

By: Representatives Whittington, McBride,
Brown, Watson, Barnett (116th), Eads,
Fredericks, Mayo

To: Judiciary A

HOUSE BILL NO. 981

1 AN ACT TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF 1972, TO
2 CREATE A PRESUMPTION THAT IT IS NOT IN THE BEST INTEREST OF THE
3 CHILD TO AWARD SOLE OR JOINT CUSTODY OF A CHILD TO A PARENT WHO
4 HAS A HISTORY OF PERPETRATING FAMILY VIOLENCE OR SEXUAL ABUSE; TO
5 PROVIDE THAT THE PRESUMPTION AGAINST CUSTODY SHALL BE OVERCOME
6 ONLY BY A PREPONDERANCE OF THE EVIDENCE THAT THE PERPETRATING
7 PARENT HAS MET CERTAIN REQUIREMENTS; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 93-5-24, Mississippi Code of 1972, is
10 amended as follows:

11 93-5-24. (1) Custody shall be awarded as follows according
12 to the best interests of the child:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

78 (8) (a) There is created a presumption that it is not in
79 the best interest of a child to award sole or joint custody of a
80 child to a parent who has a history of perpetrating family
81 violence, with one or more subsequent convictions of such charges.
82 For the purposes of this section, the term "history of
83 perpetrating family violence" means a pattern of behavior or a
84 course of conduct, and not a single incident. The presumption
85 against custody may be overcome only by a preponderance of the
86 evidence that (i) the perpetrating parent has successfully
87 completed a treatment program defined as a course of evaluation
88 and psychotherapy designed specifically for perpetrators of family
89 violence and conducted by licensed mental health professionals,
90 (ii) the perpetrating parent is not abusing alcohol or illegally
91 using drugs and (iii) the best interests of the child or children
92 requires that parent's participation as a custodial parent because
93 of the other parent's absence, mental illness or substance abuse
94 or other such circumstances that affect the best interests of the
95 child or children. Otherwise, the presumption may be overcome



96 only if the court finds evidence that there is no significant risk
97 of future family violence coupled with additional extraordinary
98 circumstances that warrant the rejection of the presumption,
99 including, but not limited to, habitual drug or alcohol abuse by
100 the nonabusive parent that renders that parent unable to
101 satisfactorily care for the child or children. The fact that the
102 abused parent suffers from effects of the abuse are not grounds
103 for denying that parent custody.

104 (b) If the court finds that both parents have a history
105 of perpetrating family violence, custody may be awarded solely to
106 the parent who is less likely to continue to perpetrate family
107 violence. In such case, the court shall mandate completion of a
108 treatment program by the custodial parent. If necessary to
109 protect the welfare of the child, custody may be awarded to a
110 suitable third person, who agrees not to allow access to a violent
111 parent, except as ordered by the court.

112 (c) If the court finds that a person has a history of
113 perpetrating family violence, the court may allow only supervised
114 child visitation with that parent, conditioned upon that parent's
115 participation in and completion of a treatment program.
116 Unsupervised visitation may only be allowed if it is shown by a
117 preponderance of the evidence that the violent parent has
118 successfully completed a treatment program, is not abusing alcohol
119 or illegal drugs, poses no danger to the child, and that such
120 visitation is in the child's best interests.

121 (d) If the court finds that a parent has sexually
122 abused his or her child or children, the court shall prohibit all
123 visitation and contact between the abusive parent and the children
124 until such time as the court finds that the abusive parent has
125 successfully completed a treatment program designed for such
126 sexual abusers and that supervised visitation is in the best
127 interests of the child.



128 (e) For the purposes of this section, the term "family
129 violence" is defined as physical harm, bodily injury, sexual
130 activity compelled by physical force, simple or aggravated
131 assault, or the intentional infliction of reasonable fear of
132 imminent physical harm, bodily injury, sexual activity compelled
133 by physical force, or simple or aggravated assault committed by
134 one (1) parent against the other parent, the child or children of
135 either or both of the parents, or the perpetrator's current spouse
136 or cohabitating intimate partner. Family violence does not
137 include reasonable acts of self-defense used by one (1) parent to
138 protect himself or herself or a child in the family from the
139 violence of the other parent or reasonable physical discipline of
140 a child or children, such as spanking.

141 (f) All court costs, attorney's fees, evaluation fees
142 and expert witness fees, in a divorce, child custody or child
143 visitation action involving allegations of family violence where
144 there has been a conviction for an incident of family violence
145 shall be paid by the convicted party.

146 (9) Notwithstanding any other provision of law, access to
147 records and information pertaining to a minor child, including,
148 but not limited to, medical, dental and school records, shall not
149 be denied to a parent because the parent is not the child's
150 custodial parent.

151 **SECTION 2.** This act shall take effect and be in force from
152 and after July 1, 2003.

