

Senate Amendments to House Bill No. 1240

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

43 **SECTION 1.** Section 93-15-101, Mississippi Code of 1972, is
44 amended as follows:

45 93-15-101. This chapter shall be known and may be cited as
46 the "Mississippi Termination of Parental Rights * * * Law."

47 **SECTION 2.** Sections 3 through 18 of this act shall be
48 codified in Chapter 15, Title 93, Mississippi Code of 1972, as the
49 Mississippi Termination of Parental Rights Law to replace Sections
50 93-15-103 through 93-15-111, which are repealed in Section 23 of
51 this act.

52 **SECTION 3.** The following shall be codified as Section
53 93-15-103, Mississippi Code of 1972:

54 93-15-103. **Definitions.** For purposes of this chapter,
55 unless a different meaning is plainly expressed by the context,
56 the following definitions apply:

57 (a) "Abandonment" means any conduct by the parent,
58 whether consisting of a single incident or actions over an
59 extended period of time, that evinces a settled purpose to

60 relinquish all parental claims and responsibilities to the child.

61 Abandonment may be established by showing:

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

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

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

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

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

78 (d) "Desertion" means:

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

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

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

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

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

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

102 (i) "Permanency outcome" means achieving a permanent or
103 long-term custodial arrangement for the custody and care of the
104 child that ends the supervision of the Department of Human
105 Services.

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

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

115 (l) "Reunification" means the restoration of the
116 parent's custodial rights in providing for the safety and welfare
117 of the child which ends the supervision of the Department of Human
118 Services.

119 **SECTION 4.** The following shall be codified as Section
120 93-15-105, Mississippi Code of 1972:

121 93-15-105. **Jurisdiction and venue.** (1) The chancery court
122 has original exclusive jurisdiction over all termination of
123 parental rights proceedings except that a county court, when
124 sitting as a youth court with jurisdiction of a child in an abuse
125 or neglect proceeding, has original exclusive jurisdiction to hear
126 a petition for termination of parental rights against a parent of
127 that child.

128 (2) (a) Venue in a county court sitting as a youth court
129 for termination of parental rights proceedings shall be in the
130 county in which the court has jurisdiction of the child in the
131 abuse or neglect proceedings. Venue in chancery court for
132 termination of parental rights proceedings shall be proper either
133 in the county in which the defendant resides, the child resides or
134 in the county where an agency or institution having custody of the
135 child is located.

136 (b) Transfers of venue shall be governed by the
137 Mississippi Rules of Civil Procedure.

138 **SECTION 5.** The following shall be codified as Section
139 93-15-107, Mississippi Code of 1972:

140 93-15-107. **Commencement of proceedings; parties; summons.**

141 (1) (a) Termination of parental rights proceedings are commenced
142 upon the filing of a petition under this chapter. The petition
143 may be filed by any interested person, or any agency or
144 institution holding custody of the child. The simultaneous filing
145 of a petition for adoption is not a pre-requisite for filing a
146 petition under this chapter.

147 (b) The proceeding shall be triable, either in term
148 time or vacation, thirty (30) days after personal service of
149 process to any necessary party or, for a nonresident necessary
150 party whose address is unknown after diligent search, thirty (30)
151 days after the date of the first publication of service of process
152 by publication that complies with the Mississippi Rules of Civil
153 Procedure.

154 (c) Necessary parties to a termination of parental
155 rights action shall include the mother of the child, the legal
156 father of the child, the putative father of the child when known,
157 any agency or institution holding custody of the child, and the
158 child. The absence of a necessary party does not preclude the
159 court from conducting the hearing or rendering a final judgment.

160 (d) A guardian ad litem shall be appointed to protect
161 the best interest of the child. The guardian ad litem fees shall
162 be determined and assessed in the discretion of the court.

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

165 (3) The court may waive service of process if an adoptive
166 child was born in a foreign country, put up for adoption in the
167 birth country, and has been legally admitted into this country.

