

By: Representative Upshaw

To: Judiciary A

HOUSE BILL NO. 1543

1 AN ACT TO AMEND SECTIONS 9-1-17, 9-5-87, 93-5-23 AND
2 99-37-19, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE REFERRAL TO
3 RESTITUTION CENTERS OF PERSONS IN CONTEMPT FOR FAILURE TO PAY
4 CHILD SUPPORT; TO BRING FORWARD SECTION 93-11-65, MISSISSIPPI CODE
5 OF 1972, FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 9-1-17, Mississippi Code of 1972, is
8 amended as follows:

9 9-1-17. The Supreme, circuit, chancery and county courts and
10 the Court of Appeals shall have power to fine and imprison any
11 person guilty of contempt of the court while sitting, but the fine
12 shall not exceed One Hundred Dollars (\$100.00) for each offense,
13 nor shall the imprisonment continue longer than thirty (30) days.
14 If any witness refuse to be sworn or to give evidence, or if any
15 officer or person refuse to obey or perform any rules, order, or
16 judgment of the court, such court shall have power to fine and
17 imprison such officer or person until he shall give evidence, or
18 until the rule, order, or judgment shall be complied with.

19 At the discretion of the court, any person found in contempt
20 for failure to pay child support and imprisoned therefor may be
21 referred for placement in a Department of Corrections operated or
22 county-operated restitution center in those counties which have
23 established such, provided such person meets the qualifications
24 prescribed in Section 99-37-19.

25 **SECTION 2.** Section 9-5-87, Mississippi Code of 1972, is
26 amended as follows:

27 9-5-87. The chancery court, or the chancellor in vacation,
28 or judge granting the writ, shall have power to punish any person

29 for breach of injunction, or any other order, decree, or process
30 of the court, by fine or imprisonment, or both, or the chancellor
31 or judge granting the writ may require bail for the appearance of
32 the party at the next term of the court to answer for the
33 contempt; but such person shall be first cited to appear and
34 answer. And any person so punished by order of the chancellor in
35 vacation, may on five days' notice to the opposite party, apply to
36 a judge of the Supreme Court, who, for good cause shown, may
37 supersede the punishment until the meeting of the said chancery
38 court.

39 At the discretion of the chancellor, any person found in
40 contempt for failure to pay child support and imprisoned therefor
41 may be referred for placement in a Department of Corrections
42 operated or county operated restitution center in those counties
43 which have established such, provided such person meets the
44 qualifications prescribed in Section 99-37-19.

45 **SECTION 3.** Section 93-5-23, Mississippi Code of 1972, is
46 amended as follows:

47 93-5-23. When a divorce shall be decreed from the bonds of
48 matrimony, the court may, in its discretion, having regard to the
49 circumstances of the parties and the nature of the case, as may
50 seem equitable and just, make all orders touching the care,
51 custody and maintenance of the children of the marriage, and also
52 touching the maintenance and alimony of the wife or the husband,
53 or any allowance to be made to her or him, and shall, if need be,
54 require bond, sureties or other guarantee for the payment of the
55 sum so allowed. Orders touching on the custody of the children of
56 the marriage shall be made in accordance with the provisions of
57 Section 93-5-24. The court may afterwards, on petition, change
58 the decree, and make from time to time such new decrees as the
59 case may require. However, where proof shows that both parents
60 have separate incomes or estates, the court may require that each
61 parent contribute to the support and maintenance of the children

62 of the marriage in proportion to the relative financial ability of
63 each. In the event a legally responsible parent has health
64 insurance available to him or her through an employer or
65 organization that may extend benefits to the dependents of such
66 parent, any order of support issued against such parent may
67 require him or her to exercise the option of additional coverage
68 in favor of such children as he or she is legally responsible to
69 support.

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

82 At the discretion of the court, any person found in contempt
83 of court for failure to pay child support payments and imprisoned
84 therefor may be referred for placement in a county operated
85 restitution center in those counties which have established
86 restitution centers.

87 Whenever in any proceeding in the chancery court concerning
88 the custody of a child a party alleges that the child whose
89 custody is at issue has been the victim of sexual or physical
90 abuse by the other party, the court may, on its own motion, grant
91 a continuance in the custody proceeding only until such allegation
92 has been investigated by the Department of Human Services. At the
93 time of ordering such continuance the court may direct the party,
94 and his attorney, making such allegation of child abuse to report

95 in writing and provide all evidence touching on the allegation of
96 abuse to the Department of Human Services. The Department of
97 Human Services shall investigate such allegation and take such
98 action as it deems appropriate and as provided in such cases under
99 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
100 Code of 1972) or under the laws establishing family courts (being
101 Chapter 23 of Title 43, Mississippi Code of 1972).

102 If after investigation by the Department of Human Services or
103 final disposition by the youth court or family court allegations
104 of child abuse are found to be without foundation, the chancery
105 court shall order the alleging party to pay all court costs and
106 reasonable attorney's fees incurred by the defending party in
107 responding to such allegation.

108 The court may investigate, hear and make a determination in a
109 custody action when a charge of abuse and/or neglect arises in the
110 course of a custody action as provided in Section 43-21-151, and
111 in such cases the court shall appoint a guardian ad litem for the
112 child as provided under Section 43-21-121, who shall be an
113 attorney. Unless the chancery court's jurisdiction has been
114 terminated, all disposition orders in such cases for placement
115 with the Department of Human Services shall be reviewed by the
116 court or designated authority at least annually to determine if
117 continued placement with the department is in the best interest of
118 the child or public.

