By: Senator(s) Tindell

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2342

AN ACT TO AMEND SECTION 93-15-103, MISSISSIPPI CODE OF 1972, TO CORRECT REFERENCES TO THE DEPARTMENT OF CHILD PROTECTION SERVICES; TO AMEND SECTION 93-15-107, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS; TO AMEND SECTION 93-15-109, MISSISSIPPI CODE OF 1972, TO CORRECT REFERENCES TO THE DEPARTMENT OF CHILD PROTECTION SERVICES; TO AMEND SECTION 93-15-111, MISSISSIPPI CODE OF 1972, TO CLARIFY TERMINATION OF PARENTAL RIGHTS BY WRITTEN VOLUNTARY RELEASE; TO AMEND SECTION 93-15-113, MISSISSIPPI CODE OF 1972, TO CLARIFY THE CONDUCT OF A HEARING FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS; TO AMEND SECTION 93-15-115, MISSISSIPPI CODE OF 1972, TO CORRECT REFERENCES TO THE DEPARTMENT OF CHILD PROTECTION SERVICES AND CORRECT STATUTORY INTERNAL REFERENCES; TO AMEND SECTION 93-15-117, MISSISSIPPI CODE OF 1972, TO CORRECT REFERENCES TO THE DEPARTMENT OF CHILD PROTECTION SERVICES AND CORRECT INTERNAL STATUTORY REFERENCES; TO AMEND SECTION 93-15-119, MISSISSIPPI CODE OF 1972, TO CREATE CONCEPTION BY AN UNLAWFUL SEXUAL ACT AS GROUNDS FOR TERMINATION OF PARENTAL RIGHTS; TO AMEND SECTION 93-15-121, MISSISSIPPI CODE OF 1972, TO CLARIFY GROUNDS FOR TERMINATION OF PARENTAL RIGHTS AND ADD CONVICTION OF HUMAN TRAFFICKING; TO AMEND SECTION 93-15-123, MISSISSIPPI CODE OF 1972, TO CORRECT REFERENCES TO THE DEPARTMENT OF CHILD PROTECTION SERVICES; TO AMEND SECTION 93-15-131, MISSISSIPPI CODE OF 1972, TO CORRECT REFERENCES TO THE DEPARTMENT OF CHILD PROTECTION SERVICES; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 93-15-103, Mississippi Code of 1972, is amended as follows:

93-15-103. For purposes of this chapter, unless a different meaning is plainly expressed by the context, the following definitions apply:

(a) "Abandonment" means any conduct by the parent, whether consisting of a single incident or actions over an extended period of time, that evinces a settled purpose to relinquish all parental claims and responsibilities to the child. Abandonment may be established by showing:

(i) For a child who is under three (3) years of age on the date that the petition for termination of parental rights was filed, that the parent has deliberately made no contact with the child for six (6) months;

(ii) For a child who is three (3) years of age or older on the date that the petition for termination of parental rights was filed, that the parent has deliberately made no contact with the child for at least one (1) year; or

(iii) If the child is under six (6) years of age, that the parent has exposed the child in any highway, street, field, outhouse, or elsewhere with the intent to wholly abandon the child.

(b) "Child" means a person under eighteen (18) years of age.

(c) "Court" means the court having jurisdiction under the Mississippi Termination of Parental Rights Law.

(d) "Desertion" means:

(i) Any conduct by the parent over an extended period of time that demonstrates a willful neglect or refusal to provide for the support and maintenance of the child; or

(ii) That the parent has not demonstrated, within a reasonable period of time after the birth of the child, a full commitment to the responsibilities of parenthood.

(e) "Home" means any charitable or religious corporation or organization or the superintendent or head of the charitable or religious corporation or organization organized under the laws of the State of Mississippi, any public authority to which has been granted the power to provide care for or procure the adoption of children by any Mississippi statute, and any association or institution engaged in placing children for adoption on July 1, 1955.

(f) "Interested person" means any person related to the child by consanguinity or affinity, a custodian or legal guardian of the child, a guardian ad litem representing the child's best interests, or an attorney representing the child's preferences under Rule 13 of the Uniform Rules of Youth Court Practice.

(g) "Minor parent" means any parent under twenty-one (21) years of age.

(h) "Parent" means a natural or adoptive parent of the child.

(i) "Permanency outcome" means achieving a permanent or long-term custodial arrangement for the custody and care of the

child that ends the supervision of the Department of * * * Child Protection Services.

(j) "Qualified health professional" means a licensed or certified professional who is engaged in the delivery of health services and who meets all applicable federal or state requirements to provide professional services.

