

By: Representative Reeves

To: Judiciary A

HOUSE BILL NO. 1106

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-5-24, MISSISSIPPI
2 CODE OF 1972, TO CLARIFY THAT NEITHER PARENT SHALL BE GIVEN
3 PREFERENCE FOR CUSTODY OF A CHILD BASED ON GENDER; AND FOR RELATED
4 PURPOSES.

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

6 **SECTION 1.** Section 93-5-23, Mississippi Code of 1972, is
7 amended as follows:

8 93-5-23. When a divorce shall be decreed from the bonds of
9 matrimony, the court may, in its discretion, having regard to the
10 circumstances of the parties and the nature of the case, as may
11 seem equitable and just, make all orders touching the care,
12 custody and maintenance of the children of the marriage, and also
13 touching the maintenance and alimony of the wife or the husband,
14 or any allowance to be made to her or him, and shall, if need be,
15 require bond, sureties or other guarantee for the payment of the
16 sum so allowed. Orders touching on the custody of the children of
17 the marriage shall be made in accordance with the provisions of
18 Section 93-5-24. The court may afterwards, on petition, change
19 the decree, and make from time to time such new decrees as the
20 case may require. However, where proof shows that both parents
21 have separate incomes or estates, the court may require that each
22 parent contribute to the support and maintenance of the children
23 of the marriage in proportion to the relative financial ability of
24 each. In the event a legally responsible parent has health
25 insurance available to him or her through an employer or
26 organization that may extend benefits to the dependents of such
27 parent, any order of support issued against such parent may
28 require him or her to exercise the option of additional coverage



29 in favor of such children as he or she is legally responsible to
30 support.

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

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

58 If after investigation by the Department of Human Services or
59 final disposition by the youth court or family court allegations
60 of child abuse are found to be without foundation, the chancery
61 court shall order the alleging party to pay all court costs and



62 reasonable attorney's fees incurred by the defending party in
63 responding to such allegation.

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

75 The duty of support of a child terminates upon the
76 emancipation of the child. The court may determine that
77 emancipation has occurred and no other support obligation exists
78 when the child:

79 (a) Attains the age of twenty-one (21) years, or

80 (b) Marries, or

81 (c) Discontinues full-time enrollment in school and
82 obtains full-time employment prior to attaining the age of
83 twenty-one (21) years, or

84 (d) Voluntarily moves from the home of the custodial
85 parent or guardian and establishes independent living arrangements
86 and obtains full-time employment prior to attaining the age of
87 twenty-one (21) years.

88 No preference shall be given to any party to any custody case
89 on account of gender, the male and female being presumed to be
90 equally fit insofar as their respective genders are concerned.

91 **SECTION 2.** Section 93-5-24, Mississippi Code of 1972, is
92 amended as follows:

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



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

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

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

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

102 (e) Upon a finding by the court that both of the
103 parents of the child have abandoned or deserted such child or that
104 both such parents are mentally, morally or otherwise unfit to rear
105 and train the child the court may award physical and legal custody
106 to:

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

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

112 In making an order for custody to either parent or to both
113 parents jointly, the court, in its discretion, may require the
114 parents to submit to the court a plan for the implementation of
115 the custody order.

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

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

122 (4) There shall be a presumption that joint custody is in
123 the best interest of a minor child where both parents have agreed
124 to an award of joint custody.

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



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

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

135 (d) For the purposes of this section, "legal custody"
136 means the decision-making rights, the responsibilities and the
137 authority relating to the health, education and welfare of a
138 child.

139 (e) For the purposes of this section, "joint legal
140 custody" means that the parents or parties share the
141 decision-making rights, the responsibilities and the authority
142 relating to the health, education and welfare of a child. An
143 award of joint legal custody obligates the parties to exchange
144 information concerning the health, education and welfare of the
145 minor child, and to confer with one another in the exercise of
146 decision-making rights, responsibilities and authority.

147 An award of joint physical and legal custody obligates the
148 parties to exchange information concerning the health, education
149 and welfare of the minor child, and unless allocated, apportioned
150 or decreed, the parents or parties shall confer with one another
151 in the exercise of decision-making rights, responsibilities and
152 authority.

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

157 (7) No preference shall be given to any party to any custody
158 case on account of gender, the male and female being presumed to
159 be equally fit insofar as their respective genders are concerned.



160 (8) Notwithstanding any other provision of law, access to
161 records and information pertaining to a minor child, including but
162 not limited to medical, dental and school records, shall not be
163 denied to a parent because the parent is not the child's custodial
164 parent.

165 **SECTION 3.** This act shall take effect and be in force from
166 and after July 1, 2002.

