

By: Senator(s) Hill

To: Judiciary, Division A

SENATE BILL NO. 2043

1 AN ACT TO AMEND SECTIONS 9-5-89 AND 43-21-121, MISSISSIPPI  
2 CODE OF 1972, TO PROVIDE THAT FAILURE TO PAY GUARDIAN AD LITEM  
3 FEES IS NOT CONTEMPT OF COURT BUT SHALL BE ENFORCED AS FOR ANY  
4 OTHER CIVIL DEBT; TO AMEND SECTIONS 93-11-65, 93-15-107, 93-17-8  
5 AND 97-5-42, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED  
6 PURPOSES.

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

8 **SECTION 1.** Section 9-5-89, Mississippi Code of 1972, is  
9 amended as follows:

10 9-5-89. (1) The court may appoint a guardian ad litem to  
11 any infant or defendant of unsound mind, and allow him suitable  
12 compensation payable out of the estate of such party or as  
13 otherwise allowed by law, but the appointment shall not be made  
14 except when the court shall consider it necessary for the  
15 protection of the interest of such defendant; and a decree or  
16 judgment of any court shall not be void or erroneous because of  
17 the failure to have a guardian ad litem.

18 (2) A failure to pay compensation to a guardian ad litem as  
19 required by court order is not punishable as contempt of court but



20 shall be a civil debt enforced against the judgment debtor by  
21 writs of attachment or garnishment as for other civil debts.

22 **SECTION 2.** Section 43-21-121, Mississippi Code of 1972, is  
23 amended as follows:

24 43-21-121. (1) The youth court shall appoint a guardian ad  
25 litem for the child:

26 (a) When a child has no parent, guardian or custodian;

27 (b) When the youth court cannot acquire personal  
28 jurisdiction over a parent, a guardian or a custodian;

29 (c) When the parent is a minor or a person of unsound  
30 mind;

31 (d) When the parent is indifferent to the interest of  
32 the child or if the interests of the child and the parent,  
33 considered in the context of the cause, appear to conflict;

34 (e) In every case involving an abused or neglected  
35 child which results in a judicial proceeding; or

36 (f) In any other instance where the youth court finds  
37 appointment of a guardian ad litem to be in the best interest of  
38 the child.

39 (2) The guardian ad litem shall be appointed by the court  
40 when custody is ordered or at the first judicial hearing regarding  
41 the case, whichever occurs first.

42 (3) In addition to all other duties required by law, a  
43 guardian ad litem shall have the duty to protect the interest of a  
44 child for whom he has been appointed guardian ad litem. The



45 guardian ad litem shall investigate, make recommendations to the  
46 court or enter reports as necessary to hold paramount the child's  
47 best interest. The guardian ad litem is not an adversary party  
48 and the court shall ensure that guardians ad litem perform their  
49 duties properly and in the best interest of their wards. The  
50 guardian ad litem shall be a competent person who has no adverse  
51 interest to the minor. The court shall ensure that the guardian  
52 ad litem is adequately instructed on the proper performance of his  
53 duties.

54 (4) The court, including a county court serving as a youth  
55 court, may appoint either a suitable attorney or a suitable layman  
56 as guardian ad litem. In cases where the court appoints a layman  
57 as guardian ad litem, the court shall also appoint an attorney to  
58 represent the child. From and after January 1, 1999, in order to  
59 be eligible for an appointment as a guardian ad litem, such  
60 attorney or layperson must have received child protection and  
61 juvenile justice training provided by or approved by the  
62 Mississippi Judicial College within the year immediately preceding  
63 such appointment. The Mississippi Judicial College shall  
64 determine the amount of child protection and juvenile justice  
65 training which shall be satisfactory to fulfill the requirements  
66 of this section. The Administrative Office of Courts shall  
67 maintain a roll of all attorneys and laymen eligible to be  
68 appointed as a guardian ad litem under this section and shall  
69 enforce the provisions of this subsection.



