

By: Representative Perry

To: Judiciary A

HOUSE BILL NO. 780
(As Passed the House)

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

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

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

(c) The court may require the payment to be made to the custodial parent, or to some person or corporation to be designated by the court as trustee, but if the child is or is likely to become a public charge on a county or the state, the public welfare agent of that county shall be made the trustee. The payment may be directed to be made to a trustee if the mother does not reside within the jurisdiction of the court. The trustee shall report to the court annually, or as often as directed by the court, the amounts received and paid over. Support shall be directed to a public welfare agent of a county or the Department of Human Services only if the recipient is receiving public assistance.

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

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

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

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

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

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

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

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

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

107 93-11-65. (1) (a) In addition to the right to proceed
108 under Section 93-5-23, Mississippi Code of 1972, and in addition
109 to the remedy of habeas corpus in proper cases, and other existing
110 remedies, the chancery court of the proper county shall have
111 jurisdiction to entertain suits for the custody, care, support and
112 maintenance of minor children and to hear and determine all such
113 matters, and shall, if need be, require bond, sureties or other
114 guarantee to secure any order for periodic payments for the
115 maintenance or support of a child. In the event a legally
116 responsible parent has health insurance available to him or her
117 through an employer or organization that may extend benefits to
118 the dependents of such parent, any order of support issued against
119 such parent may require him or her to exercise the option of
120 additional coverage in favor of such children as he or she is
121 legally responsible to support. Proceedings may be brought by or
122 against a resident or nonresident of the State of Mississippi,
123 whether or not having the actual custody of minor children, for
124 the purpose of judicially determining the legal custody of a
125 child. All actions herein authorized may be brought in the county
126 where the child is actually residing, or in the county of the
127 residence of the party who has actual custody, or of the residence
128 of the defendant. Process shall be had upon the parties as
129 provided by law for process in person or by publication, if they

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

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

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

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

Support shall be directed to a public welfare agent of a county or the Department of Human Services only if the recipient is

163 receiving public assistance.

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

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

194 (4) The duty of support of a child terminates upon the
195 emancipation of the child. The court may determine that

196 emancipation has occurred and no other support obligation exists
197 when the child:

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

199 (b) Marries, or

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

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

207 SECTION 3. Any elected public official who fails to pay
208 court-ordered child support shall be removed from the elected
209 public office.

210 SECTION 4. This act shall take effect and be in force from
211 and after July 1, 1999.