(k) "Qualified mental health professional" means a person with at least a master's degree in mental health or a related field and who has either a professional license or a Department of Mental Health credential as a mental health therapist.

(l) "Reunification" means the restoration of the parent's custodial rights in providing for the safety and welfare of the child which ends the supervision of the Department of * * * Child Protection Services.

SECTION 2. Section 93-15-107, Mississippi Code of 1972, is amended as follows:

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

(b) The proceeding shall be triable, either in term time or vacation, thirty (30) days after personal service of

process to any necessary party or, for a * * * necessary party whose address is unknown after diligent search, thirty (30) days after the date of the first publication of service of process by publication that complies with the Mississippi Rules of Civil Procedure.

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

(d) A guardian ad litem shall be appointed to protect the best interest of the child, except that the court, in its discretion, may waive this requirement when a parent executes a written voluntary release to terminate parental rights. The guardian ad litem fees shall be determined and assessed in the discretion of the court.

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

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

(* * *4) The court may waive service of process if an adoptive child was born in a foreign country, put up for adoption

in the birth country, and has been legally admitted into this country.

SECTION 3. Section 93-15-109, Mississippi Code of 1972, is amended as follows:

93-15-109. (1) A parent may accomplish the surrender of a child to the Department of *** * *** Child Protection Services or to a home by:

(a) Delivering the child to the Department of *** * *** Child Protection Services or the home;

(b) Executing an affidavit of a written agreement that names the child and which vests in the Department of *** * *** Child Protection Services or the home the exclusive custody, care and control of the child; and

(c) Executing a written voluntary release as set forth in Section 93-15-111(2).

(2) If a child has been surrendered to a home or other agency operating under the laws of another state, and the child is delivered into the custody of a petitioner or home within this state, the execution of consent by the nonresident home or agency shall be sufficient.

(3) Nothing in this section prohibits the delivery and surrender of a child to an emergency medical services provider pursuant to Sections 43-15-201 through 43-15-209.

SECTION 4. Section 93-15-111, Mississippi Code of 1972, is amended as follows:

93-15-111. * * * (* * *1) The court may accept the parent's * * * written voluntary release if it meets the following minimum requirements:

(a) Is signed under oath and dated at least seventy-two (72) hours after the birth of the child;

(b) States the parent's full name, the relationship of the parent to the child, and the parent's address * * *;

(c) States the child's full name, date of birth, time of birth if known, and place of birth as indicated on the birth certificate;

(d) Identifies the governmental agency or home to which the child has been surrendered, if any;

(e) States the parent's consent to adoption of the child and waiver of service of process for any future adoption proceedings;

(f) Acknowledges that the termination of the parent's parental rights and that the subsequent adoption of the child may significantly affect, or even eliminate, the parent's right to inherit from the child under the laws of Descent and Distribution (Chapter 1, Title 91, Mississippi Code of 1972);

(g) Acknowledges that all provisions of the written voluntary release were entered into knowingly, intelligently, and voluntarily; and

(h) Acknowledges that the parent is entitled to consult an attorney regarding the parent's parental rights.

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(*** * ***2) The court's order accepting the parent's written voluntary release terminates all of the parent's parental rights to the child, including, but not limited to, the parental right to control or withhold consent to an adoption. If the court does not accept the parent's written voluntary release, then any interested person, or any agency, institution or person holding custody of the child, may commence involuntary termination of parental rights proceedings under Section 93-15-107.

SECTION 5. Section 93-15-113, Mississippi Code of 1972, is amended as follows:

93-15-113. (1) A hearing on the involuntary termination of parental rights shall be conducted without a jury and in accordance with the Mississippi Rules of Evidence. The court may exclude *** * *** the child from the hearing *** * *** if the court determines that the exclusion of the child from the hearing is in the child's best interest.

(2) (a) At the beginning of the involuntary termination of parental rights hearing, the court shall determine whether all necessary parties are present and identify all persons participating in the hearing; determine whether the notice requirements have been complied with and, if not, determine whether the affected parties intelligently waived compliance with the notice requirements; explain to the parent the purpose of the hearing, the standard of proof required for terminating parental

rights, and the consequences if the parent's parental rights are terminated. The court shall also explain to the parent:

(i) The right to counsel;

(ii) The right to remain silent;

(iii) The right to subpoena witnesses;

(iv) The right to confront and cross-examine witnesses; and

(v) The right to appeal, including the right to a transcript of the proceedings.