70 (5) Upon appointment of a guardian ad litem, the youth court  
71 shall continue any pending proceedings for a reasonable time to  
72 allow the guardian ad litem to familiarize himself with the  
73 matter, consult with counsel and prepare his participation in the  
74 cause. The youth court shall issue an order of assignment that  
75 grants the guardian ad litem authority to review all relevant  
76 documents concerning the minor child and to interview all parties  
77 and witnesses involved in proceedings concerning the minor child  
78 for whom the guardian ad litem is appointed.

79 (6) (a) Upon order of the youth court, the guardian ad  
80 litem shall be paid a reasonable fee as determined by the youth  
81 court judge or referee out of the county general fund as provided  
82 under Section 43-21-123 or as otherwise provided by law. To be  
83 eligible for such fee, the guardian ad litem shall submit an  
84 accounting of the time spent in performance of his duties to the  
85 court.

86 (b) A failure to pay compensation to a guardian ad  
87 litem as required by court order is not punishable as contempt of  
88 court but shall be a civil debt enforced against the judgment  
89 debtor by writs of attachment or garnishment as for other civil  
90 debts.

91 (7) (a) The court, in its sound discretion, may appoint a  
92 volunteer trained layperson to assist children subject to the  
93 provisions of this section in addition to the appointment of a  
94 guardian ad litem. If the court utilizes his or her discretion as



95 prescribed under this subsection, a volunteer Court-Appointed  
96 Special Advocate (CASA) shall be appointed from a program that  
97 supervises the volunteer and meets all state and national CASA  
98 standards to advocate for the best interests of children in abuse  
99 and neglect proceedings. To accomplish the assignment of a CASA  
100 volunteer, the court shall issue an order of assignment that shall  
101 grant the CASA volunteer the authority, equal to that of the  
102 guardian ad litem, to review all relevant documents and to  
103 interview all parties and witnesses involved in the proceeding in  
104 which he or she is appointed. Except as otherwise ordered by the  
105 court, the assignment of a CASA volunteer for a child shall  
106 include subsequent proceedings through permanent placement of the  
107 child.

108 (b) Before assigning a CASA volunteer as prescribed  
109 under this subsection, the youth court judge shall determine if  
110 the volunteer has sufficient qualifications, training and ability  
111 to serve as a CASA volunteer, including his or her ability to  
112 represent and advocate for the best interests of children assigned  
113 to him or her. No volunteer shall be assigned until a  
114 comprehensive criminal background check has been conducted.

115 All CASA volunteers shall:

116 (i) Be sworn in by a judge of the court;

117 (ii) Swear or affirm to abide by all laws,  
118 regulations, and orders of the court;



119 (iii) Swear or affirm to advocate what he or she  
120 perceives to be in the best interests of the child for whom he or  
121 she is assigned in all matters pending before the court;

122 (iv) Provide independent, factual information to  
123 the court regarding the children and cases to which they are  
124 assigned;

125 (v) Advocate on behalf of the children involved in  
126 the cases to which they are assigned what they perceive to be in  
127 the best interests of the children; and

128 (vi) Monitor proceedings in cases to which they  
129 have been assigned and advise and assist the court in its  
130 determination of the best interests of the children involved.

131 (c) Regarding any case to which a CASA volunteer has  
132 been assigned, the CASA volunteer:

133 (i) Shall be notified by the court of all court  
134 proceedings and hearings of any kind pertaining to the child;

135 (ii) Shall be notified by the Department of Child  
136 Protection Services of all administrative review hearings;

137 (iii) Shall be entitled to attend all court  
138 proceedings and hearings of any kind pertaining to the child;

139 (iv) May be called as a witness in the proceedings  
140 by any party or by the court and may request of the court the  
141 opportunity to appear as a witness; and



142 (v) Shall be given access to all portions of the  
143 court record relating to proceedings pertaining to the child and  
144 the child's family.

