

TITLE 93 - DOMESTIC RELATIONS

Chapter 5 - Divorce and Alimony.

93-5-23 - Custody of children; alimony.

§ 93-5-23. Custody of children; alimony.

When a divorce shall be decreed from the bonds of matrimony, the court may, in its discretion, having regard to the circumstances of the parties and the nature of the case, as may seem equitable and just, make all orders touching the care, custody and maintenance of the children of the marriage, and also touching the maintenance and alimony of the wife or the husband, or any allowance to be made to her or him, and shall, if need be, require bond, sureties or other guarantee for the payment of the sum so allowed. Orders touching on the custody of the children of the marriage shall be made in accordance with the provisions of Section 93-5-24. For the purposes of orders touching the maintenance and alimony of the wife or husband, "property" and "an asset of a spouse" shall not include any interest a party may have as an heir at law of a living person or any interest under a third-party will, nor shall any such interest be considered as an economic circumstance or other factor. The court may afterwards, on petition, change the decree, and make from time to time such new decrees as the case may require. However, where proof shows that both parents have separate incomes or estates, the court may require that each parent contribute to the support and maintenance of the children of the marriage in proportion to the relative financial ability of each. In the event a legally responsible parent has health insurance available to him or her through an employer or organization that may extend benefits to the dependents of such parent, any order of support issued against such parent may require him or her to exercise the option of additional coverage in favor of such children as he or she is legally responsible to support.

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

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

Whenever in any proceeding in the chancery court concerning the custody of a child a party

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alleges that the child whose custody is at issue has been the victim of sexual or physical abuse by the other party, the court may, on its own motion, grant a continuance in the custody proceeding only until such allegation has been investigated by the Department of Human Services. At the time of ordering such continuance, the court may direct the party and his attorney making such allegation of child abuse to report in writing and provide all evidence touching on the allegation of abuse to the Department of Human Services. The Department of Human Services shall investigate such allegation and take such action as it deems appropriate and as provided in such cases under the Youth Court Law (being Chapter 21 of Title 43, Mississippi Code of 1972) or under the laws establishing family courts (being Chapter 23 of Title 43, Mississippi Code of 1972).

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

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

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