

Paternity – 2009

§ 93-9-1. Short title.

Sections 93-9-1 through 93-9-49 may be cited as the "Mississippi Uniform Law on Paternity."

Sources: Codes, 1942, § 383-24; Laws, 1962, ch. 312, § 24, eff from and after July 1, 1962.

§ 93-9-3. Construction.

Nothing herein contained shall be construed as abridging the power and jurisdiction of the chancery courts of the State of Mississippi, exercised over the estates of minors, nor as an abridgment of the power and authority of said chancery courts or the chancellor in vacation or chancery clerk in vacation to appoint guardians for minors. The Uniform Law on Paternity shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

Sources: Codes, 1942, § 383-23; Laws, 1962, ch. 312, § 23, eff from and after July 1, 1962.

§ 93-9-5. Application of Uniform Law on Paternity.

Sections 93-9-1 through 93-9-49 apply to all cases of birth out of lawful matrimony as defined in Section 93-9-7.

Sources: Codes, 1942, § 383-25; Laws, 1962, ch. 312, § 25, eff from and after July 1, 1962.

§ 93-9-7. Obligations of father.

The father of a child which is or may be born out of lawful matrimony is liable to the same extent as the father of a child born of lawful matrimony, whether or not the child is born alive, for the reasonable expense of the mother's pregnancy and confinement, and for the education, necessary support and maintenance, and medical and funeral expenses of the child. A child born out of lawful matrimony also includes a child born to a married woman by a man other than her lawful husband.

Sources: Codes, 1942, § 383-01; Laws, 1962, ch. 312, § 1, eff from and after July 1, 1962.

§ 93-9-9. Enforcement; attorney's fees and costs; surname of child; request for genetic testing by alleged father; tolling of sixty-day time limit to rescind voluntary acknowledgement of paternity.

- (1) Paternity may be determined upon the petition of the mother, or father, the child or any public authority chargeable by law with the support of the child; provided that such an adjudication after the death of the defendant must be made only upon clear and convincing evidence. If paternity has been lawfully determined, or has been acknowledged in writing according to the laws of this state, the liabilities of the noncustodial parent may be enforced in the same or other proceedings by the custodial parent, the child, or any public authority which has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, necessary support and maintenance, and medical or funeral expenses for the custodial parent or the child. The trier of fact shall receive without the need for third-party foundation testimony certified, attested or sworn documentation as evidence of (a) childbirth records; (b) cost of filing fees; (c) court costs; (d) services of process fees; (e) mailing cost; (f) genetic tests and testing fees; (g) the department's attorney's fees; (h) in cases where the state or any of its entities or divisions have provided medical services to the child or the child's mother, all costs of prenatal care, birthing, postnatal care and any other medical expenses incurred by the child or by the mother as a consequence of the mother's pregnancy or delivery; and (i) funeral expenses. All costs and fees shall be ordered paid to the Department of Human Services in all cases successfully prosecuted with a minimum of Two Hundred Fifty Dollars (\$250.00) in attorney's fees or an amount determined by the court without submitting an affidavit. Proceedings may be instituted at any time until such child

attains the age of twenty-one (21) years unless the child has been emancipated as provided in Section 93-5-23 and Section 93-11-65. In the event of court-determined paternity, the surname of the child shall be that of the father, unless the judgment specifies otherwise.