145 (d) Upon application to the court and notice to all  
146 parties, the court shall grant the CASA volunteer access to other  
147 information, including the department records as provided in  
148 Section 43-21-261, relating to the child and the child's family  
149 and to other matters involved in the proceeding in which he or she  
150 is appointed. All records and information requested or reviewed  
151 by the CASA volunteer in the course of his or her assignment shall  
152 be deemed confidential and shall not be disclosed by him except  
153 pursuant to court order. All records and information shall only  
154 be disclosed as directed by court order and shall be disclosed as  
155 directed by court order and shall be subject to whatever  
156 protective order the court deems appropriate.

157 **SECTION 3.** Section 93-11-65, Mississippi Code of 1972, is  
158 amended as follows:

159 93-11-65. (1) (a) In addition to the right to proceed  
160 under Section 93-5-23, Mississippi Code of 1972, and in addition  
161 to the remedy of habeas corpus in proper cases, and other existing  
162 remedies, the chancery court of the proper county shall have  
163 jurisdiction to entertain suits for the custody, care, support and  
164 maintenance of minor children and to hear and determine all such  
165 matters, and shall, if need be, require bond, sureties or other  
166 guarantee to secure any order for periodic payments for the



167 maintenance or support of a child. In the event a legally  
168 responsible parent has health insurance available to him or her  
169 through an employer or organization that may extend benefits to  
170 the dependents of such parent, any order of support issued against  
171 such parent may require him or her to exercise the option of  
172 additional coverage in favor of such children as he or she is  
173 legally responsible to support. Proceedings may be brought by or  
174 against a resident or nonresident of the State of Mississippi,  
175 whether or not having the actual custody of minor children, for  
176 the purpose of judicially determining the legal custody of a  
177 child. All actions herein authorized may be brought in the county  
178 where the child is actually residing, or in the county of the  
179 residence of the party who has actual custody, or of the residence  
180 of the defendant. Process shall be had upon the parties as  
181 provided by law for process in person or by publication, if  
182 they \* \* \* are nonresidents of the state or residents of another  
183 jurisdiction or are not found therein after diligent search and  
184 inquiry or are unknown after diligent search and inquiry; provided  
185 that the court or chancellor in vacation may fix a date in  
186 termtime or in vacation to which process may be returnable and  
187 shall have power to proceed in termtime or vacation. Provided,  
188 however, that if the court shall find that both parties are fit  
189 and proper persons to have custody of the children, and that  
190 either party is able to adequately provide for the care and  
191 maintenance of the children, the chancellor may consider the





192 preference of a child of twelve (12) years of age or older as to  
193 the parent with whom the child would prefer to live in determining  
194 what would be in the best interest and welfare of the child. The  
195 chancellor shall place on the record the reason or reasons for  
196 which the award of custody was made and explain in detail why the  
197 wishes of any child were or were not honored.

198 (b) An order of child support shall specify the sum to  
199 be paid weekly or otherwise. In addition to providing for support  
200 and education, the order shall also provide for the support of the  
201 child prior to the making of the order for child support, and such  
202 other expenses as the court may deem proper.

203 (c) The court may require the payment to be made to the  
204 custodial parent, or to some person or corporation to be  
205 designated by the court as trustee, but if the child or custodial  
206 parent is receiving public assistance, the Department of Human  
207 Services shall be made the trustee.

208 (d) The noncustodial parent's liabilities for past  
209 education and necessary support and maintenance and other expenses  
210 are limited to a period of one (1) year next preceding the  
211 commencement of an action.

212 (2) Provided further, that where the proof shows that both  
213 parents have separate incomes or estates, the court may require  
214 that each parent contribute to the support and maintenance of the  
215 children in proportion to the relative financial ability of each.



216 (3) Whenever the court has ordered a party to make periodic  
217 payments for the maintenance or support of a child, but no bond,  
218 sureties or other guarantee has been required to secure such  
219 payments, and whenever such payments as have become due remain  
220 unpaid for a period of at least thirty (30) days, the court may,  
221 upon petition of the person to whom such payments are owing, or  
222 such person's legal representative, enter an order requiring that  
223 bond, sureties or other security be given by the person obligated  
224 to make such payments, the amount and sufficiency of which shall  
225 be approved by the court. The obligor shall, as in other civil  
226 actions, be served with process and shall be entitled to a hearing  
227 in such case.

