

By: Representative Bourdeaux

To: Judiciary A

HOUSE BILL NO. 659

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-11-65, MISSISSIPPI
2 CODE OF 1972, TO CLARIFY THAT CHILD SUPPORT MAY BE ORDERED
3 RETROACTIVELY AND TO ENACT LIMITATIONS; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 93-5-23, Mississippi Code of 1972, is
6 amended as follows:

7 93-5-23. (1) (a) When a divorce shall be decreed from the
8 bonds of matrimony, the court may, in its discretion, having
9 regard to the circumstances of the parties and the nature of the
10 case, as may seem equitable and just, make all orders touching the
11 care, custody and maintenance of the children of the marriage, and
12 also touching the maintenance and alimony of the wife or the
13 husband, or any allowance to be made to her or him, and shall, if
14 need be, require bond, sureties or other guarantee for the payment
15 of the sum so allowed. Orders touching on the custody of the
16 children of the marriage may be made in accordance with the
17 provisions of Section 93-5-24. The court may afterwards, on
18 petition, change the decree, and make from time to time such new
19 decrees as the case may require. However, where proof shows that
20 both parents have separate incomes or estates, the court may
21 require that each parent contribute to the support and maintenance
22 of the children of the marriage in proportion to the relative
23 financial ability of each. In the event a legally responsible
24 parent has health insurance available to him or her through an
25 employer or organization that may extend benefits to the
26 dependents of such parent, any order of support issued against

27 such parent may require him or her to exercise the option of
28 additional coverage in favor of such children as he or she is
29 legally responsible to support.

30 (b) An order of child support shall specify the sum to
31 be paid weekly or otherwise. In addition to providing for support
32 and education, the order shall also provide for the support of the
33 child prior to the making of the order for child support, and such
34 other expenses as the court may deem proper.

35 (c) The court may require the payment to be made to the
36 custodial parent, or to some person or corporation to be
37 designated by the court as trustee, but if the child is or is
38 likely to become a public charge on a county or the state, the
39 public welfare agent of that county shall be made the trustee.
40 The payment shall be directed to be made to a trustee if the
41 mother does not reside within the jurisdiction of the court. The
42 trustee shall report to the court annually, or as often as
43 directed by the court, the amounts received and paid over.

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

48 (2) Whenever the court has ordered a party to make periodic
49 payments for the maintenance or support of a child, but no bond,
50 sureties or other guarantee has been required to secure such
51 payments, and whenever such payments as have become due remain
52 unpaid for a period of at least thirty (30) days, the court may,
53 upon petition of the person to whom such payments are owing, or
54 such person's legal representative, enter an order requiring that
55 bond, sureties or other security be given by the person obligated
56 to make such payments, the amount and sufficiency of which shall
57 be approved by the court. The obligor shall, as in other civil
58 actions, be served with process and shall be entitled to a hearing
59 in such case.

60 (3) Whenever in any proceeding in the chancery court
61 concerning the custody of a child a party alleges that the child
62 whose custody is at issue has been the victim of sexual or
63 physical abuse by the other party, the court may, on its own

64 motion, grant a continuance in the custody proceeding only until
65 such allegation has been investigated by the Department of Human
66 Services. At the time of ordering such continuance the court may
67 direct the party, and his attorney, making such allegation of
68 child abuse to report in writing and provide all evidence touching
69 on the allegation of abuse to the Department of Human Services.
70 The Department of Human Services shall investigate such allegation
71 and take such action as it deems appropriate and as provided in
72 such cases under the Youth Court Law (being Chapter 21 of Title
73 43, Mississippi Code of 1972) or under the laws establishing
74 family courts (being Chapter 23 of Title 43, Mississippi Code of
75 1972).

76 If after investigation by the Department of Human Services or
77 final disposition by the youth court or family court allegations
78 of child abuse are found to be without foundation, the chancery
79 court shall order the alleging party to pay all court costs and
80 reasonable attorney's fees incurred by the defending party in
81 responding to such allegation.

82 The court may investigate, hear and make a determination in a
83 custody action when a charge of abuse and/or neglect arises in the
84 course of a custody action as provided in Section 43-21-151, and
85 in such cases the court shall appoint a guardian ad litem for the
86 child as provided under Section 43-21-121, who shall be an
87 attorney. Unless the chancery court's jurisdiction has been
88 terminated, all disposition orders in such cases for placement
89 with the Department of Human Services shall be reviewed by the
90 court or designated authority at least annually to determine if
91 continued placement with the department is in the best interest of
92 the child or public.

93 (4) The duty of support of a child terminates upon the
94 emancipation of the child. The court may determine that
95 emancipation has occurred and no other support obligation exists
96 when the child:

97 (a) Attains the age of twenty-one (21) years, or
98 (b) Marries, or
99 (c) Discontinues full-time enrollment in school and
100 obtains full-time employment prior to attaining the age of
101 twenty-one (21) years, or
102 (d) Voluntarily moves from the home of the custodial
103 parent or guardian and establishes independent living arrangements
104 and obtains full-time employment prior to attaining the age of
105 twenty-one (21) years.