- (2) If the alleged father in an action to determine paternity to which the Department of Human Services is a party fails to appear for a scheduled hearing after having been served with process or subsequent notice consistent with the Rules of Civil Procedure, his paternity of the child(ren) shall be established by the court if an affidavit sworn to by the mother averring the alleged father's paternity of the child has accompanied the complaint to determine paternity. Said affidavit shall constitute sufficient grounds for the court's finding of the alleged father's paternity without the necessity of the presence or testimony of the mother at the said hearing. The court shall, upon motion by the Department of Human Services, enter a judgment of paternity. Any person who shall willfully and knowingly file a false affidavit shall be subject to a fine of not more than One Thousand Dollars (\$1,000.00).
- (3) Upon application of both parents to the State Board of Health and receipt by the State Board of Health of a sworn acknowledgement of paternity executed by both parents subsequent to the birth of a child born out of wedlock, the birth certificate of the child shall be amended to show such paternity if paternity is not shown on the birth certificate. Upon request of the parents for the legitimization of a child under this section, the surname of the child shall be changed on the certificate to that of the father.
- (4) (a) A signed voluntary acknowledgment of paternity is subject to the right of any signatory to rescind the acknowledgment within the earlier of:
 - (i) Sixty (60) days; or
 - (ii) The date of a judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.
- (b) After the expiration of the sixty-day period specified in subsection (4)(a)(i) of this section, a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress or material mistake of fact, with the burden of proof upon the challenger; the legal responsibilities, including child support obligations, of any signatory arising from the acknowledgment may not be suspended during the pendency of the challenge, except for good cause shown.
- (c) During the sixty-day time period specified in subsection (4)(a)(i) of this section, the alleged father may request genetic testing through the Department of Human Services in accordance with the provisions of Section 93-9-21.
- (d) The sixty-day time limit, specified in subsection (4) (a) (i) of this section, for the right of the alleged father to rescind the signed voluntary acknowledgement of paternity shall be tolled from the date the alleged father files his formal application for genetic testing with the Department of Human Services until the date the test results are revealed to the alleged father by the department. After a total of sixty (60) calendar days have expired, not including any period of time tolled for the purpose of acquiring genetic testing through the department, the provisions of subsection (4) (b) of this section shall apply.

Sources: Codes, 1942, § 383-02; Laws, 1962, ch. 312, § 2; Laws, 1981, ch. 529, § 2; Laws, 1989, ch. 438, § 1; Laws, 1994, ch. 614, § 2; Laws, 1996, ch. 339, § 1; Laws, 1997, ch. 588, § 143; Laws, 1999, ch. 512, § 10; Laws, 2003, ch. 514, § 6; Laws, 2008, ch. 426, § 1; Laws, 2009, ch. 370, § 1, eff from and after July 1, 2009.

§ 93-9-11. Limitation on recovery from father.

The father's liabilities for past education and necessary support and maintenance and other expenses are limited to a period of one (1) year next preceding the commencement of an action.

Sources: Codes, 1942, § 383-03; Laws, 1962, ch. 312, § 3, eff from and after July 1, 1962.

§ 93-9-13. Limitation on recovery from father's estate.

The obligation of the estate of the father for liabilities under Section 93-9-7 is limited to amounts accrued prior to his death. However, in order to hold the estate of the father liable under Section 93-9-7, the action must be filed within one (1) year after the death of the father or within ninety (90) days after the first publication of notice to creditors to present their claims, whichever is less.

Sources: Codes, 1942, § 383-04; Laws, 1962, ch. 312, § 4; Laws, 1981, ch 529, § 3, eff from and after July 1, 1981.

§ 93-9-15. Jurisdiction and remedies; right to trial by jury.

The county court, the circuit court, or the chancery court has jurisdiction of an action under Sections 93-9-1 through 93-9-49, and all remedies for the enforcement of orders for expenses of pregnancy and confinement for a wife, or for education, necessary support and maintenance, or funeral expenses for legitimate children shall apply. The defendant must defend the cause in whichever court the action is commenced. The court has continuing jurisdiction to modify or revoke an order and to increase or decrease amounts fixed by order for future education and necessary support and maintenance. All remedies under the Uniform Reciprocal Enforcement of Support Act, and amendments thereto, are available for enforcement of duties of support and maintenance under Sections 93-9-1 through 93-9-49. Parties to an action to establish paternity shall not be entitled to a jury trial.

Sources: Codes, 1942, § 383-05; Laws, 1962, ch. 312, § 5; Laws, 1966, ch. 319, § 1; Laws, 1997, ch. 588, § 135; Laws, 2000, ch. 530, § 4, eff from and after July 1, 2000.