228 (4) When a charge of abuse or neglect of a child first  
229 arises in the course of a custody or maintenance action pending in  
230 the chancery court pursuant to this section, the chancery court  
231 may proceed with the investigation, hearing and determination of  
232 such abuse or neglect charge as a part of its hearing and  
233 determination of the custody or maintenance issue as between the  
234 parents, as provided in Section 43-21-151, notwithstanding the  
235 other provisions of the Youth Court Law. The proceedings in  
236 chancery court on the abuse or neglect charge shall be  
237 confidential in the same manner as provided in youth court  
238 proceedings, and the chancery court shall appoint a guardian ad  
239 litem in such cases, as provided under Section 43-21-121 for youth  
240 court proceedings, who shall be an attorney. In determining



241 whether any portion of a guardian ad litem's fee shall be assessed  
242 against any party or parties as a cost of court for reimbursement  
243 to the county, the court shall consider each party's individual  
244 ability to pay, and payment of the guardian ad litem's fee is  
245 subject to Section 9-5-89(2). Unless the chancery court's  
246 jurisdiction has been terminated, all disposition orders in such  
247 cases for placement with the Department of Human Services shall be  
248 reviewed by the court or designated authority at least annually to  
249 determine if continued placement with the department is in the  
250 best interest of the child or the public.

251 (5) Each party to a paternity or child support proceeding  
252 shall notify the other within five (5) days after any change of  
253 address. In addition, the noncustodial and custodial parent shall  
254 file and update, with the court and with the state case registry,  
255 information on that party's location and identity, including  
256 social security number, residential and mailing addresses,  
257 telephone numbers, photograph, driver's license number, and name,  
258 address and telephone number of the party's employer. This  
259 information shall be required upon entry of an order or within  
260 five (5) days of a change of address.

261 (6) In any case subsequently enforced by the Department of  
262 Human Services pursuant to Title IV-D of the Social Security Act,  
263 the court shall have continuing jurisdiction.

264 (7) In any subsequent child support enforcement action  
265 between the parties, upon sufficient showing that diligent effort



266 has been made to ascertain the location of a party, due process  
267 requirements for notice and service of process shall be deemed to  
268 be met with respect to the party upon delivery of written notice  
269 to the most recent residential or employer address filed with the  
270 state case registry.

271 (8) (a) The duty of support of a child terminates upon the  
272 emancipation of the child. Unless otherwise provided for in the  
273 underlying child support judgment, emancipation shall occur when  
274 the child:

275 (i) Attains the age of twenty-one (21) years, or

276 (ii) Marries, or

277 (iii) Joins the military and serves on a full-time  
278 basis, or

279 (iv) Is convicted of a felony and is sentenced to  
280 incarceration of two (2) or more years for committing such  
281 felony; \* \* \*

282 (b) Unless otherwise provided for in the underlying  
283 child support judgment, the court may determine that emancipation  
284 has occurred and no other support obligation exists when the  
285 child:

286 (i) Discontinues full-time enrollment in school  
287 having attained the age of eighteen (18) years, unless the child  
288 is disabled, or

289 (ii) Voluntarily moves from the home of the  
290 custodial parent or guardian, establishes independent living



291 arrangements, obtains full-time employment and discontinues  
292 educational endeavors prior to attaining the age of twenty-one  
293 (21) years, or

294 (iii) Cohabits with another person without the  
295 approval of the parent obligated to pay support; \* \* \*

296 (c) The duty of support of a child who is incarcerated  
297 but not emancipated shall be suspended for the period of the  
298 child's incarceration.