119 The duty of support of a child terminates upon the
120 emancipation of the child. The court may determine that
121 emancipation has occurred and no other support obligation exists
122 when the child:

- 123 (a) Attains the age of twenty-one (21) years, or
124 (b) Marries, or
125 (c) Discontinues full-time enrollment in school and
126 obtains full-time employment prior to attaining the age of
127 twenty-one (21) years, or

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

132 **SECTION 4.** Section 99-37-19, Mississippi Code of 1972, is
133 amended as follows:

134 99-37-19. The boards of supervisors of the several counties
135 and the governing authorities of municipalities are hereby
136 authorized to cooperate with the Department of Corrections in the
137 establishment of restitution centers. Such centers may house both
138 probationers referred by the circuit courts as well as inmates
139 transferred from other facilities of the Department of Corrections
140 as provided in Section 47-5-110; and may house, separately from
141 probationers and inmates, those contemnors referred by the
142 chancery courts for failure to pay child support. In order to
143 qualify for placement in a restitution center, an offender must:
144 (a) be convicted of a nonviolent offense that constitutes a
145 felony, (b) not be convicted of a sex crime and (c) not have drug,
146 alcohol, emotional or physical problems so serious that the
147 offender appears unlikely to meet obligations of the restitution
148 program. Such centers shall be operated by the Department of
149 Corrections. County or municipal property may be utilized with
150 the approval of the board of supervisors or municipal governing
151 authority for the construction, renovation and maintenance of
152 facilities owned by the state or a local political subdivision.
153 Such facility may be leased to the Department of Corrections for a
154 period of time for use as a restitution center.

155 It is the intent of this section that county and local
156 governments contribute only to the establishment, renovation and
157 maintenance of the physical plant of a restitution center and that
158 the Department of Corrections support the operation of, and have
159 sole jurisdiction over and responsibility for offenders and
160 contemnors in, such restitution program.

161 This section shall stand repealed on July 1, 2005.

162 **SECTION 5.** Section 93-11-65, Mississippi Code of 1972, is
163 brought forward as follows:

164 93-11-65. (1) (a) In addition to the right to proceed
165 under Section 93-5-23, Mississippi Code of 1972, and in addition
166 to the remedy of habeas corpus in proper cases, and other existing
167 remedies, the chancery court of the proper county shall have
168 jurisdiction to entertain suits for the custody, care, support and
169 maintenance of minor children and to hear and determine all such
170 matters, and shall, if need be, require bond, sureties or other
171 guarantee to secure any order for periodic payments for the
172 maintenance or support of a child. In the event a legally
173 responsible parent has health insurance available to him or her
174 through an employer or organization that may extend benefits to
175 the dependents of such parent, any order of support issued against
176 such parent may require him or her to exercise the option of
177 additional coverage in favor of such children as he or she is
178 legally responsible to support. Proceedings may be brought by or
179 against a resident or nonresident of the State of Mississippi,
180 whether or not having the actual custody of minor children, for
181 the purpose of judicially determining the legal custody of a
182 child. All actions herein authorized may be brought in the county
183 where the child is actually residing, or in the county of the
184 residence of the party who has actual custody, or of the residence
185 of the defendant. Process shall be had upon the parties as
186 provided by law for process in person or by publication, if they
187 be nonresidents of the state or residents of another jurisdiction
188 or are not found therein after diligent search and inquiry or are
189 unknown after diligent search and inquiry; provided that the court
190 or chancellor in vacation may fix a date in termtime or in
191 vacation to which process may be returnable and shall have power
192 to proceed in termtime or vacation. Provided, however, that if
193 the court shall find that both parties are fit and proper persons

194 to have custody of the children, and that either party is able to
195 adequately provide for the care and maintenance of the children,
196 and that it would be to the best interest and welfare of the
197 children, then any such child who shall have reached his twelfth
198 birthday shall have the privilege of choosing the parent with whom
199 he shall live.

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

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

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

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

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

227 be approved by the court. The obligor shall, as in other civil
228 actions, be served with process and shall be entitled to a hearing
229 in such case.

230 (4) When a charge of abuse or neglect of a child first
231 arises in the course of a custody or maintenance action pending in
232 the chancery court pursuant to this section, the chancery court
233 may proceed with the investigation, hearing and determination of
234 such abuse or neglect charge as a part of its hearing and
235 determination of the custody or maintenance issue as between the
236 parents, as provided in Section 43-21-151, notwithstanding the
237 other provisions of the Youth Court Law. The proceedings in
238 chancery court on the abuse or neglect charge shall be
239 confidential in the same manner as provided in youth court
240 proceedings, and the chancery court shall appoint a guardian ad
241 litem in such cases, as provided under Section 43-21-121 for youth
242 court proceedings, who shall be an attorney. Unless the chancery
243 court's jurisdiction has been terminated, all disposition orders
244 in such cases for placement with the Department of Human Services
245 shall be reviewed by the court or designated authority at least
246 annually to determine if continued placement with the department
247 is in the best interest of the child or the public.

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

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

261 (7) In any subsequent child support enforcement action
262 between the parties, upon sufficient showing that diligent effort
263 has been made to ascertain the location of a party, due process
264 requirements for notice and service of process shall be deemed to
265 be met with respect to the party upon delivery of written notice
266 to the most recent residential or employer address filed with the
267 state case registry.

268 (8) The duty of support of a child terminates upon the
269 emancipation of the child. The court may determine that
270 emancipation has occurred and no other support obligation exists
271 when the child:

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

273 (b) Marries, or

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

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

281 (9) Upon motion of a party requesting temporary child
282 support pending a determination of parentage, temporary support
283 shall be ordered if there is clear and convincing evidence of
284 paternity on the basis of genetic tests or other evidence, unless
285 the court makes written findings of fact on the record that the
286 award of temporary support would be unjust or inappropriate in a
287 particular case.

288 **SECTION 6.** This act shall take effect and be in force from
289 and after July 1, 2005.