(b) The court shall then determine whether the parent before the court is represented by counsel. If the parent wishes to retain counsel, the court shall continue the hearing for a reasonable time to allow the parent to obtain and consult with counsel of the parent's own choosing. If an indigent parent does not have counsel, the court shall determine whether the parent is entitled to appointed counsel under the Constitution of the United States, the Mississippi Constitution of 1890, or statutory law and, if so, appoint counsel for the parent and then continue the hearing for a reasonable time to allow the parent to consult with the appointed counsel. The setting of fees for court-appointed counsel and the assessment of those fees are in the discretion of the court.

SECTION 6. Section 93-15-115, Mississippi Code of 1972, is amended as follows:

93-15-115. When reasonable efforts for reunification are required for a child who is in the custody of, or under the supervision of, the Department of * * * Child Protection Services pursuant to youth court proceedings, the court hearing a petition under this chapter may terminate the parental rights of a parent if, after conducting an evidentiary hearing, the court finds by clear and convincing evidence that:

(a) The child has been adjudicated abused or neglected;

(b) The child has been in the custody and care of, or under the supervision of, the Department of * * * Child Protection Services for at least six (6) months, and, in that time period, the Department of * * * Child Protection Services has developed a service plan for the reunification of the parent and the child;

(c) A permanency hearing, or a permanency review hearing, has been conducted pursuant to the Uniform Rules of Youth Court Practice and the court has found that the Department of * * * Child Protection Services, or a licensed child caring agency under its supervision, has made reasonable efforts over a reasonable period to diligently assist the parent in complying with the service plan but the parent has failed to substantially comply with the terms and conditions of the plan and that reunification with the abusive or neglectful parent is not in the best interests of the child; and

(d) Termination of the parent's parental rights is appropriate because * * * reunification between the parent and

child * * * is not desirable toward obtaining a satisfactory permanency outcome based on one or more of the * * * grounds set out in Section 93-15-119 or 93-15-121.

SECTION 7. Section 93-15-117, Mississippi Code of 1972, is amended as follows:

93-15-117. When reasonable efforts for reunification are not required, a court hearing a petition under this chapter may terminate the parental rights of a parent if, after conducting an evidentiary hearing, the court finds by clear and convincing evidence:

(a) That the child has been adjudicated abused or neglected;

(b) That the child has been in the custody and care of, or under the supervision of, the Department of * * * Child Protection Services for at least sixty (60) days and the Department of * * * Child Protection Services is not required to make reasonable efforts for the reunification of the parent and the child pursuant to Section 43-21-603(7)(c) of the Mississippi Youth Court Law;

(c) That a permanency hearing, or a permanency review hearing, has been conducted pursuant to the Uniform Rules of Youth Court Practice and the court has found that reunification with the abusive or neglectful parent is not in the best interests of the child; and

(d) That termination of the parent's parental rights is appropriate because * * * reunification between the parent and child * * * is not desirable toward obtaining a satisfactory permanency outcome based on one or more of the following grounds:

(i) The basis for bypassing the reasonable efforts for reunification of the parent and child under Section 43-21-603(7)(c) is established by clear and convincing evidence; or

(ii) Any ground listed in Section 93-15-119 or 93-15-121 is established by clear and convincing evidence.

SECTION 8. Section 93-15-119, Mississippi Code of 1972, is amended as follows:

93-15-119. (1) A * * * court hearing a petition under this chapter may terminate the parental rights of a parent when, after conducting an evidentiary hearing, the court finds by clear and convincing evidence:

(a) (i) That the parent has engaged in conduct constituting abandonment or desertion of the child, as defined in Section 93-15-103, or is mentally, morally, or otherwise unfit to raise the child * * *, which shall be established by showing past or present conduct of the parent that demonstrates a substantial risk of compromising or endangering the child's safety and welfare; and

(* * *ii) That termination of the parent's parental rights is appropriate because * * * reunification between

the parent and child * * * is not desirable toward obtaining a satisfactory permanency outcome * * *; or

(b) That a parent has committed against the other parent a sexual act that is unlawful under Section 97-3-65 or 97-3-95, or under a similar law of another state, territory, possession or Native American tribe where the offense occurred, and that the child was conceived as a result of the unlawful sexual act. A criminal conviction of the unlawful sexual act is not required to terminate the offending parent's parental rights under this paragraph (b).

(2) An allegation of desertion may be fully rebutted by proof that the parent, in accordance with the parent's means and knowledge of the mother's pregnancy or the child's birth, either:

(a) Provided financial support, including, but not limited to, the payment of consistent support to the mother during her pregnancy, contributions to the payment of the medical expenses of the pregnancy and birth, and contributions of consistent support of the child after birth; frequently and consistently visited the child after birth; and is now willing and able to assume legal and physical care of the child; or

(b) Was willing to provide financial support and to make visitations with the child, but reasonable attempts to do so were thwarted by the mother or her agents, and that the parent is now willing and able to assume legal and physical care of the child.