168 **SECTION 6.** The following shall be codified as Section
169 93-15-109, Mississippi Code of 1972:

170 93-15-109. **Surrender of a child to the Department of Human**
171 **Services or a home.** (1) A parent may accomplish the surrender of
172 a child to the Department of Human Services or to a home by:

173 (a) Delivering the child to the Department of Human
174 Services or the home;

175 (b) Executing an affidavit of a written agreement that
176 names the child and which vests in the Department of Human
177 Services or the home the exclusive custody, care and control of
178 the child; and

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

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

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

189 **SECTION 7.** The following shall be codified as Section
190 93-15-111, Mississippi Code of 1972:

191 93-15-111. **Termination by written voluntary release.** (1) A
192 parent or an interested person may petition the court to accept a
193 parent's written voluntary release that relinquishes all of the
194 parent's parental rights to the child.

195 (2) The court may accept the parent's execution of a written
196 voluntary release if it meets the following minimum requirements:

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

199 (b) States the parent's full name, the relationship of
200 the parent to the child, and the parent's address for service of
201 process in the proceedings to terminate parental rights;

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

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

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

209 (f) Acknowledges that the termination of the parent's
210 parental rights and that the subsequent adoption of the child may
211 significantly affect, or even eliminate, the parent's right to

212 inherit from the child under the laws of Descent and Distribution
213 (Chapter 1, Title 91, Mississippi Code of 1972);

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

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

219 (3) An adult or minor parent who is mentally competent may
220 relinquish all parental rights to a child, waive service of
221 process, and consent to be voluntarily joined as a co-petitioner
222 in a termination of parental rights proceeding, consistent with
223 Rule 81(a)(9) of the Mississippi Rules of Civil Procedure, by
224 filing with the court, or by authorizing an interested person to
225 file with the court, an affidavit of a written waiver of service
226 of process and a consent to be voluntarily joined as a
227 co-petitioner that is dated and signed by the parent no earlier
228 than ninety (90) days before filing of the petition or at any time
229 after the commencement of the action, thereby allowing the court
230 to fully adjudicate the parent's parental rights in the absence of
231 the parent.

232 (4) The court's order accepting the parent's written
233 voluntary release terminates all of the parent's parental rights
234 to the child, including, but not limited to, the parental right to
235 control or withhold consent to an adoption.

236 **SECTION 8.** The following shall be codified as Section
237 93-15-113, Mississippi Code of 1972:

238 93-15-113. **Conduct of hearing for involuntary termination of**
239 **parental rights; counsel for parent.** (1) A hearing on the
240 involuntary termination of parental rights shall be conducted
241 without a jury and in accordance with the Mississippi Rules of
242 Evidence. The court may exclude the attendance of the child from
243 the hearing with the consent of the child's guardian ad litem or
244 legal counsel.

245 (2) (a) At the beginning of the involuntary termination of
246 parental rights hearing, the court shall determine whether all
247 necessary parties are present and identify all persons
248 participating in the hearing; determine whether the notice
249 requirements have been complied with and, if not, determine
250 whether the affected parties intelligently waived compliance with
251 the notice requirements; explain to the parent the purpose of the
252 hearing, the standard of proof required for terminating parental
253 rights, and the consequences if the parent's parental rights are
254 terminated. The court shall also explain to the parent:

- 255 (i) The right to counsel;
- 256 (ii) The right to remain silent;
- 257 (iii) The right to subpoena witnesses;
- 258 (iv) The right to confront and cross-examine
259 witnesses; and
- 260 (v) The right to appeal, including the right to a
261 transcript of the proceedings.

262 (b) The court shall then determine whether the parent
263 before the court is represented by counsel. If the parent wishes

264 to retain counsel, the court shall continue the hearing for a
265 reasonable time to allow the parent to obtain and consult with
266 counsel of the parent's own choosing. If an indigent parent does
267 not have counsel, the court shall determine whether the parent is
268 entitled to appointed counsel under the Constitution of the United
269 States, the Mississippi Constitution of 1890, or statutory law
270 and, if so, appoint counsel for the parent and then continue the
271 hearing for a reasonable time to allow the parent to consult with
272 the appointed counsel. The setting of fees for court-appointed
273 counsel and the assessment of those fees are in the discretion of
274 the court.

