

By: Senator(s) Tindell

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2342

1 AN ACT TO AMEND SECTION 93-15-103, MISSISSIPPI CODE OF 1972,
2 TO CORRECT REFERENCES TO THE DEPARTMENT OF CHILD PROTECTION
3 SERVICES; TO AMEND SECTION 93-15-107, MISSISSIPPI CODE OF 1972, TO
4 CLARIFY THE PROCEDURE FOR INVOLUNTARY TERMINATION OF PARENTAL
5 RIGHTS; TO AMEND SECTION 93-15-109, MISSISSIPPI CODE OF 1972, TO
6 CORRECT REFERENCES TO THE DEPARTMENT OF CHILD PROTECTION SERVICES;
7 TO AMEND SECTION 93-15-111, MISSISSIPPI CODE OF 1972, TO CLARIFY
8 TERMINATION OF PARENTAL RIGHTS BY WRITTEN VOLUNTARY RELEASE; TO
9 AMEND SECTION 93-15-113, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
10 CONDUCT OF A HEARING FOR INVOLUNTARY TERMINATION OF PARENTAL
11 RIGHTS; TO AMEND SECTION 93-15-115, MISSISSIPPI CODE OF 1972, TO
12 CORRECT REFERENCES TO THE DEPARTMENT OF CHILD PROTECTION SERVICES
13 AND CORRECT STATUTORY INTERNAL REFERENCES; TO AMEND SECTION
14 93-15-117, MISSISSIPPI CODE OF 1972, TO CORRECT REFERENCES TO THE
15 DEPARTMENT OF CHILD PROTECTION SERVICES AND CORRECT INTERNAL
16 STATUTORY REFERENCES; TO AMEND SECTION 93-15-119, MISSISSIPPI CODE
17 OF 1972, TO CREATE CONCEPTION BY AN UNLAWFUL SEXUAL ACT AS GROUNDS
18 FOR TERMINATION OF PARENTAL RIGHTS; TO AMEND SECTION 93-15-121,
19 MISSISSIPPI CODE OF 1972, TO CLARIFY GROUNDS FOR TERMINATION OF
20 PARENTAL RIGHTS AND ADD CONVICTION OF HUMAN TRAFFICKING; TO AMEND
21 SECTION 93-15-123, MISSISSIPPI CODE OF 1972, TO CORRECT REFERENCES
22 TO THE DEPARTMENT OF CHILD PROTECTION SERVICES; TO AMEND SECTION
23 93-15-131, MISSISSIPPI CODE OF 1972, TO CORRECT REFERENCES TO THE
24 DEPARTMENT OF CHILD PROTECTION SERVICES; AND FOR RELATED PURPOSES.

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

26 **SECTION 1.** Section 93-15-103, Mississippi Code of 1972, is
27 amended as follows:



28 93-15-103. For purposes of this chapter, unless a different
29 meaning is plainly expressed by the context, the following
30 definitions apply:

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

36 (i) For a child who is under three (3) years of
37 age on the date that the petition for termination of parental
38 rights was filed, that the parent has deliberately made no contact
39 with the child for six (6) months;

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

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

48 (b) "Child" means a person under eighteen (18) years of
49 age.

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

52 (d) "Desertion" means:



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

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

59 (e) "Home" means any charitable or religious
60 corporation or organization or the superintendent or head of the
61 charitable or religious corporation or organization organized
62 under the laws of the State of Mississippi, any public authority
63 to which has been granted the power to provide care for or procure
64 the adoption of children by any Mississippi statute, and any
65 association or institution engaged in placing children for
66 adoption on July 1, 1955.

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

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

74 (h) "Parent" means a natural or adoptive parent of the
75 child.

76 (i) "Permanency outcome" means achieving a permanent or
77 long-term custodial arrangement for the custody and care of the



78 child that ends the supervision of the Department of * * * Child
79 Protection Services.

80 (j) "Qualified health professional" means a licensed or
81 certified professional who is engaged in the delivery of health
82 services and who meets all applicable federal or state
83 requirements to provide professional services.

84 (k) "Qualified mental health professional" means a
85 person with at least a master's degree in mental health or a
86 related field and who has either a professional license or a
87 Department of Mental Health credential as a mental health
88 therapist.

89 (l) "Reunification" means the restoration of the
90 parent's custodial rights in providing for the safety and welfare
91 of the child which ends the supervision of the Department of * * *
92 Child Protection Services.

93 **SECTION 2.** Section 93-15-107, Mississippi Code of 1972, is
94 amended as follows:

95 93-15-107. (1) (a) Involuntary termination of parental
96 rights proceedings are commenced upon the filing of a petition
97 under this chapter. The petition may be filed by any interested
98 person, or any agency * * *, institution or person holding custody
99 of the child. The simultaneous filing of a petition for adoption
100 is not a prerequisite for filing a petition under this chapter.

