

By: Senator(s) Hill, Seymour

To: Judiciary, Division A

SENATE BILL NO. 2423

1 AN ACT TO AMEND SECTION 93-15-119, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY A PARENT'S RIGHT TO NOMINATE A GUARDIAN BEFORE FINAL
3 TERMINATION OF PARENTAL RIGHTS; TO AMEND SECTION 43-21-609,
4 MISSISSIPPI CODE OF 1972, TO CLARIFY THE DISPOSITION ALTERNATIVE
5 OF APPOINTING FICTIVE KIN AS A GUARDIAN; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 93-15-119, Mississippi Code of 1972, is
8 amended as follows:

9 93-15-119. (1) A court hearing a petition under this
10 chapter may terminate the parental rights of a parent when, after
11 conducting an evidentiary hearing and affording the parent the
12 opportunity to transfer custody of the child as provided in
13 subsection (4) of this section, the court finds by clear and
14 convincing evidence:

15 (a) (i) That the parent has engaged in conduct
16 constituting abandonment or desertion of the child, as defined in
17 Section 93-15-103, or is mentally, morally, or otherwise unfit to
18 raise the child, which shall be established by showing past or



19 present conduct of the parent that demonstrates a substantial risk
20 of compromising or endangering the child's safety and welfare; and

21 (ii) That termination of the parent's parental
22 rights is appropriate because reunification between the parent and
23 child is not desirable toward obtaining a satisfactory permanency
24 outcome; or

25 (b) That a parent has committed against the other
26 parent a sexual act that is unlawful under Section 97-3-65 or
27 97-3-95, or under a similar law of another state, territory,
28 possession or Native American tribe where the offense occurred,
29 and that the child was conceived as a result of the unlawful
30 sexual act. A criminal conviction of the unlawful sexual act is
31 not required to terminate the offending parent's parental rights
32 under this paragraph (b).

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

36 (a) Provided financial support, including, but not
37 limited to, the payment of consistent support to the mother during
38 her pregnancy, contributions to the payment of the medical
39 expenses of the pregnancy and birth, and contributions of
40 consistent support of the child after birth; frequently and
41 consistently visited the child after birth; and is now willing and
42 able to assume legal and physical care of the child; or



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

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

(4) The parent can petition the chancery court to transfer custody to a person chosen by the parent if: (a) the person receives a satisfactory criminal background check; and (b) the court approves the person chosen as an appropriate custodian. A cause initiated under this subsection (4) shall be a preference case.

SECTION 2. Section 43-21-609, Mississippi Code of 1972, is amended as follows:

43-21-609. In neglect and abuse cases, the disposition order may include any of the following alternatives, giving precedence in the following sequence:

- (a) Release the child without further action;
- (b) Place the child in the custody of his parents, a relative or other person subject to any conditions and limitations as the court may prescribe. If the court finds that temporary relative placement, adoption or foster care placement is inappropriate, unavailable or otherwise not in the best interest



of the child, durable legal custody may be granted by the court to any person subject to any limitations and conditions the court may prescribe; such durable legal custody will not take effect unless the child or children have been in the physical custody of the proposed durable custodians for at least six (6) months under the supervision of the Department of Human Services. The requirements of Section 43-21-613 as to disposition review hearings do not apply to those matters in which the court has granted durable legal custody. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities;

(c) (i) If neither (a) nor (b) apply, the court shall grant durable legal relative guardianship to a relative or fictive kin licensed as a foster parent if the licensed relative foster parent or licensed fictive kin foster parent exercised physical custody of the child for at least six (6) months before the grant of durable legal relative guardianship and the Department of Child Protection Services had legal custody or exercised supervision of the child for at least six (6) months. In order to establish durable legal relative guardianship, the youth court must find the following:

1. That both reunification and adoption have been determined to be inappropriate;



91 2. That the relative guardian or fictive kin
92 guardian shows full commitment to the care, shelter, education,
93 nurture, and reasonable medical care of the child; and

94 3. That the youth court consulted with any
95 child twelve (12) years of age or older before granting durable
96 legal relative guardianship.

97 (ii) The requirements of Section 43-21-613 as to
98 disposition review hearings do not apply to a hearing concerning
99 durable legal relative guardianship. However, the Department of
100 Child Protection Services must conduct an annual review and
101 recertification of the durable legal relative guardianship to
102 determine whether it remains in the best interest of the child.
103 If a material change in circumstances occurs adverse to the best
104 interest of the child, the parent, relative guardian, fictive kin
105 guardian, or Department of Child Protection Services may petition
106 the court to review the durable legal relative guardianship;

107 (d) Order terms of treatment calculated to assist the
108 child and the child's parent, guardian or custodian which are
109 within the ability of the parent, guardian or custodian to
110 perform;

111 (e) Order youth court personnel, the Department of
112 Child Protection Services or child care agencies to assist the
113 child and the child's parent, guardian or custodian to secure
114 social or medical services to provide proper supervision and care
115 of the child;



(f) Give legal custody of the child to any of the following but in no event to any state training school:

(i) The Department of Child Protection Services for appropriate placement; or

(ii) Any private or public organization, preferably community-based, able to assume the education, care and maintenance of the child, which has been found suitable by the court. Prior to assigning the custody of any child to any private institution or agency, the youth court through its designee shall first inspect the physical facilities to determine that they provide a reasonable standard of health and safety for the child;

(g) If the court makes a finding that custody is necessary as defined in Section 43-21-301(3)(b), and that the child, in the action pending before the youth court had not previously been taken into custody, the disposition order shall recite that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interests of the child, and unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), the order also must state:

(i) That reasonable efforts have been made to maintain the child within his or her own home, but that the circumstances warrant his or her removal, and there is no reasonable alternative to custody; or



(ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his or her own home, and there is no reasonable alternative to custody; or

(iii) If the court makes a finding in accordance with subparagraph (ii) of this paragraph, the court shall order that reasonable efforts be made towards the reunification of the child with his or her family; or

(h) If the court had, before the disposition hearing in the action pending before the court, taken the child into custody, the judge or referee shall determine, and the youth court order shall recite that reasonable efforts were made by the Department of Child Protection Services to finalize the child's permanency plan that was in effect on the date of the disposition hearing.

SECTION 3. This act shall take effect and be in force from and after July 1, 2018.