§ 93-9-17. Venue.

- (1) An action under Sections 93-9-1 through 93-9-49 may be brought in the county where the alleged father is present or has property; or in the county where the mother resides; or in the county where the child resides. However, if the alleged father resides or is domiciled in this state, upon the motion of the alleged father filed within thirty (30) days after the date the action is served upon him, the action shall be removed to the county where the alleged father resides or is domiciled. If no such motion is filed by the alleged father within thirty (30) days after the action is served upon him, the court shall hear the action in the county in which the action was brought.
- (2) Subsequent to an initial filing in an appropriate court, any action regarding paternity, support, enforcement or modification and to which the Department of Human Services is a party may be heard in any county by a court which would otherwise have jurisdiction and is a proper venue. Upon written request by the Department of Human Services, the clerk of the court of the original county shall transfer a certified copy of the court file to the clerk of the appropriate transfer county without need for application to the court. Such written request shall certify that the Department of Human Services has issued timely notification of the transfer in writing to all interested parties. Such written request and notice shall be entered into the court file by the transferring clerk of the transferring court. The transferred action shall remain on the docket of the transferred court in which the action is heard, subject to another such transfer.

Sources: Codes, 1942, § 383-06; Laws, 1962, ch. 312, § 6; Laws, 1992, ch. 560 § 1; Laws, 1997, ch. 588, § 136, eff from and after July 1, 1997.

§ 93-9-19. Time of trial; perpetuation of testimony.

If the issue of paternity is raised in an action commenced during the pregnancy of the mother, the trial shall not, without the consent of the alleged father, be held until after the birth or miscarriage, but during such delay testimony may be perpetuated according to the laws of this state.

Sources: Codes, 1942, § 383-07; Laws, 1962, ch. 312, § 7, eff from and after July 1, 1962.

§ 93-9-21. Blood tests and other tests; enforcement of order to submit; notice of witnesses testifying as to sexual intercourse with mother.

- (1) (a) In all cases brought pursuant to Title IV-D of the Social Security Act, upon sworn documentation by the mother, putative father, or the Department of Human Services alleging paternity, the department may issue an administrative order for paternity testing which requires the mother, putative father and minor child to submit themselves for paternity testing. The department shall send the putative father a copy of the Administrative Order and a Notice for Genetic Testing which shall include the date, time and place for collection of the putative father's genetic sample. The Department shall also send the putative father a Notice and Complaint to Establish Paternity which shall specify the date and time certain of the court hearing by certified mail, restricted delivery, return receipt requested. Notice shall be deemed complete as of the date of delivery as evidenced by the return receipt. The required notice may also be delivered by personal service upon the putative father in accordance with Rule 4 of the Mississippi Rules of Civil Procedure insofar as service of an administrative order or notice is concerned.
- (b) If the putative father does not submit to genetic testing, the court shall, without further notice, on the date and time previously set through the notice for hearing, review the documentation of the refusal to submit to genetic testing and make a determination as to whether the complaint to establish paternity should be granted. The refusal to submit to such testing shall create a rebuttable presumption of an admission to paternity by the putative father.
- (c) In any case in which the Department of Human Services orders genetic testing, the department is required to advance costs of such tests subject to recoupment from the alleged father if paternity is established. If either party challenges the original test results, the department shall order additional testing at the expense of the challenging party.

- (2) The court, on its own motion or on motion of the plaintiff or the defendant, shall order the mother, the alleged father and the child or children to submit to genetic tests and any other tests which reasonably prove or disprove the probability of paternity.

If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order for genetic testing as the rights of others and the interest of justice require.