(3) The court shall inquire as to the military status of an absent parent before conducting an evidentiary hearing under this section.

SECTION 9. Section 93-15-121, Mississippi Code of 1972, is amended as follows:

93-15-121. Any of the following *** * ***, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if *** * *** reunification between the parent and child *** * *** is not desirable toward obtaining a satisfactory permanency outcome:

(a) The parent has been medically diagnosed by a qualified mental health professional with a severe mental illness or deficiency that is unlikely to change in a reasonable period of time and which, based upon expert testimony or an established pattern of behavior, makes the parent unable or unwilling to provide an adequate permanent home for the child;

(b) The parent has been medically diagnosed by a qualified health professional with an extreme physical incapacitation that is unlikely to change in a reasonable period of time and which, based upon expert testimony or an established pattern of behavior, prevents the parent, despite reasonable accommodations, from providing minimally acceptable care for the child;

(c) The parent is suffering from habitual alcoholism or other drug addiction and has failed to successfully complete alcohol or drug treatment *** * ***;

(d) The parent is unwilling to provide reasonably necessary food, clothing, shelter, or medical care for the child; reasonably necessary medical care does not include recommended or optional vaccinations against childhood or any other disease;

(e) The parent has failed to exercise reasonable visitation or communication with the child;

(f) The parent's abusive or neglectful conduct has caused, at least in part, an extreme and deep-seated antipathy by the child toward the parent, or some other substantial erosion of the relationship between the parent and the child;

(g) The parent has committed an abusive act for which reasonable efforts to maintain the children in the home would not be required under Section 43-21-603, or a series of physically, mentally, or emotionally abusive incidents, against the child or another child, whether related by consanguinity or affinity or not, making future contacts between the parent and child undesirable; or

(h) (i) The parent has been convicted of any of the following offenses against any child:

1. Rape of a child under Section 97-3-65;

2. Sexual battery of a child under Section 97-3-95(c);

3. Touching a child for lustful purposes under Section 97-5-23;

4. Exploitation of a child under Sections 97-5-31 through 97-5-37;

5. Felonious abuse or battery of a child under Section 97-5-39(2); *** * ***

6. Carnal knowledge of a step or adopted child or a child of a cohabitating partner under Section 97-5-41; or

7. Human trafficking of a child under Section 97-3-54.1; or

(ii) The parent has been convicted of:

1. Murder or voluntary manslaughter of another child of the parent;

2. Aiding, abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of the child or another child of the parent; or

3. A felony assault that results in the serious bodily injury to the child or another child of the parent.

SECTION 10. Section 93-15-123, Mississippi Code of 1972, is amended as follows:

93-15-123. Notwithstanding any other provision of this chapter, the court may exercise its discretion not to terminate the parent's parental rights in a proceeding under this chapter if the child's safety and welfare will not be compromised or

endangered and terminating the parent's parental right is not in the child's best interests based on one or more of the following factors:

(a) The Department of * * * Child Protection Services has documented compelling and extraordinary reasons why terminating the parent's parental rights would not be in the child's best interests;

(b) There is a likelihood that continuing reasonable efforts for achieving reunification will be successful;

(c) Terminating the parent's parental rights would inappropriately relieve the parent of the parent's financial or support obligations to the child; or

(d) The child is being cared for by the other parent, or a relative, guardian, or custodian, in a residence not occupied by the abusive or neglectful parent and terminating the parent's parental rights would not expedite the process for obtaining a satisfactory permanency outcome.

SECTION 11. Section 93-15-131, Mississippi Code of 1972, is amended as follows:

93-15-131. (1) If the court does not terminate the parent's parental rights, the custody and care of the child shall continue with the person, agency, or institution that is holding custody of the child at the time the judgment is rendered, or the court may grant custody to the parent whose rights were sought to be terminated if that is in the best interest of the child. If the

Department of * * * Child Protection Services has legal custody of the child, the court must conduct a permanency hearing and permanency review hearings as required under the Mississippi Youth Court Law and the Mississippi Uniform Rules of Youth Court Practice.

(2) If the court terminates the parent's parental rights, the court shall place the child in the custody and care of the other parent or some suitable person, agency, or institution until an adoption or some other permanent living arrangement is achieved. No notice of adoption proceedings or any other subsequent proceedings pertaining to the custody and care of the child shall be given to a parent whose rights have been terminated.

SECTION 12. This act shall take effect and be in force from and after its passage.