

By: Moak, Guice

To: Judiciary A

HOUSE BILL NO. 214
(As Passed the House)

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 interest 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, 2000.