- (3) Any party calling a witness or witnesses for the purpose of testifying that they had sexual intercourse with the mother at any possible time of conception of the child whose paternity is in question shall provide all other parties with the name and address of the witness at least twenty (20) days before the trial. If a witness is produced at the hearing for the purpose provided in this subsection but the party calling the witness failed to provide the twenty-day notice, the court may adjourn the proceeding for the purpose of taking a genetic test of the witness before hearing the testimony of the witness if the court finds that the party calling the witness acted in good faith.
- (4) The court shall ensure that all parties are aware of their right to request genetic tests under this section.
- (5) (a) Genetic tests shall be performed by a laboratory selected from the approved list as prepared and maintained by the Department of Human Services.
- (b) The Department of Human Services shall publicly issue a request for proposals, and such requests for proposals when issued shall contain terms and conditions relating to price, technology and such other matters as are determined by the department to be appropriate for inclusion or required by law. After responses to the request for proposals have been duly received, the department shall select the lowest and best bid(s) on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter into contract(s) with one or more of the laboratories submitting proposals. The department shall prepare a list of all laboratories with which it has contracted on these terms. The list and any updates thereto shall be distributed to all chancery clerks. To be eligible to appear on the list, a laboratory must meet the following requirements:

- (i) The laboratory is qualified to do business within the State of Mississippi;
- (ii) The laboratory can provide test results in less than fourteen (14) days; and
- (iii) The laboratory must have participated in the competitive procurement process.

Sources: Codes, 1942, § 383-08; Laws, 1962, ch. 312, § 8; Laws, 1987, ch. 455, § 1; Laws, 1990, ch. 543, § 3; Laws, 1997, ch. 588, § 133; Laws, 1999, ch. 512, § 2, eff from and after July 1, 1999.

§ 93-9-23. Blood tests and other tests; appointment of experts; affidavits of experts; challenging test results.

- (1) Genetic testing shall be made by experts qualified as examiners of genetic tests who shall be appointed by the court pursuant to Section 93-9-21(5). The expert shall attach to the report of the test results an affidavit stating in substance: (a) that the affiant has been appointed by the court to administer the test and shall give his name, address, telephone number, qualifications, education and experience; (b) how the mother, child and alleged father were identified when the samples were obtained; (c) who obtained the samples and how, when and where obtained; (d) the chain of custody of the samples from the time obtained until the tests were completed; (e) the results of the test and the probability of paternity as calculated by an expert based on the test results; (f) the amount of the fee for performing the test; and (g) the procedures performed to obtain the test results. In cases initiated or enforced by the Department of Human Services pursuant to Title IV-D of the Social Security Act, the Department of Human Services shall be responsible for paying the costs of any genetic testing when such testing is required by law to establish paternity, subject to recoupment from the defendant if paternity is established.
- (2) The expert or laboratory shall send all parties, or the attorney of record if a party is represented by counsel, a copy of the report by first class mail. The expert or laboratory shall file the original report with the clerk of the court along with proof of mailing to the parties or attorneys. A party may challenge the testing procedure within thirty (30) days of the date of mailing the results. If either party challenges the original test results, the court shall order additional testing at the expense of the challenging party.
- (3) If the court, in its discretion, finds cause to order additional testing, then it may do so using the same or another laboratory or expert. If there is no timely challenge to the original test results or if the court finds no cause to order additional testing, then the certified report shall be admitted as evidence in the proceeding as prima facie proof of its contents.
- (4) Upon request or motion of any party to the proceeding, the court may require persons making any analysis to appear as a witness and be subject to cross-examination, provided that the request or motion is made at least ten (10) days before the hearing. The court may require the party making the request or motion to pay the costs and/or fees for the expert witness' appearance.

Sources: Codes, 1942, § 383-09; Laws, 1962, ch. 312, § 9; Laws, 1987, ch. 455, § 2; Laws, 1991, ch. 573, § 139; Laws, 1994, ch. 363, § 1; Laws, 1997, ch. 588, § 142; Laws, 1999, ch. 512, § 3, eff from and after July 1, 1999.

§ 93-9-25. Blood tests and other tests; costs; compensation of experts.