106 SECTION 2. Section 93-11-65, Mississippi Code of 1972, is
107 amended as follows:

108 93-11-65. (1) (a) In addition to the right to proceed
109 under Section 93-5-23, Mississippi Code of 1972, and in addition
110 to the remedy of habeas corpus in proper cases, and other existing
111 remedies, the chancery court of the proper county shall have
112 jurisdiction to entertain suits for the custody, care, support and
113 maintenance of minor children and to hear and determine all such
114 matters, and shall, if need be, require bond, sureties or other
115 guarantee to secure any order for periodic payments for the
116 maintenance or support of a child. In the event a legally
117 responsible parent has health insurance available to him or her
118 through an employer or organization that may extend benefits to
119 the dependents of such parent, any order of support issued against
120 such parent may require him or her to exercise the option of
121 additional coverage in favor of such children as he or she is
122 legally responsible to support. Proceedings may be brought by or
123 against a resident or nonresident of the State of Mississippi,
124 whether or not having the actual custody of minor children, for
125 the purpose of judicially determining the legal custody of a
126 child. All actions herein authorized may be brought in the county
127 where the child is actually residing, or in the county of the
128 residence of the party who has actual custody, or of the residence
129 of the defendant. Process shall be had upon the parties as

130 provided by law for process in person or by publication, if they
131 be nonresidents of the state or residents of another jurisdiction
132 or are not found therein after diligent search and inquiry or are
133 unknown after diligent search and inquiry; provided that the court
134 or chancellor in vacation may fix a date in termtime or in
135 vacation to which process may be returnable and shall have power
136 to proceed in termtime or vacation. Provided, however, that if
137 the court shall find that both parties are fit and proper persons
138 to have custody of the children, and that either party is able to
139 adequately provide for the care and maintenance of the children,
140 and that it would be to the best interest and welfare of the
141 children, then any such child who shall have reached his twelfth
142 birthday shall have the privilege of choosing the parent with whom
143 he shall live.

144 Provided further, that where the proof shows that both
145 parents have separate incomes or estates, the court may require
146 that each parent contribute to the support and maintenance of the
147 children in proportion to the relative financial ability of each.

148 (b) An order of child support shall specify the sum to
149 be paid weekly or otherwise. In addition to providing for support
150 and education, the order shall also provide for the support of the
151 child prior to the making of the order for child support, and such
152 other expenses as the court may deem proper.

153 (c) The court may require the payment to be made to the
154 custodial parent, or to some person or corporation to be
155 designated by the court as trustee, but if the child is or is
156 likely to become a public charge on a county or the state, the
157 public welfare agent of that county shall be made the trustee.
158 The payment shall be directed to be made to a trustee if the
159 mother does not reside within the jurisdiction of the court. The
160 trustee shall report to the court annually, or as often as
161 directed by the court, the amounts received and paid over.

162 (d) The noncustodial parent's liabilities for past

163 education and necessary support and maintenance and other expenses
164 are limited to a period of one (1) year next preceding the
165 commencement of an action.

166 (2) Whenever the court has ordered a party to make periodic
167 payments for the maintenance or support of a child, but no bond,
168 sureties or other guarantee has been required to secure such
169 payments, and whenever such payments as have become due remain
170 unpaid for a period of at least thirty (30) days, the court may,
171 upon petition of the person to whom such payments are owing, or
172 such person's legal representative, enter an order requiring that
173 bond, sureties or other security be given by the person obligated
174 to make such payments, the amount and sufficiency of which shall
175 be approved by the court. The obligor shall, as in other civil
176 actions, be served with process and shall be entitled to a hearing
177 in such case.

178 (3) When a charge of abuse or neglect of a child first
179 arises in the course of a custody or maintenance action pending in
180 the chancery court pursuant to this section, the chancery court
181 may proceed with the investigation, hearing and determination of
182 such abuse or neglect charge as a part of its hearing and
183 determination of the custody or maintenance issue as between the
184 parents, as provided in Section 43-21-151, notwithstanding the
185 other provisions of the Youth Court Law. The proceedings in
186 chancery court on the abuse or neglect charge shall be
187 confidential in the same manner as provided in youth court
188 proceedings, and the chancery court shall appoint a guardian ad
189 litem in such cases, as provided under Section 43-21-121 for youth
190 court proceedings, who shall be an attorney. Unless the chancery
191 court's jurisdiction has been terminated, all disposition orders
192 in such cases for placement with the Department of Human Services
193 shall be reviewed by the court or designated authority at least
194 annually to determine if continued placement with the department
195 is in the best interest of the child or the public.

196 (4) The duty of support of a child terminates upon the
197 emancipation of the child. The court may determine that
198 emancipation has occurred and no other support obligation exists
199 when the child:

200 (a) Attains the age of twenty-one (21) years, or

201 (b) Marries, or

202 (c) Discontinues full-time enrollment in school and
203 obtains full-time employment prior to attaining the age of
204 twenty-one (21) years, or

205 (d) Voluntarily moves from the home of the custodial
206 parent or guardian and establishes independent living arrangements
207 and obtains full-time employment prior to attaining the age of
208 twenty-one (21) years.

209 SECTION 3. This act shall take effect and be in force from
210 and after July 1, 1999.