101 (b) The proceeding shall be triable, either in term
102 time or vacation, thirty (30) days after personal service of



103 process to any necessary party or, for a * * * necessary party
104 whose address is unknown after diligent search, thirty (30) days
105 after the date of the first publication of service of process by
106 publication that complies with the Mississippi Rules of Civil
107 Procedure.

108 (c) Necessary parties to a termination of parental
109 rights action shall include the mother of the child, the legal
110 father of the child, the putative father of the child when known,
111 and any agency * * *, institution or person holding custody of the
112 child * * *. The absence of a necessary party who has been
113 properly served does not preclude the court from conducting the
114 hearing or rendering a final judgment.

115 (d) A guardian ad litem shall be appointed to protect
116 the best interest of the child, except that the court, in its
117 discretion, may waive this requirement when a parent executes a
118 written voluntary release to terminate parental rights. The
119 guardian ad litem fees shall be determined and assessed in the
120 discretion of the court.

121 (2) Voluntary termination of parental rights by written
122 voluntary release is governed by Section 93-15-111.

123 (* * *3) In all cases involving termination of parental
124 rights, a minor parent shall be served with process as an adult.

125 (* * *4) The court may waive service of process if an
126 adoptive child was born in a foreign country, put up for adoption



127 in the birth country, and has been legally admitted into this
128 country.

129 **SECTION 3.** Section 93-15-109, Mississippi Code of 1972, is
130 amended as follows:

131 93-15-109. (1) A parent may accomplish the surrender of a
132 child to the Department of * * * Child Protection Services or to a
133 home by:

134 (a) Delivering the child to the Department of * * *
135 Child Protection Services or the home;

136 (b) Executing an affidavit of a written agreement that
137 names the child and which vests in the Department of * * * Child
138 Protection Services or the home the exclusive custody, care and
139 control of the child; and

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

142 (2) If a child has been surrendered to a home or other
143 agency operating under the laws of another state, and the child is
144 delivered into the custody of a petitioner or home within this
145 state, the execution of consent by the nonresident home or agency
146 shall be sufficient.

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

150 **SECTION 4.** Section 93-15-111, Mississippi Code of 1972, is
151 amended as follows:



152 93-15-111. * * * (* * *1) The court may accept the
153 parent's * * * written voluntary release if it meets the following
154 minimum requirements:

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

157 (b) States the parent's full name, the relationship of
158 the parent to the child, and the parent's address * * *;

159 (c) States the child's full name, date of birth, time
160 of birth if known, and place of birth as indicated on the birth
161 certificate;

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

164 (e) States the parent's consent to adoption of the
165 child and waiver of service of process for any future adoption
166 proceedings;

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

172 (g) Acknowledges that all provisions of the written
173 voluntary release were entered into knowingly, intelligently, and
174 voluntarily; and

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



177 * * *

178 (* * *2) The court's order accepting the parent's written
179 voluntary release terminates all of the parent's parental rights
180 to the child, including, but not limited to, the parental right to
181 control or withhold consent to an adoption. If the court does not
182 accept the parent's written voluntary release, then any interested
183 person, or any agency, institution or person holding custody of
184 the child, may commence involuntary termination of parental rights
185 proceedings under Section 93-15-107.

186 **SECTION 5.** Section 93-15-113, Mississippi Code of 1972, is
187 amended as follows:

188 93-15-113. (1) A hearing on the involuntary termination of
189 parental rights shall be conducted without a jury and in
190 accordance with the Mississippi Rules of Evidence. The court may
191 exclude * * * the child from the hearing * * * if the court
192 determines that the exclusion of the child from the hearing is in
193 the child's best interest.

194 (2) (a) At the beginning of the involuntary termination of
195 parental rights hearing, the court shall determine whether all
196 necessary parties are present and identify all persons
197 participating in the hearing; determine whether the notice
198 requirements have been complied with and, if not, determine
199 whether the affected parties intelligently waived compliance with
200 the notice requirements; explain to the parent the purpose of the
201 hearing, the standard of proof required for terminating parental



202 rights, and the consequences if the parent's parental rights are
203 terminated. The court shall also explain to the parent:

- 204 (i) The right to counsel;
- 205 (ii) The right to remain silent;
- 206 (iii) The right to subpoena witnesses;
- 207 (iv) The right to confront and cross-examine
208 witnesses; and
- 209 (v) The right to appeal, including the right to a
210 transcript of the proceedings.

