

By: Representative Dixon

To: Judiciary B

HOUSE BILL NO. 516

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-11-65, MISSISSIPPI
2 CODE OF 1972, TO REQUIRE PATERNITY TO BE ESTABLISHED BY DNA
3 TESTING BEFORE CHILD SUPPORT IS ORDERED; TO ALLOW A REASONABLE
4 TIME TO PAY ARREARAGE IF SUCH TESTING WAS NOT ORIGINALLY
5 PERFORMED; AND FOR RELATED PURPOSES.

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

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

9 93-5-23. When a divorce shall be decreed from the bonds of
10 matrimony, the court may, in its discretion, having regard to the
11 circumstances of the parties and the nature of the case, as may
12 seem equitable and just, make all orders touching the care,
13 custody and maintenance of the children of the marriage, and also
14 touching the maintenance and alimony of the wife or the husband,
15 or any allowance to be made to her or him, and shall, if need be,
16 require bond, sureties or other guarantee for the payment of the
17 sum so allowed. Orders touching on the custody of the children of
18 the marriage shall be made in accordance with the provisions of
19 Section 93-5-24. For the purposes of orders touching the



20 maintenance and alimony of the wife or husband, "property" and "an
21 asset of a spouse" shall not include any interest a party may have
22 as an heir at law of a living person or any interest under a
23 third-party will, nor shall any such interest be considered as an
24 economic circumstance or other factor. The court may afterwards,
25 on petition, change the decree, and make from time to time such
26 new decrees as the case may require. However, where proof shows
27 that both parents have separate incomes or estates, the court may
28 require that each parent contribute to the support and maintenance
29 of the children of the marriage in proportion to the relative
30 financial ability of each. In the event a legally responsible
31 parent has health insurance available to him or her through an
32 employer or organization that may extend benefits to the
33 dependents of such parent, any order of support issued against
34 such parent may require him or her to exercise the option of
35 additional coverage in favor of such children as he or she is
36 legally responsible to support. Paternity must be established by
37 DNA blood tests before child support can be ordered.

38 Whenever the court has ordered a party to make periodic
39 payments for the maintenance or support of a child, but no bond,
40 sureties or other guarantee has been required to secure such
41 payments, and whenever such payments as have become due remain
42 unpaid for a period of at least thirty (30) days, the court may,
43 upon petition of the person to whom such payments are owing, or
44 such person's legal representative, enter an order requiring that



45 bond, sureties or other security be given by the person obligated
46 to make such payments, the amount and sufficiency of which shall
47 be approved by the court. The obligor shall, as in other civil
48 actions, be served with process and shall be entitled to a hearing
49 in such case.

50 A reasonable time period shall be allowed for any parent
51 liable for arrearage if paternity was not originally established
52 by DNA blood testing and subsequent testing proved paternity.

53 At the discretion of the court, any person found in contempt
54 for failure to pay child support and imprisoned therefor may be
55 referred for placement in a state, county or municipal
56 restitution, house arrest or restorative justice center or
57 program, provided such person meets the qualifications prescribed
58 in Section 99-37-19.

59 Whenever in any proceeding in the chancery court concerning
60 the custody of a child a party alleges that the child whose
61 custody is at issue has been the victim of sexual or physical
62 abuse by the other party, the court may, on its own motion, grant
63 a continuance in the custody proceeding only until such allegation
64 has been investigated by the Department of Human Services. At the
65 time of ordering such continuance, the court may direct the party
66 and his attorney making such allegation of child abuse to report
67 in writing and provide all evidence touching on the allegation of
68 abuse to the Department of Human Services. The Department of
69 Human Services shall investigate such allegation and take such



70 action as it deems appropriate and as provided in such cases under
71 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
72 Code of 1972) or under the laws establishing family courts (being
73 Chapter 23 of Title 43, Mississippi Code of 1972).

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

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

91 The duty of support of a child terminates upon the
92 emancipation of the child. The court may determine that
93 emancipation has occurred pursuant to Section 93-11-65.



94 Custody and visitation upon military temporary duty,
95 deployment or mobilization shall be governed by Section 93-5-34.

