department
299 of Human Services shall investigate the reported abuse immediately
300 and shall file a preliminary report with the appropriate
301 prosecutor's office within twenty-four (24) hours and shall make
302 additional reports as new or additional information or evidence
303 becomes available. The Department of Human Services shall advise
304 the clerk of the youth court and the youth court prosecutor of all
305 cases of abuse reported to the department within seventy-two (72)
306 hours and shall update such report as information becomes
307 available.

308 (2) Any report to the Department of Human Services shall
309 contain the names and addresses of the child and his parents or
310 other persons responsible for his care, if known, the child's age,
311 the nature and extent of the child's injuries, including any
312 evidence of previous injuries and any other information that might
313 be helpful in establishing the cause of the injury and the
314 identity of the perpetrator.

315 (3) The Department of Human Services shall maintain a
316 statewide incoming wide-area telephone service or similar service
317 for the purpose of receiving reports of suspected cases of child
318 abuse; provided that any attorney, physician, dentist, intern,
319 resident, nurse, psychologist, social worker, family protection
320 worker, family protection specialist, child caregiver, minister,
321 law enforcement officer or public or private school employee who



322 is required to report under subsection (1) of this section shall
323 report in the manner required in subsection (1).

324 (4) Reports of abuse and neglect made under this chapter and
325 the identity of the reporter are confidential except when the
326 court in which the investigation report is filed, in its
327 discretion, determines the testimony of the person reporting to be
328 material to a judicial proceeding or when the identity of the
329 reporter is released to law enforcement agencies and the
330 appropriate prosecutor pursuant to subsection (1). Reports made
331 under this section to any law enforcement agency or prosecutorial
332 officer are for the purpose of criminal investigation and
333 prosecution only and no information from these reports may be
334 released to the public except as provided by Section 43-21-261.
335 Disclosure of any information by the prosecutor shall be according
336 to the Mississippi Uniform Rules of Circuit and County Court
337 Procedure. The identity of the reporting party shall not be
338 disclosed to anyone other than law enforcement officers or
339 prosecutors without an order from the appropriate youth court.
340 Any person disclosing any reports made under this section in a
341 manner not expressly provided for in this section or Section
342 43-21-261 * * * shall be guilty of a misdemeanor and subject to
343 the penalties prescribed by Section 43-21-267.

344 (5) All final dispositions of law enforcement investigations
345 described in subsection (1) of this section shall be determined
346 only by the appropriate prosecutor or court. All final



347 dispositions of investigations by the Department of Human Services
348 as described in subsection (1) of this section shall be determined
349 only by the youth court. Reports made under subsection (1) of
350 this section by the Department of Human Services to the law
351 enforcement agency and to the district attorney's office shall
352 include the following, if known to the department:

353 (a) The name and address of the child;
354 (b) The names and addresses of the parents;
355 (c) The name and address of the suspected perpetrator;
356 (d) The names and addresses of all witnesses, including
357 the reporting party if a material witness to the abuse;

358 (e) A brief statement of the facts indicating that the
359 child has been abused and any other information from the agency
360 files or known to the family protection worker or family
361 protection specialist making the investigation, including medical
362 records or other records, which may assist law enforcement or the
363 district attorney in investigating and/or prosecuting the case;
364 and

365 (f) What, if any, action is being taken by the
366 Department of Human Services.

367 (6) In any investigation of a report made under this chapter
368 of the abuse or neglect of a child as defined in Section
369 43-21-105(m), the Department of Human Services may request the
370 appropriate law enforcement officer with jurisdiction to accompany



371 the department in its investigation, and in such cases the law
372 enforcement officer shall comply with such request.

373 (7) Anyone who willfully violates any provision of this
374 section shall be, upon being found guilty, punished by a fine not
375 to exceed Five Thousand Dollars (\$5,000.00), or by imprisonment in
376 jail not to exceed one (1) year, or both.

377 (8) If a report is made directly to the Department of Human
378 Services that a child has been abused or neglected in an
379 out-of-home setting, a referral shall be made immediately to the
380 law enforcement agency in whose jurisdiction the abuse occurred
381 and the department shall notify the district attorney's office
382 within forty-eight (48) hours of such report. The Department of
383 Human Services shall investigate the out-of-home setting report of
384 abuse or neglect to determine whether the child who is the subject
385 of the report, or other children in the same environment, comes
386 within the jurisdiction of the youth court and shall report to the
387 youth court the department's findings and recommendation as to
388 whether the child who is the subject of the report or other
389 children in the same environment require the protection of the
390 youth court. The law enforcement agency shall investigate the
391 reported abuse immediately and shall file a preliminary report
392 with the district attorney's office within forty-eight (48) hours
393 and shall make additional reports as new information or evidence
394 becomes available. If the out-of-home setting is a licensed
395 facility, an additional referral shall be made by the Department



396 of Human Services to the licensing agency. The licensing agency
397 shall investigate the report and shall provide the Department of
398 Human Services, the law enforcement agency and the district
399 attorney's office with their written findings from such
400 investigation as well as that licensing agency's recommendations
401 and actions taken.

402 (9) If a child protective investigation does not result in
403 an out-of-home placement, a child protective investigator must
404 provide information to the parent or guardians about community
405 service programs that provide respite care, voluntary guardianship
406 or other support services for families in crisis.

407 **SECTION 8.** This act shall take effect and be in force from
408 and after July 1, 2016.