The costs of the blood or other tests required by the court and the compensation of each expert witness appointed by the court shall be fixed at a reasonable amount. It shall be paid as the court shall order. The court may order that it be paid by the parties in such proportions and at such times as it shall prescribe, and that, after payment by either of the parties or both, all or part or none of it be taxed as costs in the action. The fee of an expert witness called by a party but not appointed by the court shall be paid by the party calling him but shall not be taxed as costs in the action.

Sources: Codes, 1942, § 383-10; Laws, 1962, ch. 312, § 10; Laws, 1987, ch. 455, § 3, eff from and after July 1, 1987.

§ 93-9-27. Blood tests; effect of test results; no right to jury trial in paternity proceedings.

- (1) If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, are that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly. If an expert concludes that the blood or other tests show the probability of paternity, that evidence shall be admitted.
- (2) There shall be a rebuttable presumption of paternity, affecting the burden of proof, if the court finds that the probability of paternity, as calculated by the experts qualified as examiners of genetic tests, is ninety-eight percent (98%) or greater. This presumption may only be rebutted by a preponderance of the evidence.
- (3) Parties to an action to establish paternity shall not be entitled to a jury trial.
- (4) The Department of Human Services may statistically report as positive, to the Administration for Children and Families within the United States Department of Health and Human Services, any putative paternity if the probability of paternity, as calculated by the experts qualified as examiners of genetic tests, is ninety-nine percent (99%) or greater, subject only to a later determination of nonpaternity ordered by a court under this chapter.

Sources: Codes, 1942, § 383-11; Laws, 1962, ch. 312, § 11; Laws, 1987, ch. 455, § 4; Laws, 1994, ch. 363, § 2; Laws, 2000, ch. 530, § 5; Laws, 2007, ch. 344, § 1, eff. from and after July 1, 2007.

§ 93-9-28. Procedures for voluntary acknowledgement of paternity.

- (1) The Mississippi State Department of Health in cooperation with the Mississippi Department of Human Services shall develop a form and procedure which may be used to secure a voluntary acknowledgement of paternity from the mother and father of any child born out of wedlock in Mississippi. The form shall clearly state on its face that the execution of the acknowledgement of paternity shall result in the same legal effect as if the father and mother had been married at the time of the birth of the child. The form shall also clearly indicate the right of the alleged father to request genetic testing through the Department of Human Services within the sixty-day time period specified in subsection (2)(a)(i) of this section and shall state the adverse effects and ramifications of not availing himself of this one-time opportunity to definitively establish the paternity of the child. When such form has been completed according to the established procedure and the signatures of both the mother and father have been notarized, then such voluntary acknowledgement shall constitute a full determination of the legal parentage of the child. The completed voluntary acknowledgement of paternity shall be filed with the Bureau of Vital Statistics of the Mississippi State Department of Health. The name of the father shall be entered on the certificate of birth upon receipt of the completed voluntary acknowledgement.
- (2)
 - (a) A signed voluntary acknowledgment of paternity is subject to the right of any signatory to rescind the acknowledgment within the earlier of:
 - (i) Sixty (60) days; or
 - (ii) The date of a judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.
 - (b) After the expiration of the sixty-day period specified in subsection (2)(a)(i) of this section, a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger; the legal responsibilities, including child support obligations, of any signatory arising from the acknowledgment may not be suspended during the pendency of the challenge, except for good cause shown.
 - (c) During the sixty-day time period specified in subsection (2)(a)(i) of this section, the alleged father may request genetic testing through the Department of Human Services in accordance with the provisions of Section 93-9-21.
 - (d) The sixty-day time limit, specified in subsection (2)(a)(i) of this section, for the right of the alleged father to rescind the signed voluntary acknowledgement of paternity shall be tolled from the date the alleged father files

his formal application for genetic testing with the Department of Human Services until the date the test results are revealed to the alleged father by the department. After a total of sixty (60) calendar days have expired, not including any period of time tolled for the purpose of acquiring genetic testing through the department, the provisions of subsection (2)(b) of this section shall apply.