211 (b) The court shall then determine whether the parent
212 before the court is represented by counsel. If the parent wishes
213 to retain counsel, the court shall continue the hearing for a
214 reasonable time to allow the parent to obtain and consult with
215 counsel of the parent's own choosing. If an indigent parent does
216 not have counsel, the court shall determine whether the parent is
217 entitled to appointed counsel under the Constitution of the United
218 States, the Mississippi Constitution of 1890, or statutory law
219 and, if so, appoint counsel for the parent and then continue the
220 hearing for a reasonable time to allow the parent to consult with
221 the appointed counsel. The setting of fees for court-appointed
222 counsel and the assessment of those fees are in the discretion of
223 the court.

224 **SECTION 6.** Section 93-15-115, Mississippi Code of 1972, is
225 amended as follows:



226 93-15-115. When reasonable efforts for reunification are
227 required for a child who is in the custody of, or under the
228 supervision of, the Department of * * * Child Protection Services
229 pursuant to youth court proceedings, the court hearing a petition
230 under this chapter may terminate the parental rights of a parent
231 if, after conducting an evidentiary hearing, the court finds by
232 clear and convincing evidence that:

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

234 (b) The child has been in the custody and care of, or
235 under the supervision of, the Department of * * * Child Protection
236 Services for at least six (6) months, and, in that time period,
237 the Department of * * * Child Protection Services has developed a
238 service plan for the reunification of the parent and the child;

239 (c) A permanency hearing, or a permanency review
240 hearing, has been conducted pursuant to the Uniform Rules of Youth
241 Court Practice and the court has found that the Department
242 of * * * Child Protection Services, or a licensed child caring
243 agency under its supervision, has made reasonable efforts over a
244 reasonable period to diligently assist the parent in complying
245 with the service plan but the parent has failed to substantially
246 comply with the terms and conditions of the plan and that
247 reunification with the abusive or neglectful parent is not in the
248 best interests of the child; and

249 (d) Termination of the parent's parental rights is
250 appropriate because * * * reunification between the parent and



251 child * * * is not desirable toward obtaining a satisfactory
252 permanency outcome based on one or more of the * * * grounds set
253 out in Section 93-15-119 or 93-15-121.

254 **SECTION 7.** Section 93-15-117, Mississippi Code of 1972, is
255 amended as follows:

256 93-15-117. When reasonable efforts for reunification are not
257 required, a court hearing a petition under this chapter may
258 terminate the parental rights of a parent if, after conducting an
259 evidentiary hearing, the court finds by clear and convincing
260 evidence:

261 (a) That the child has been adjudicated abused or
262 neglected;

263 (b) That the child has been in the custody and care of,
264 or under the supervision of, the Department of * * * Child
265 Protection Services for at least sixty (60) days and the
266 Department of * * * Child Protection Services is not required to
267 make reasonable efforts for the reunification of the parent and
268 the child pursuant to Section 43-21-603(7)(c) of the Mississippi
269 Youth Court Law;

270 (c) That a permanency hearing, or a permanency review
271 hearing, has been conducted pursuant to the Uniform Rules of Youth
272 Court Practice and the court has found that reunification with the
273 abusive or neglectful parent is not in the best interests of the
274 child; and



275 (d) That termination of the parent's parental rights is
276 appropriate because * * * reunification between the parent and
277 child * * * is not desirable toward obtaining a satisfactory
278 permanency outcome based on one or more of the following grounds:

279 (i) The basis for bypassing the reasonable efforts
280 for reunification of the parent and child under Section
281 43-21-603(7)(c) is established by clear and convincing evidence;
282 or

283 (ii) Any ground listed in Section 93-15-119 or
284 93-15-121 is established by clear and convincing evidence.

285 **SECTION 8.** Section 93-15-119, Mississippi Code of 1972, is
286 amended as follows:

287 93-15-119. (1) A * * * court hearing a petition under this
288 chapter may terminate the parental rights of a parent when, after
289 conducting an evidentiary hearing, the court finds by clear and
290 convincing evidence:

291 (a) (i) That the parent has engaged in conduct
292 constituting abandonment or desertion of the child, as defined in
293 Section 93-15-103, or is mentally, morally, or otherwise unfit to
294 raise the child * * *, which shall be established by showing past
295 or present conduct of the parent that demonstrates a substantial
296 risk of compromising or endangering the child's safety and
297 welfare; and

298 (* * * ii) That termination of the parent's
299 parental rights is appropriate because * * * reunification between



300 the parent and child * * * is not desirable toward obtaining a
301 satisfactory permanency outcome * * * ; or

302 (b) That a parent has committed against the other
303 parent a sexual act that is unlawful under Section 97-3-65 or
304 97-3-95, or under a similar law of another state, territory,
305 possession or Native American tribe where the offense occurred,
306 and that the child was conceived as a result of the unlawful
307 sexual act. A criminal conviction of the unlawful sexual act is
308 not required to terminate the offending parent's parental rights
309 under this paragraph (b).