275 **SECTION 9.** The following shall be codified as Section
276 93-15-115, Mississippi Code of 1972:

277 93-15-115. **Involuntary termination when child in care and**
278 **custody or under the supervision of the Department of Human**
279 **Services pursuant to youth court proceedings and reasonable**
280 **efforts for reunification are required; standard of proof.** When
281 reasonable efforts for reunification are required for a child who
282 is in the custody of, or under the supervision of, the Department
283 of Human Services pursuant to youth court proceedings, the court
284 hearing a petition under this chapter may terminate the parental
285 rights of a parent if, after conducting an evidentiary hearing,
286 the court finds by clear and convincing evidence that:

- 287 (a) The child has been adjudicated abused or neglected;
- 288 (b) The child has been in the custody and care of, or
- 289 under the supervision of, the Department of Human Services for at

290 least six (6) months, and, in that time period, the Department of
291 Human Services has developed a service plan for the reunification
292 of the parent and the child;

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

303 (d) Termination of the parent's parental rights is
304 appropriate because future contacts between the parent and child
305 are not desirable toward obtaining a satisfactory permanency
306 outcome based on one or more of the factors set out in Section
307 93-15-121.

308 **SECTION 10.** The following shall be codified as Section
309 93-15-117, Mississippi Code of 1972:

310 93-15-117. **Involuntary termination when child in care and**
311 **custody or under supervision of the Department of Human Services**
312 **pursuant to youth court proceedings and reasonable efforts for**
313 **reunification are not required; standard of proof.** When
314 reasonable efforts for reunification are not required, a court
315 hearing a petition under this chapter may terminate the parental

316 rights of a parent if, after conducting an evidentiary hearing,
317 the court finds by clear and convincing evidence:

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

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

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

331 (d) That termination of the parent's parental rights is
332 appropriate because future contacts between the parent and child
333 are not desirable toward obtaining a satisfactory permanency
334 outcome based on one or more of the following grounds:

335 (i) The basis for bypassing the reasonable efforts
336 for reunification of the parent and child under Section
337 43-21-603(7)(c) is established by clear and convincing evidence;
338 or

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

341 **SECTION 11.** The following shall be codified as Section
342 93-15-119, Mississippi Code of 1972:

343 93-15-119. **Involuntary termination in chancery court for**
344 **reasons of abandonment, desertion, or parental unfitness to raise**
345 **the child; standard of proof.** (1) A chancery court hearing a
346 petition under this chapter may terminate the parental rights of a
347 parent when, after conducting an evidentiary hearing, the court
348 finds by clear and convincing evidence:

349 (a) That the parent has engaged in conduct constituting
350 abandonment or desertion of the child or is mentally, morally, or
351 otherwise unfit to raise the child. The court shall inquire as to
352 the military status of any absent parent. Proof that a parent is
353 mentally, morally, or otherwise unfit to raise the child shall be
354 established by showing past or present conduct of the parent that
355 demonstrates a substantial risk of compromising or endangering the
356 child's safety and welfare; and

357 (b) That termination of the parent's parental rights is
358 appropriate because future contacts between the parent and child
359 are not desirable toward obtaining a satisfactory permanency
360 outcome based on one or more of the factors set out in Section
361 93-15-121.

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

365 (a) Provided financial support, including, but not
366 limited to, the payment of consistent support to the mother during

367 her pregnancy, contributions to the payment of the medical
368 expenses of the pregnancy and birth, and contributions of
369 consistent support of the child after birth; frequently and
370 consistently visited the child after birth; and is now willing and
371 able to assume legal and physical care of the child; or

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

377 **SECTION 12.** The following shall be codified as Section
378 93-15-121, Mississippi Code of 1972:

379 93-15-121. **Grounds for termination.** The following factors
380 if established by clear and convincing evidence may be grounds for
381 termination of the parent's parental rights if future contacts
382 between the parent and child are not desirable toward obtaining a
383 satisfactory permanency outcome:

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

390 (b) The parent has been medically diagnosed by a
391 qualified health professional with an extreme physical
392 incapacitation that is unlikely to change in a reasonable period

393 of time and which, based upon expert testimony or an established
394 pattern of behavior, prevents the parent, despite reasonable
395 accommodations, from providing minimally acceptable care for the
396 child;

397 (c) The parent is suffering from habitual alcoholism or
398 other drug addiction and has failed to successfully complete
399 alcohol or drug treatment as reasonably directed by the court;

400 (d) The parent is unwilling to provide reasonably
401 necessary food, clothing, shelter, or medical care for the child;

402 (e) The parent has failed to exercise reasonable
403 visitation or communication with the child; reasonably necessary
404 medical care does not include recommended or optional vaccinations
405 against childhood or any other disease;

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

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

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

- 419 1. Rape of a child under Section 97-3-65;
- 420 2. Sexual battery of a child under Section
- 421 97-3-95(c);
- 422 3. Touching a child for lustful purposes
- 423 under Section 97-5-23;
- 424 4. Exploitation of a child under Sections
- 425 97-5-31 through 97-5-37;
- 426 5. Felonious abuse or battery of a child
- 427 under Section 97-5-39(2); or
- 428 6. Carnal knowledge of a step or adopted
- 429 child or a child of a cohabitating partner under Section 97-5-41;
- 430 or
- 431 (ii) The parent has been convicted of:
- 432 1. Murder or voluntary manslaughter of
- 433 another child of the parent;
- 434 2. Aiding, abetting, attempting, conspiring
- 435 or soliciting to commit murder or voluntary manslaughter of the
- 436 child or another child of the parent; or
- 437 3. A felony assault that results in the
- 438 serious bodily injury to the child or another child of the parent.

439 **SECTION 13.** The following shall be codified as Section

440 93-15-123, Mississippi Code of 1972:

441 93-15-123. **Court discretion not to terminate.**

442 Notwithstanding any other provision of this chapter, the court may

443 exercise its discretion not to terminate the parent's parental

444 rights in a proceeding under this chapter if the child's safety

445 and welfare will not be compromised or endangered and terminating
446 the parent's parental right is not in the child's best interests
447 based on one or more of the following factors:

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

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

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

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

461 **SECTION 14.** The following shall be codified as Section
462 93-15-125, Mississippi Code of 1972:

463 93-15-125. **Compliance with Indian Child Welfare Act.** In any
464 proceeding under this chapter, where the court knows or has reason
465 to know that an Indian child is involved, the court must comply
466 with the Indian Child Welfare Act (25 USCS Section 1901 et seq.)
467 in regard to notice, appointment of counsel, examination of
468 reports or other documents, remedial services and rehabilitation
469 programs, and other protections the act provides. Additionally,
470 no termination of parental rights may be ordered in the proceeding

471 in the absence of a determination, supported by evidence beyond a
472 reasonable doubt, including testimony of qualified expert
473 witnesses, that the continued custody of the Indian child by the
474 parent is likely to result in serious emotional or physical damage
475 to the Indian child.

476 **SECTION 15.** The following shall be codified as Section
477 93-15-127, Mississippi Code of 1972:

478 93-15-127. **Effect on another parent's rights.** Termination
479 under this chapter of a parent's parental rights does not affect
480 the parental rights of another parent.

481 **SECTION 16.** The following shall be codified as Section
482 93-15-129, Mississippi Code of 1972:

483 93-15-129. **Petitions involving sexual abuse or serious**
484 **bodily injury treated as preference case.** In any case where a
485 child has been removed from the custody and care of the parent due
486 to sexual abuse or serious bodily injury to the child, or is not
487 living in the home of the offending parent, the court shall treat
488 the petition for termination of parental rights as a preference
489 case to be determined with all reasonable expedition.