299 (9) A determination of emancipation does not terminate any  
300 obligation of the noncustodial parent to satisfy arrearage  
301 existing as of the date of emancipation; the total amount of  
302 periodic support due prior to the emancipation plus any periodic  
303 amounts ordered paid toward the arrearage shall continue to be  
304 owed until satisfaction of the arrearage in full, in addition to  
305 the right of the person for whom the obligation is owed to execute  
306 for collection as may be provided by law.

307 (10) Upon motion of a party requesting temporary child  
308 support pending a determination of parentage, temporary support  
309 shall be ordered if there is clear and convincing evidence of  
310 paternity on the basis of genetic tests or other evidence, unless  
311 the court makes written findings of fact on the record that the  
312 award of temporary support would be unjust or inappropriate in a  
313 particular case.

314 (11) Custody and visitation upon military temporary duty,  
315 deployment or mobilization shall be governed by Section 93-5-34.



316           **SECTION 4.** Section 93-15-107, Mississippi Code of 1972, is  
317 amended as follows:

318           93-15-107. (1) (a) Involuntary termination of parental  
319 rights proceedings are commenced upon the filing of a petition  
320 under this chapter. The petition may be filed by any interested  
321 person, or any agency, institution or person holding custody of  
322 the child. The simultaneous filing of a petition for adoption is  
323 not a prerequisite for filing a petition under this chapter.

324           (b) The proceeding shall be triable, either in term  
325 time or vacation, thirty (30) days after personal service of  
326 process to any necessary party or, for a necessary party whose  
327 address is unknown after diligent search, thirty (30) days after  
328 the date of the first publication of service of process by  
329 publication that complies with the Mississippi Rules of Civil  
330 Procedure.

331           (c) Necessary parties to a termination of parental  
332 rights action shall include the mother of the child, the legal  
333 father of the child, the putative father of the child when known,  
334 and any agency, institution or person holding custody of the  
335 child. The absence of a necessary party who has been properly  
336 served does not preclude the court from conducting the hearing or  
337 rendering a final judgment.

338           (d) A guardian ad litem shall be appointed to protect  
339 the best interest of the child, except that the court, in its  
340 discretion, may waive this requirement when a parent executes a



341 written voluntary release to terminate parental rights. The  
342 guardian ad litem fees shall be determined and assessed in the  
343 discretion of the court, and payment of the guardian ad litem's  
344 fee will be subject to Section 9-5-89(2) or 43-21-121(6)(b), as  
345 the case may be.

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

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

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

353 (5) The clerk shall docket cases seeking relief under this  
354 chapter as priority cases. The assigned judge shall be  
355 immediately notified when a case is filed in order to provide for  
356 expedited proceedings.

357 **SECTION 5.** Section 93-17-8, Mississippi Code of 1972, is  
358 amended as follows:

359 93-17-8. (1) Whenever an adoption becomes a contested  
360 matter, whether after a hearing on a petition for determination of  
361 rights under Section 93-17-6 or otherwise, the court:

362 (a) Shall, on motion of any party or on its own motion,  
363 issue an order for immediate blood or tissue sampling in  
364 accordance with the provisions of Section 93-9-21 et seq., if  
365 paternity is at issue. The court shall order an expedited report



366 of such testing and shall hold the hearing resolving this matter  
367 at the earliest time possible.

368 (b) Shall appoint a guardian ad litem to represent the  
369 child. Such guardian ad litem shall be an attorney, however his  
370 duties are as guardian ad litem and not as attorney for the child.  
371 The reasonable costs of the guardian ad litem shall be taxed as  
372 costs of court, and payment of the guardian ad litem's fee will be  
373 subject to Section 9-5-89(2). Neither the child nor anyone  
374 purporting to act on his behalf may waive the appointment of a  
375 guardian ad litem.

376 (c) Shall determine first whether or not the objecting  
377 parent is entitled to so object under the criteria of Section  
378 93-17-7 and then shall determine the custody of the child in  
379 accord with the best interests of the child and the rights of the  
380 parties as established by the hearings and judgments.