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

313 (a) Provided financial support, including, but not
314 limited to, the payment of consistent support to the mother during
315 her pregnancy, contributions to the payment of the medical
316 expenses of the pregnancy and birth, and contributions of
317 consistent support of the child after birth; frequently and
318 consistently visited the child after birth; and is now willing and
319 able to assume legal and physical care of the child; or

320 (b) Was willing to provide financial support and to
321 make visitations with the child, but reasonable attempts to do so
322 were thwarted by the mother or her agents, and that the parent is
323 now willing and able to assume legal and physical care of the
324 child.



325 (3) The court shall inquire as to the military status of an
326 absent parent before conducting an evidentiary hearing under this
327 section.

328 **SECTION 9.** Section 93-15-121, Mississippi Code of 1972, is
329 amended as follows:

330 93-15-121. Any of the following * * *, if established by
331 clear and convincing evidence, may be grounds for termination of
332 the parent's parental rights if * * * reunification between the
333 parent and child * * * is not desirable toward obtaining a
334 satisfactory permanency outcome:

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

341 (b) The parent has been medically diagnosed by a
342 qualified health professional with an extreme physical
343 incapacitation that is unlikely to change in a reasonable period
344 of time and which, based upon expert testimony or an established
345 pattern of behavior, prevents the parent, despite reasonable
346 accommodations, from providing minimally acceptable care for the
347 child;



348 (c) The parent is suffering from habitual alcoholism or
349 other drug addiction and has failed to successfully complete
350 alcohol or drug treatment * * *;

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

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

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

361 (g) The parent has committed an abusive act for which
362 reasonable efforts to maintain the children in the home would not
363 be required under Section 43-21-603, or a series of physically,
364 mentally, or emotionally abusive incidents, against the child or
365 another child, whether related by consanguinity or affinity or
366 not, making future contacts between the parent and child
367 undesirable; or

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

- 370 1. Rape of a child under Section 97-3-65;
371 2. Sexual battery of a child under Section
372 97-3-95(c);



- 373 3. Touching a child for lustful purposes
374 under Section 97-5-23;
- 375 4. Exploitation of a child under Sections
376 97-5-31 through 97-5-37;
- 377 5. Felonious abuse or battery of a child
378 under Section 97-5-39(2); * * *
- 379 6. Carnal knowledge of a step or adopted
380 child or a child of a cohabitating partner under Section 97-5-41;
381 or
- 382 7. Human trafficking of a child under Section
383 97-3-54.1; or
- 384 (ii) The parent has been convicted of:
- 385 1. Murder or voluntary manslaughter of
386 another child of the parent;
- 387 2. Aiding, abetting, attempting, conspiring
388 or soliciting to commit murder or voluntary manslaughter of the
389 child or another child of the parent; or
- 390 3. A felony assault that results in the
391 serious bodily injury to the child or another child of the parent.

392 **SECTION 10.** Section 93-15-123, Mississippi Code of 1972, is
393 amended as follows:

394 93-15-123. Notwithstanding any other provision of this
395 chapter, the court may exercise its discretion not to terminate
396 the parent's parental rights in a proceeding under this chapter if
397 the child's safety and welfare will not be compromised or



398 endangered and terminating the parent's parental right is not in
399 the child's best interests based on one or more of the following
400 factors:

401 (a) The Department of * * * Child Protection Services
402 has documented compelling and extraordinary reasons why
403 terminating the parent's parental rights would not be in the
404 child's best interests;

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

407 (c) Terminating the parent's parental rights would
408 inappropriately relieve the parent of the parent's financial or
409 support obligations to the child; or

410 (d) The child is being cared for by the other parent,
411 or a relative, guardian, or custodian, in a residence not occupied
412 by the abusive or neglectful parent and terminating the parent's
413 parental rights would not expedite the process for obtaining a
414 satisfactory permanency outcome.

415 **SECTION 11.** Section 93-15-131, Mississippi Code of 1972, is
416 amended as follows:

417 93-15-131. (1) If the court does not terminate the parent's
418 parental rights, the custody and care of the child shall continue
419 with the person, agency, or institution that is holding custody of
420 the child at the time the judgment is rendered, or the court may
421 grant custody to the parent whose rights were sought to be
422 terminated if that is in the best interest of the child. If the



423 Department of * * * Child Protection Services has legal custody of
424 the child, the court must conduct a permanency hearing and
425 permanency review hearings as required under the Mississippi Youth
426 Court Law and the Mississippi Uniform Rules of Youth Court
427 Practice.

428 (2) If the court terminates the parent's parental rights,
429 the court shall place the child in the custody and care of the
430 other parent or some suitable person, agency, or institution until
431 an adoption or some other permanent living arrangement is
432 achieved. No notice of adoption proceedings or any other
433 subsequent proceedings pertaining to the custody and care of the
434 child shall be given to a parent whose rights have been
435 terminated.

436 **SECTION 12.** This act shall take effect and be in force from
437 and after its passage.