490 **SECTION 17.** The following shall be codified as Section
491 93-15-131, Mississippi Code of 1972:

492 93-15-131. **Post-judgment proceedings.** (1) If the court
493 does not terminate the parent's parental rights, the custody and
494 care of the child shall continue with the person, agency, or
495 institution that is holding custody of the child at the time the
496 judgment is rendered, or the court may grant custody to the parent

497 whose rights were sought to be terminated if that is in the best
498 interest of the child. If the Department of Human Services has
499 legal custody of the child, the court must conduct a permanency
500 hearing and permanency review hearings as required under the
501 Mississippi Youth Court Law and the Mississippi Uniform Rules of
502 Youth Court Practice.

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

511 **SECTION 18.** The following shall be codified as Section
512 93-15-133, Mississippi Code of 1972:

513 93-15-133. **Review by Supreme Court.** Appeal from a final
514 judgment on the termination of parental rights under this chapter
515 shall be to the Supreme Court of Mississippi pursuant to the
516 Mississippi Rules of Appellate Procedure.

517 **SECTION 19.** Section 93-17-5, Mississippi Code of 1972, is
518 amended as follows:

519 93-17-5. (1) There shall be made parties to the proceeding
520 by process or by the filing therein of a consent to the adoption
521 proposed in the petition, which consent shall be duly sworn to or

522 acknowledged and executed only by the following persons, but not
523 before seventy-two (72) hours after the birth of * * * the child:

524 (a) The parents, or parent, if only one (1) parent,
525 though either be under the age of twenty-one (21) years; * * *

526 (b) * * * If both parents are dead, then any two (2)
527 adult kin of the child within the third degree computed according
528 to the civil law * * * ; if one of such kin is in possession of the
529 child, he or she shall join in the petition or be made a party to
530 the suit; or

531 (c) The guardian ad litem of an abandoned child, upon
532 petition showing that the names of the parents of * * * the child
533 are unknown after diligent search and inquiry by the petitioners.
534 In addition to the above, there shall be made parties to any
535 proceeding to adopt a child, either by process or by the filing of
536 a consent to the adoption proposed in the petition, the following:

537 (i) Those persons having physical custody of * * *
538 the child, except persons * * * who are acting as foster parents
539 as a result of placement with them by the Department of Human
540 Services of the State of Mississippi.

541 (ii) Any person to whom custody of * * * the child
542 may have been awarded by a court of competent jurisdiction of the
543 State of Mississippi.

544 (iii) The agent of the county Department of Human
545 Services of the State of Mississippi that has placed a child in
546 foster care, either by agreement or by court order.

547 (2) * * * The consent may also be executed and filed by the
548 duly authorized officer or representative of a home to whose care
549 the child has been delivered. The child shall join the petition
550 by * * * the child's next friend.

551 * * *

552 (* * *3) If * * * consent * * * is not filed, * * * process
553 shall be had upon the parties as provided by law for process in
554 person or by publication, if they * * * are nonresidents of the
555 state or are not found therein * * * after diligent search and
556 inquiry, * * * the court or chancellor in vacation may fix a date
557 in termtime or in vacation to which process may be returnable and
558 shall have power to proceed in termtime or vacation. In any
559 event, if the child is more than fourteen (14) years of age, a
560 consent to the adoption, sworn to or acknowledged by the child,
561 shall also be required or personal service of process shall be had
562 upon the child in the same manner and in the same effect as
563 if * * * the child were an adult.

564 **SECTION 20.** Section 93-17-6, Mississippi Code of 1972, is
565 amended as follows:

566 93-17-6. (1) Any person who would be a necessary party to
567 an adoption proceeding under this chapter and any person alleged
568 or claiming to be the father of a child born out of wedlock who is
569 proposed for adoption or who has been determined to be such by any
570 administrative or judicial procedure (the "alleged father") may
571 file a petition for determination of rights as a preliminary
572 pleading to a petition for adoption in any court which would have

573 jurisdiction and venue of an adoption proceeding. A petition for
574 determination of rights may be filed at any time after the period
575 ending thirty (30) days after the birth of the child. Should
576 competing petitions be filed in two (2) or more courts having
577 jurisdiction and venue, the court in which the first such petition
578 was properly filed shall have jurisdiction over the whole
579 proceeding until its disposition. The prospective adopting
580 parents need not be a party to * * * the petition. Where the
581 child's biological mother has surrendered the child to a home for
582 adoption, the home may represent the biological mother and her
583 interests in this proceeding.