- (3) The Mississippi State Department of Health and the Mississippi Department of Human Services shall cooperate to establish procedures to facilitate the voluntary acknowledgement of paternity by both father and mother at the time of the birth of any child born out of wedlock. Such procedures shall establish responsibilities for each of the departments and for hospitals, birthing centers, midwives, and/or other birth attendants to seek and report voluntary acknowledgements of paternity. In establishing such procedures, the departments shall provide for obtaining the Social Security account numbers of both the father and mother on voluntary acknowledgements.
- (4) Upon the birth of a child out of wedlock, the hospital, birthing center, midwife or other birth attendant shall provide an opportunity for the child's mother and natural father to complete an acknowledgement of paternity by giving the mother and natural father the appropriate forms and information developed through the procedures established in subsection (3). The hospital, birthing center, midwife or other birth attendant shall be responsible for providing printed information, and audio visual material if available, related to the acknowledgement of paternity, and shall be required to provide notary services needed for the completion of acknowledgements of paternity. The information described above shall be provided to the mother and natural father, if present and identifiable, within twenty-four (24) hours of birth or before the mother is released. Such information, including forms, brochures, pamphlets, video tapes and other media, shall be provided at no cost to the hospital, birthing center or midwife by the Mississippi State Department of Health, the Department of Human Services or other appropriate agency.

Sources: Laws, 1994, ch. 544, § 1; Laws, 1999, ch. 512, § 11; Laws, 2009, ch. 370, § 2, eff from and after July 1, 2009.

§ 93-9-29. Order.

- (1) If the finding be against the defendant, the court shall make an order of filiation, declaring paternity and for the support and education of the child.
- (2) The order of filiation shall specify the sum to be paid weekly or otherwise. In addition to providing for the support and education, the order shall also provide for the funeral expenses if the child has died; for the support of the child prior to the making of the order of filiation; and such other expenses as the court may deem proper. In the event the defendant has health insurance available to him through an employer or organization that may extend benefits to the dependents of such defendant, the order of filiation may require the defendant to exercise the option of additional coverage in favor of the child he is legally responsible to support.
- (3) The court may require the payment to be made to the mother, or to some person or corporation to be designated by the court as trustee, but if the child is or is likely to become a public charge on a county or the state, the public welfare agent of that county shall be made the trustee. The payment shall be directed to be made to a trustee if the mother does not reside within the jurisdiction of the court. The trustee shall report to the court annually, or oftener as directed by the court, the amounts received and paid over.

Sources: Codes, 1942, § 383-12; Laws, 1962, ch. 312, § 12; Laws, 1981, ch 529, § 4; Laws, 1985, ch. 518, § 17; Laws, 1989, ch. 511, § 6, eff from and after July 1, 1989.

§ 93-9-30. Full faith and credit to foreign paternity determinations.

In any proceeding in Mississippi, either before a court or administrative tribunal, wherein the question of paternity may arise, and a determination or adjudication of paternity has been made through either a voluntary acknowledgement procedure, an administrative determination or a judicial order in another state or jurisdiction, then upon certification of that determination or adjudication by competent administrative or judicial authority of such state or jurisdiction, the court or administrative tribunal in Mississippi shall give full faith and credit to that foreign determination or adjudication, and it shall be conclusive proof of its substance.

§ 93-9-31. Security; commitment; probation.