96 **SECTION 2.** Section 93-11-65, Mississippi Code of 1972, is
97 amended as follows:

98 93-11-65. (1) (a) In addition to the right to proceed
99 under Section 93-5-23, Mississippi Code of 1972, and in addition
100 to the remedy of habeas corpus in proper cases, and other existing
101 remedies, the chancery court of the proper county shall have
102 jurisdiction to entertain suits for the custody, care, support and
103 maintenance of minor children and to hear and determine all such
104 matters, and shall, if need be, require bond, sureties or other
105 guarantee to secure any order for periodic payments for the
106 maintenance or support of a child. In the event a legally
107 responsible parent has health insurance available to him or her
108 through an employer or organization that may extend benefits to
109 the dependents of such parent, any order of support issued against
110 such parent may require him or her to exercise the option of
111 additional coverage in favor of such children as he or she is
112 legally responsible to support. Proceedings may be brought by or
113 against a resident or nonresident of the State of Mississippi,
114 whether or not having the actual custody of minor children, for
115 the purpose of judicially determining the legal custody of a
116 child. All actions herein authorized may be brought in the county
117 where the child is actually residing, or in the county of the
118 residence of the party who has actual custody, or of the residence



119 of the defendant. Process shall be had upon the parties as
120 provided by law for process in person or by publication, if they
121 be nonresidents of the state or residents of another jurisdiction
122 or are not found therein after diligent search and inquiry or are
123 unknown after diligent search and inquiry; provided that the court
124 or chancellor in vacation may fix a date in termtime or in
125 vacation to which process may be returnable and shall have power
126 to proceed in termtime or vacation. Provided, however, that if
127 the court shall find that both parties are fit and proper persons
128 to have custody of the children, and that either party is able to
129 adequately provide for the care and maintenance of the children,
130 the chancellor may consider the preference of a child of twelve
131 (12) years of age or older as to the parent with whom the child
132 would prefer to live in determining what would be in the best
133 interest and welfare of the child. The chancellor shall place on
134 the record the reason or reasons for which the award of custody
135 was made and explain in detail why the wishes of any child were or
136 were not honored. Paternity must be established by DNA blood
137 tests before child support can be ordered.

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



143 (c) The court may require the payment to be made to the
144 custodial parent, or to some person or corporation to be
145 designated by the court as trustee, but if the child or custodial
146 parent is receiving public assistance, the Department of Human
147 Services shall be made the trustee.

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

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

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



168 A reasonable time period shall be allowed for any parent
169 liable for arrearage if paternity was not originally established
170 by DNA blood testing and subsequent testing proved paternity.

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



193 (5) Each party to a paternity or child support proceeding
194 shall notify the other within five (5) days after any change of
195 address. In addition, the noncustodial and custodial parent shall
196 file and update, with the court and with the state case registry,
197 information on that party's location and identity, including
198 social security number, residential and mailing addresses,
199 telephone numbers, photograph, driver's license number, and name,
200 address and telephone number of the party's employer. This
201 information shall be required upon entry of an order or within
202 five (5) days of a change of address.

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

206 (7) In any subsequent child support enforcement action
207 between the parties, upon sufficient showing that diligent effort
208 has been made to ascertain the location of a party, due process
209 requirements for notice and service of process shall be deemed to
210 be met with respect to the party upon delivery of written notice
211 to the most recent residential or employer address filed with the
212 state case registry.

213 (8) (a) The duty of support of a child terminates upon the
214 emancipation of the child. Unless otherwise provided for in the
215 underlying child support judgment, emancipation shall occur when
216 the child:

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



218 (ii) Marries, or
219 (iii) Joins the military and serves on a full-time
220 basis, or

221 (iv) Is convicted of a felony and is sentenced to
222 incarceration of two (2) or more years for committing such
223 felony; * * *

224 (b) Unless otherwise provided for in the underlying
225 child support judgment, the court may determine that emancipation
226 has occurred and no other support obligation exists when the
227 child:

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

231 (ii) Voluntarily moves from the home of the
232 custodial parent or guardian, establishes independent living
233 arrangements, obtains full-time employment and discontinues
234 educational endeavors prior to attaining the age of twenty-one
235 (21) years, or

236 (iii) Cohabits with another person without the
237 approval of the parent obligated to pay support; * * *

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

241 (9) A determination of emancipation does not terminate any
242 obligation of the noncustodial parent to satisfy arrearage



243 existing as of the date of emancipation; the total amount of
244 periodic support due prior to the emancipation plus any periodic
245 amounts ordered paid toward the arrearage shall continue to be
246 owed until satisfaction of the arrearage in full, in addition to
247 the right of the person for whom the obligation is owed to execute
248 for collection as may be provided by law.

249 (10) Upon motion of a party requesting temporary child
250 support pending a determination of parentage, temporary support
251 shall be ordered if there is clear and convincing evidence of
252 paternity on the basis of genetic tests or other evidence, unless
253 the court makes written findings of fact on the record that the
254 award of temporary support would be unjust or inappropriate in a
255 particular case.

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

258 **SECTION 3.** This act shall take effect and be in force from
259 and after July 1, 2015.