381 (d) Shall schedule all hearings concerning the  
382 contested adoption as expeditiously as possible for prompt  
383 conclusion of the matter.

384 (2) In determining the custody of the child after a finding  
385 that the adoption will not be granted, the fact of the surrender  
386 of the child for adoption by a parent shall not be taken as any  
387 evidence of that parent's abandonment or desertion of the child or  
388 of that parent's unfitness as a parent.

389 (3) In contested adoptions arising through petitions for  
390 determination of rights where the prospective adopting parents





391 were not parties to that proceeding, they need not be made parties  
392 to the contested adoption until there has been a ruling that the  
393 objecting parent is not entitled to enter a valid objection to the  
394 adoption. At that point the prospective adopting parents shall be  
395 made parties by joinder which shall show their suitability to be  
396 adopting parents as would a petition for adoption. The identity  
397 and suitability of the prospective adopting parents shall be made  
398 known to the court and the guardian ad litem, but shall not be  
399 made known to other parties to the proceeding unless the court  
400 determines that the interests of justice or the best interests of  
401 the child require it.

402 (4) No birth parent or alleged parent shall be permitted to  
403 contradict statements given in a proceeding for the adoption of  
404 their child in any other proceeding concerning that child or his  
405 ancestry.

406 (5) Appointment of a guardian ad litem is not required in  
407 any proceeding under this chapter except as provided in subsection  
408 (1)(b) above and except for the guardian ad litem needed for an  
409 abandoned child. It shall not be necessary for a guardian ad  
410 litem to be appointed where the chancery judge presiding in the  
411 adoption proceeding deems it unnecessary and no adoption agency is  
412 involved in the proceeding. No final decree of adoption  
413 heretofore granted shall be set aside or modified because a  
414 guardian ad litem was not appointed unless as the result of a  
415 direct appeal not now barred.



416 (6) The provisions of Chapter 15 of this Title 93,  
417 Mississippi Code of 1972, are not applicable to proceedings under  
418 this chapter except as specifically provided by reference herein.

419 (7) The court may order a child's birth father, identified  
420 as such in the proceedings, to reimburse the Department of Child  
421 Protection Services, the foster parents, the adopting parents, the  
422 home, any other agency or person who has assumed liability for  
423 such child, all or part of the costs of the medical expenses  
424 incurred for the mother and the child in connection with the birth  
425 of the child, as well as reasonable support for the child after  
426 his birth.

427 **SECTION 6.** Section 97-5-42, Mississippi Code of 1972, is  
428 amended as follows:

429 97-5-42. (1) (a) For purposes of this section, a  
430 conviction of felony parental child sexual abuse shall include any  
431 nolo contendere plea, guilty plea or conviction at trial to any  
432 offense enumerated in Section 93-15-121(h) or any other statute of  
433 the State of Mississippi whereby a parent may be penalized as a  
434 felon on account of sexual abuse of his or her own child; and  
435 shall include any conviction by plea or trial in any other state  
436 of the United States to an offense whereby a parent may be  
437 penalized as a felon for sexual abuse of his or her own child  
438 under the laws of that state, or which would be so penalized for  
439 such conduct had the act or acts been committed in the State of  
440 Mississippi.



441 (b) A certified copy of the court order or judgment  
442 evidencing such a conviction shall be accepted by any public  
443 office with responsibilities pursuant to this section, and by any  
444 court in the State of Mississippi, as conclusive evidence of the  
445 conviction.

446 (2) (a) No person who has been convicted of felony parental  
447 child sexual abuse shall contact or attempt to contact the victim  
448 child without the prior express written permission of the child's  
449 then legal custodian, who may be the other parent, a guardian,  
450 person in loco parentis or person with legal or physical custody  
451 of a child.

452 (b) No person who has been convicted of felony parental  
453 child sexual abuse shall harass, threaten, intimidate or by any  
454 other means menace the victim child or any legal custodian of the  
455 child, who may be the other parent, a guardian, person in loco  
456 parentis or person with legal or physical custody of a child.

