

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 267

1 AN ACT TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT THERE SHALL BE NO PRESUMPTION THAT CHILD CUSTODY  
3 SHOULD BE AWARDED TO THE MOTHER DURING DIVORCE PROCEEDINGS; TO  
4 AMEND SECTION 93-5-23, MISSISSIPPI CODE OF 1972, IN CONFORMITY  
5 THERETO; AND FOR RELATED PURPOSES.

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

7 SECTION 1. Section 93-5-24, Mississippi Code of 1972, is  
8 amended as follows:

9 93-5-24. (1) Custody shall be awarded as follows according  
10 to the best interests of the child:

11 (a) Physical and legal custody to both parents jointly  
12 pursuant to subsections 2 through 7.

13 (b) Physical custody to both parents jointly pursuant  
14 to subsections 2 through 7 and legal custody to either parent.

15 (c) Legal custody to both parents jointly pursuant to  
16 subsections 2 through 7 and physical custody to either parent.

17 (d) Physical and legal custody to either parent.

18 (e) Upon a finding by the court that both of the  
19 parents of the child have abandoned or deserted such child or that  
20 both such parents are mentally, morally or otherwise unfit to rear  
21 and train the child the court may award physical and legal custody  
22 to:

23 (i) The person in whose home the child has been  
24 living in a wholesome and stable environment; or

25 (ii) Physical and legal custody to any other  
26 person deemed by the court to be suitable and able to provide  
27 adequate and proper care and guidance for the child.

28           In making an order for custody to either parent or to both  
29 parents jointly, the court, in its discretion, may require the  
30 parents to submit to the court a plan for the implementation of  
31 the custody order.

32           (2) Joint custody may be awarded where irreconcilable  
33 differences is the ground for divorce, in the discretion of the  
34 court, upon application of both parents.

35           (3) In other cases, joint custody may be awarded, in the  
36 discretion of the court, upon application of one (1) or both  
37 parents.

38           (4) There shall be a presumption that joint custody is in  
39 the best interests of a minor child where both parents have agreed  
40 to an award of joint custody.

41           (5) (a) For the purposes of this section, "joint custody"  
42 means joint physical and legal custody.

43           (b) For the purposes of this section, "physical  
44 custody" means those periods of time in which a child resides with  
45 or is under the care and supervision of one of the parents.

46           (c) For the purposes of this section, "joint physical  
47 custody" means that each of the parents shall have significant  
48 periods of physical custody. Joint physical custody shall be  
49 shared by the parents in such a way so as to assure a child of  
50 frequent and continuing contact with both parents.

51           (d) For the purposes of this section, "legal custody"  
52 means the decision-making rights, the responsibilities and the  
53 authority relating to the health, education and welfare of a  
54 child.

55           (e) For the purposes of this section, "joint legal  
56 custody" means that the parents or parties share the  
57 decision-making rights, the responsibilities and the authority  
58 relating to the health, education and welfare of a child. An  
59 award of joint legal custody obligates the parties to exchange  
60 information concerning the health, education and welfare of the

61 minor child, and to confer with one another in the exercise of  
62 decision-making rights, responsibilities and authority.

63 An award of joint physical and legal custody obligates the  
64 parties to exchange information concerning the health, education  
65 and welfare of the minor child, and unless allocated, apportioned  
66 or decreed, the parents or parties shall confer with one another  
67 in the exercise of decision-making rights, responsibilities and  
68 authority.

69 (6) Any order for joint custody may be modified or  
70 terminated upon the petition of both parents or upon the petition  
71 of one (1) parent showing that a material change in circumstances  
72 has occurred.

73 (7) There shall be no presumption that it is in the best  
74 interest of a child that a mother be awarded either legal or  
75 physical custody.

76 (8) Notwithstanding any other provision of law, access to  
77 records and information pertaining to a minor child, including but  
78 not limited to medical, dental and school records, shall not be  
79 denied to a parent because the parent is not the child's custodial  
80 parent.

81 SECTION 2. Section 93-5-23, Mississippi Code of 1972, is  
82 amended as follows:

83 93-5-23. When a divorce shall be decreed from the bonds of  
84 matrimony, the court may, in its discretion, having regard to the  
85 circumstances of the parties and the nature of the case, as may  
86 seem equitable and just, make all orders touching the care,  
87 custody and maintenance of the children of the marriage, and also  
88 touching the maintenance and alimony of the wife or the husband,  
89 or any allowance to be made to her or him, and shall, if need be,  
90 require bond, sureties or other guarantee for the payment of the  
91 sum so allowed. Orders touching on the custody of the children of  
92 the marriage shall be made in accordance with the provisions of  
93 Section 93-5-24. The court may afterwards, on petition, change

94 the decree, and make from time to time such new decrees as the  
95 case may require. However, where proof shows that both parents  
96 have separate incomes or estates, the court may require that each  
97 parent contribute to the support and maintenance of the children  
98 of the marriage in proportion to the relative financial ability of  
99 each. In the event a legally responsible parent has health  
100 insurance available to him or her through an employer or  
101 organization that may extend benefits to the dependents of such  
102 parent, any order of support issued against such parent may  
103 require him or her to exercise the option of additional coverage  
104 in favor of such children as he or she is legally responsible to  
105 support.

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

118 Whenever in any proceeding in the chancery court concerning  
119 the custody of a child a party alleges that the child whose  
120 custody is at issue has been the victim of sexual or physical  
121 abuse by the other party, the court may, on its own motion, grant  
122 a continuance in the custody proceeding only until such allegation  
123 has been investigated by the Department of Human Services. At the  
124 time of ordering such continuance the court may direct the party,  
125 and his attorney, making such allegation of child abuse to report  
126 in writing and provide all evidence touching on the allegation of

127 abuse to the Department of Human Services. The Department of  
128 Human Services shall investigate such allegation and take such  
129 action as it deems appropriate and as provided in such cases under  
130 the Youth Court Law (being Chapter 21 of Title 43, Mississippi  
131 Code of 1972) or under the laws establishing family courts (being  
132 Chapter 23 of Title 43, Mississippi Code of 1972).

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

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

150 The duty of support of a child terminates upon the  
151 emancipation of the child. The court may determine that  
152 emancipation has occurred and no other support obligation exists  
153 when the child:

- 154 (a) Attains the age of twenty-one (21) years, or
- 155 (b) Marries, or
- 156 (c) Discontinues full-time enrollment in school and  
157 obtains full-time employment prior to attaining the age of  
158 twenty-one (21) years, or
- 159 (d) Voluntarily moves from the home of the custodial

160 parent or guardian and establishes independent living arrangements  
161 and obtains full-time employment prior to attaining the age of  
162 twenty-one (21) years.

163 SECTION 3. This act shall take effect and be in force from  
164 and after July 1, 1999.