584 (2) The court shall set this petition for hearing as
585 expeditiously as possible allowing not less than ten (10) days'
586 notice from the service or completion of process on the parties to
587 be served.

588 (3) The sole matter for determination under a petition for
589 determination of rights is whether the alleged father * * * is the
590 natural father of the child based on Mississippi law governing
591 paternity or other relevant evidence.

592 * * *

593 (* * *4) If the court determines that the alleged
594 father * * * is not the natural father of the child, he shall have
595 no right to object to an adoption under Section 93-17-7.

596 (* * *5) If the court determines that the alleged
597 father * * * is the child's natural father and that he objects to
598 the child's adoption, the court shall stay the adoption

599 proceedings to allow the filing of a petition to determine whether
600 the father's parental rights should be terminated pursuant to
601 Section 93-15-119, or other applicable provision of the
602 Mississippi Termination of Parental Rights Law.

603 (6) If a petition for the termination of parental rights is
604 filed and, after an evidentiary hearing, the court does not
605 terminate the father's parental rights, the court shall set the
606 matter as a contested adoption as provided in * * * Section
607 93-17-8.

608 (7) A petition for determination of rights may be used to
609 determine the rights of alleged fathers whose identity is unknown
610 or uncertain. In such cases the court shall determine what, if
611 any, notice can be and is to be given * * * those persons.
612 Determinations of rights under the procedure of this section may
613 also be made under a petition for adoption.

614 (8) Petitions for determination of rights shall be
615 considered adoption cases and all subsequent proceedings such as a
616 contested adoption under Section 93-17-8 and the adoption
617 proceeding itself shall be portions of the same file.

618 (9) Service of process in the adoption of a foreign born
619 child shall be governed by Section 93-15-105(5).

620 **SECTION 21.** Section 93-17-7, Mississippi Code of 1972, is
621 amended as follows:

622 93-17-7. (1) No infant shall be adopted to any person
623 if * * * a parent whose parental rights have not been terminated
624 under the Mississippi Termination of Parental Rights Law, after

625 having been summoned, shall appear and object thereto before the
626 making of a decree for adoption * * *. A parent shall not be
627 summoned in the adoption proceedings nor have the right to object
628 thereto if the parental rights of the parent * * * have been
629 terminated by the procedure set forth in * * * the Mississippi
630 Termination of Parental Rights Law (Section 93-15-101 et seq.),
631 and * * * the termination shall be res judicata on the question of
632 parental abandonment or unfitness in the adoption proceedings.

633 (2) * * * No person, whether claiming to be the parent of
634 the child or not, has standing to object to the adoption if:

635 (a) A final judgment for adoption that comports with
636 all applicable state and federal laws has been entered by a court;
637 and

638 (b) Notice to the parties of the action, whether known
639 or unknown, has been made in compliance with Section 93-17-5.

640 **SECTION 22.** Section 93-17-9, Mississippi Code of 1972, which
641 provides for the surrender of a child to an organization organized
642 for the purpose of caring for or adoption of children, is
643 repealed.

644 **SECTION 23.** Sections 93-15-103, 93-15-105, 93-15-107,
645 93-15-109 and 93-15-111, Mississippi Code of 1972, which comprise
646 the substantive portion of the Termination of Rights of Unfit
647 Parents Law that was first adopted in 1980, are repealed to be
648 replaced as directed in Section 2 of this act.