- (1) The court shall, if need be, require the father to give security by bond or other security, with sufficient sureties approved by the court, for the payment of the order of filiation. Such security, when required, shall not exceed three (3) times the total periodic sum the father shall be required to pay under the terms of the order of filiation in any one (1) calendar year. If bond or security be required, and in case the action has been instituted by a public welfare official, the defendant shall also be required to give security that he will indemnify the state and the county where the child was or may be born and every other county against any expense for the support and education of the child, which said undertaking shall also require that all arrears shall be paid by the principal and sureties. In default of such security, when required, the court may commit him to jail, or put him on probation. At any time within one (1) year he may be discharged from jail, but his liability to pay the judgment shall not be thereby affected.
- (2) Whenever any order of filiation has been made, but no bond or other security has been required for payment of support of the child, 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 due, or such person's legal representative, enter an order requiring that bond or other security be given by the father in accordance with and under such terms and conditions as provided for in subsection (1) of this section. The father shall, as in other civil actions, be served with process and shall be entitled to a hearing in such case.
- (3) Where security is given and default is made in any payment, the court shall cite the parties bound by the security requiring them to show cause why judgment should not be given against them and execution issued thereon. If the amount due and unpaid shall not be paid before the return day of the citation, and no cause be shown to the contrary, judgment shall be rendered against those served with the citation for the amount due and unpaid together with costs, and execution shall issue therefor, saving all remedies upon the bond for future default. The judgment is a lien on real estate and in other respects enforceable the same as other judgments. The amount collected on such judgment or such sums as may have been deposited as collateral, in lieu of bond when forfeited, may be used for the benefit of the child, as provided for in the order of filiation.
- (4) If at any time after an order of filiation in paternity proceedings shall have been made, and an undertaking given thereon, in accordance with the provisions of Sections 93-9-1 through 93-9-49 and such undertaking shall not be complied with, or that for any reason a recovery thereon cannot be had, or if the original undertaking shall have been complied with, and the sureties discharged therefrom, or if money were deposited in lieu of bail, and the same shall have been exhausted, and the natural child still needs support, the public welfare official of any county where the natural child for whose support the order of filiation was made shall be at the time, or the Commissioner of the State Welfare Department upon giving proof of the making of the order of filiation, the giving of the above-mentioned undertaking, and the noncompliance therewith, or that the sureties have been discharged from their liability, or that for any reason a recovery cannot be had on such undertaking, may apply to the court in such county having jurisdiction in filiation proceedings, for a warrant for the arrest of the defendant against whom such order of filiation was made, which shall be executed in the manner provided in criminal procedure for the execution of the warrant; upon the arrest and arraignment of the defendant in said court, and upon proof of the making of the order of filiation, the giving of the above-mentioned undertaking, and the noncompliance therewith, or that for any reason a recovery cannot be had on such undertaking, the said court shall make an order requiring him to give a new undertaking, which said undertaking shall also require that all arrears shall be paid by the principal and sureties, or upon his failure to give such new undertaking, shall commit him to jail, or put him on probation.
- (5) If the child and mother die, or the father and mother be legally married to each other, the court in which such security is filed, on proof of such fact, may cause the security to be marked "cancelled" and be surrendered to the obligors.

§ 93-9-33. Commitment for contempt.

The court also has power, on default as aforesaid, to adjudge the father in contempt and to order him committed to jail in the same manner and with the same powers as in case of commitment for default in giving security. The commitment of the father shall not operate to stay execution upon the judgment of the bond.

Sources: Codes, 1942, § 383-14; Laws, 1962, ch. 312, § 14, eff from and after July 1, 1962.

§ 93-9-35. Support by mother.

- (1) If a mother of a natural child be possessed of property and shall fail to support and educate her child, the court having jurisdiction, on the application of the guardian or next friend of the child or, if the child shall receive Temporary Assistance for Needy Families (TANF) benefits or other financial assistance, of the county human services agent or youth counselor, may examine into the matter and after a hearing may make an order charging the mother with the payment of money weekly or otherwise for the support and education of the child.
- (2) The court may require the mother to give security, by bond or other security, with sufficient sureties approved by the court, for the payment of the order. In default of such security, when required, the court may commit her to jail, or put her on probation. At any time within one (1) year she may be discharged from jail, but her liability to pay the judgment shall not be thereby affected.
- (3) Nothing in this section shall be deemed to relieve the father from liability for support and education of the child in accordance with the provisions of Sections 93-9-1 through 93-9-49.