457 (c) Any person who believes that a person who has been  
458 convicted of felony parental child sexual abuse may violate the  
459 provisions of paragraph (a) or (b) of this subsection may register  
460 with the sheriff and any municipal law enforcement agency of the  
461 child's county and municipality of residence, setting forth the  
462 factual basis for that belief which shall include a certified copy  
463 of the court order or judgment evidencing the conviction of the  
464 child sexual abuse felon. The sheriff's office of each county and  
465 all municipal law enforcement agencies shall maintain a separate



466 and distinct register for the purpose of recording the data  
467 required herein, and shall advise the reporting party of how  
468 emergency contact can be made with that office at any time with  
469 respect to a threatened violation of paragraph (a) or (b) of this  
470 subsection. Immediate response with police protection shall be  
471 provided to any emergency contact made pursuant to this section,  
472 which police protection shall be continued in such reasonable  
473 manner as to deter future violations and protect the child and any  
474 person with legal custody of the child.

475 (d) Any person who has been convicted of felony  
476 parental child sexual abuse who violates paragraph (a) of this  
477 subsection shall, upon conviction, be punished by imprisonment in  
478 the county jail for not more than one (1) year. Any person who  
479 has been convicted of felony parental child sexual abuse who  
480 violates paragraph (b) of this subsection shall, upon conviction,  
481 be punished by imprisonment in the State Penitentiary for not more  
482 than five (5) years.

483 (3) No person who has been convicted of felony parental  
484 child sexual abuse shall be entitled to have parental or other  
485 visitation rights as to that child who was the victim, unless he  
486 or she files a petition in the chancery court of the county in  
487 which the child resides, reciting the conviction, and joining as  
488 parties defendant any other parent, guardian, person standing in  
489 loco parentis or having legal or physical custody of the child. A  
490 guardian ad litem shall be appointed to represent the child at



491 petitioner's expense, but failure to make payment of the guardian  
492 ad litem's fee is subject to Section 9-5-89(2) or 43-21-121(6)(b),  
493 as the case may be. The court shall appoint a qualified  
494 psychologist or psychiatrist to conduct an independent examination  
495 of the petitioner to determine whether contact with that person  
496 poses a physical or emotional risk to the child, and report to the  
497 court. Such examination shall be at petitioner's expense. The  
498 court shall require any such petitioner to deposit with the court  
499 sufficient funds to pay expenses chargeable to a petitioner  
500 hereunder, the amount of such deposit to be within the discretion  
501 of the chancellor. Any defendant and the child through his or her  
502 guardian ad litem shall be entitled to a full evidentiary hearing  
503 on the petition. In no event shall a child be required to testify  
504 in court or by deposition, or be subjected to any psychological  
505 examination, without the express consent of the child through his  
506 or her guardian ad litem. Such guardian ad litem shall consult  
507 with the child's legal guardian or custodians before consenting to  
508 such testimony or examination. At any hearing there is a  
509 rebuttable presumption that contact with the child poses a  
510 physical and emotional risk to the child. That presumption may be  
511 rebutted and visitation or contact allowed on such terms and  
512 conditions that the chancery court shall set only upon specific  
513 written findings by the court that:

514           (a) Contact between the child and the offending parent  
515 is appropriate and poses minimal risk to the child;



516 (b) If the child has received counseling, that the  
517 child's counselor believes such contact is in the child's best  
518 interest;

519 (c) The offending parent has successfully engaged in  
520 treatment for sex offenders or is engaged in such treatment and  
521 making progress; and

522 (d) The offending parent's treatment provider believes  
523 contact with the child is appropriate and poses minimal risk to  
524 the child. If the court, in its discretion, allows visitation or  
525 contact it may impose such conditions to the visitation or contact  
526 which it finds reasonable, including supervision of contact or  
527 visitation by a neutral and independent adult with a detailed plan  
528 for supervision of any such contact or visitation.

529 **SECTION 7.** This act shall take effect and be in force from  
530 and after July 1, 2024.