649 **SECTION 24.** This act shall take effect and be in force from
650 and after its passage.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 93-15-101, MISSISSIPPI CODE OF 1972,
2 TO AMEND THE SHORT TITLE OF THE CHAPTER REGARDING TERMINATION OF
3 PARENTAL RIGHTS; TO CREATE NEW SECTION 93-15-103, MISSISSIPPI CODE
4 OF 1972, TO ENACT DEFINITIONS; TO CREATE NEW SECTION 93-15-105,
5 MISSISSIPPI CODE OF 1972, TO SPECIFY JURISDICTION AND VENUE UNDER
6 THE ACT; TO CREATE NEW SECTION 93-15-107, MISSISSIPPI CODE OF
7 1972, TO PROVIDE FOR THE COMMENCEMENT OF PROCEEDINGS, NECESSARY
8 PARTIES AND SUMMONS; TO CREATE NEW SECTION 93-15-109, MISSISSIPPI
9 CODE OF 1972, TO PROVIDE FOR SURRENDER OF A CHILD; TO CREATE NEW
10 SECTION 93-15-111, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
11 TERMINATION BY WRITTEN VOLUNTARY RELEASE; TO CREATE NEW SECTION
12 93-15-113, MISSISSIPPI CODE OF 1972, TO PROVIDE PROCEDURES FOR THE
13 INVOLUNTARY TERMINATION OF PARENTAL RIGHTS; TO CREATE NEW SECTION
14 93-15-115, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR INVOLUNTARY
15 TERMINATION WHERE A REUNIFICATION ATTEMPT IS MANDATORY; TO CREATE
16 NEW SECTION 93-15-117, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
17 INVOLUNTARY TERMINATION WHERE A REUNIFICATION ATTEMPT IS NOT
18 REQUIRED; TO CREATE NEW SECTION 93-15-119, MISSISSIPPI CODE OF
19 1972, TO PROVIDE FOR INVOLUNTARY TERMINATION FOR ABANDONMENT,
20 DESERTION OR UNFITNESS; TO CREATE NEW SECTION 93-15-121,
21 MISSISSIPPI CODE OF 1972, TO SPECIFY GROUNDS FOR TERMINATION; TO
22 CREATE NEW SECTION 93-15-123, MISSISSIPPI CODE OF 1972, TO
23 AUTHORIZE THE COURT TO DECLINE TO TERMINATE PARENTAL RIGHTS WHEN
24 IN THE CHILD'S BEST INTEREST; TO CREATE NEW SECTION 93-15-125,
25 MISSISSIPPI CODE OF 1972, TO REQUIRE COMPLIANCE WITH THE FEDERAL
26 INDIAN CHILD WELFARE ACT; TO CREATE NEW SECTION 93-15-127,
27 MISSISSIPPI CODE OF 1972, TO PROVIDE THE EFFECT OF TERMINATION ON
28 THE OTHER PARENT; TO CREATE NEW SECTION 93-15-129, MISSISSIPPI
29 CODE OF 1972, TO SPECIFY WHEN A TERMINATION IS A PREFERENCE CASE;
30 TO CREATE NEW SECTION 93-15-131, MISSISSIPPI CODE OF 1972, TO
31 PROVIDE FOR POST-JUDGMENT PROCEEDINGS; TO CREATE NEW SECTION
32 93-15-133, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPEALS; TO
33 AMEND SECTIONS 93-17-5, 93-17-6 AND 93-17-7, MISSISSIPPI CODE OF
34 1972, TO REVISE THE ADOPTION LAW TO CONFORM TO THIS ACT; TO REPEAL
35 SECTION 93-17-9, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE
36 SURRENDER OF A CHILD TO AN ORGANIZATION ORGANIZED FOR THE PURPOSE
37 OF CARING FOR OR ADOPTION OF CHILDREN; TO REPEAL SECTIONS
38 93-15-103, 93-15-105, 93-15-107, 93-15-109 AND 93-15-111,
39 MISSISSIPPI CODE OF 1972, WHICH COMPRISE THE SUBSTANTIVE PORTION
40 OF THE TERMINATION OF RIGHTS OF UNFIT PARENTS LAW; AND FOR RELATED
41 PURPOSES.

SS26\HB1240PS.J

Liz Welch
Secretary of the Senate