Sources: Codes, 1942, § 383-15; Laws, 1962, ch. 312, § 15; Laws, 1997, ch. 316, § 18, eff from and after passage (approved March 12, 1997).

§ 93-9-37. False declaration of identity.

The making of a false complaint as to the identity of the father, or the aiding or abetting therein, shall be punishable as for perjury.

Sources: Codes, 1942, § 383-16; Laws, 1962, ch. 312, § 16, eff from and after July 1, 1962.

§ 93-9-39. Probation.

Upon a failure to give security as provided herein, the court, instead of imposing sentence or of committing the father or mother to jail, or as a condition of his or her release from jail, may place him or her on probation, upon such terms as to payment of support to or on behalf of the child, and as to personal reports, as the court may direct. Upon violation of the terms imposed, the court may proceed to impose the sentence and commit or recommit to jail in accordance with the sentence.

Sources: Codes, 1942, § 383-17; Laws, 1962, ch. 312, § 17, eff from and after July 1, 1962.

§ 93-9-41. Appeals.

An appeal in all cases may be taken by the defendant, a guardian ad litem appointed by the court for the child, the mother or her personal representative, or the public welfare official, from any final order or judgment of any court having jurisdiction of filiation proceedings, as provided for in Sections 93-9-1 through 93-9-49, directly to the supreme court within thirty (30) days after the entry of said order of judgment.

No appeal however shall operate as a stay of execution unless the defendant shall give the security provided for in Sections 93-9-1 through 93-9-49, and further security to pay the costs of such appeal. If any such appeal shall be taken by

a guardian ad litem, appointed for the child by the court, the court may in its discretion allow payment, for the actual disbursements made by the said guardian ad litem for taking appeal. When allowed by the judge and duly audited, said disbursement shall become a county charge and shall be paid by the county.

Sources: Codes, 1942, § 383-18; Laws, 1962, ch. 312, § 18, eff from and after July 1, 1962.

§ 93-9-43. Prosecuting official.

It shall be the duty of the county attorney, in counties having a county attorney, (in the county in which the complaint is made) to prosecute all cases relating to natural children where the complainant is a state or county public welfare official. He shall receive as compensation for his services, when and if performed, not to exceed the sum of one hundred dollars (\$100.00) for any one month, in addition to compensation provided otherwise, out of the county treasury upon an order of the county, circuit, or chancery judge. In counties not having a county attorney, the complaint shall be prosecuted by the district attorney, or by an attorney representing the state or county public welfare official as the petitioner, who shall receive the same compensation as herein provided for the county attorney.

Sources: Codes, 1942, § 383-19; Laws, 1962, ch. 312, § 19, eff from and after July 1, 1962.

§ 93-9-45. Costs.

If the court makes an order of filiation, declaring paternity and for the support and maintenance, and education of the child, court costs, including the cost of the legal services of the attorney representing the petitioner, expert witness fees, the court clerk, sheriff and other costs shall be taxed against the defendant.

Sources: Codes, 1942, § 383-20; Laws, 1962, ch. 312, § 20, eff from and after July 1, 1962.

§ 93-9-47. No explicit reference to illegitimacy to appear in certain records.

In all records, certificates or other papers hereafter made or executed, other than birth records and certificates or records of judicial proceedings in which the question of birth out of wedlock is at issue, requiring a declaration by or notice to the mother of a child born out of wedlock or otherwise requiring a reference to the relation of a mother to such a child, it shall be sufficient for all purposes to refer to the mother as the parent having the sole custody of the child, and no explicit reference shall be made to illegitimacy.

Sources: Codes, 1942, § 383-21; Laws, 1962, ch. 312, § 21, eff from and after July 1, 1962.

§ 93-9-49. Settlement agreements.

An agreement of settlement with the alleged father is binding only when approved by the court.

Sources: Codes, 1942, § 383-22; Laws, 1962, ch. 312, § 22, eff from and after July 1, 1962.