

By: Representative Eads

To: Judiciary A

HOUSE BILL NO. 1167

1 AN ACT TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF 1972, TO  
2 CREATE A REBUTTABLE PRESUMPTION THAT IT IS NOT IN THE BEST  
3 INTEREST OF A CHILD TO BE PLACED IN THE CUSTODY OF AN ABUSIVE  
4 PARENT; AND FOR RELATED PURPOSES.

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

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

8 93-5-24. (1) Custody shall be awarded as follows according  
9 to the best interests of the child:

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

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

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

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

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

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

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

27 In making an order for custody to either parent or to both  
28 parents jointly, the court, in its discretion, may require the



29 parents to submit to the court a plan for the implementation of  
30 the custody order.

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

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

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

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

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

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

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

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



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

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

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

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

80 (9) In every proceeding where the custody of a child is in  
81 dispute, there shall be a rebuttable presumption that it is  
82 detrimental to the child and not in the best interest of the child  
83 to be placed in sole custody, joint legal custody or joint  
84 physical custody of a parent who has a history of perpetrating  
85 family violence. The court may find a history of perpetrating  
86 family violence if the court finds, by a preponderance of the  
87 evidence, one (1) incident of family violence that has resulted in  
88 serious bodily injury to, or a pattern of family violence against,  
89 the party making the allegation or a family household member of  
90 either party. The court shall make written findings to document  
91 how and why the presumption was or was not triggered.

92 (10) (a) This presumption may only be rebutted by a  
93 preponderance of the evidence.



94           (b) In determining whether the presumption set forth in  
95 subsection (9) has been overcome, the court shall consider all of  
96 the following factors:

97           (i) Whether the perpetrator of family violence has  
98 demonstrated that giving sole or joint physical or legal custody  
99 of a child to the perpetrator is in the best interest of the child  
100 because of the other parent's absence, mental illness, or  
101 substance abuse or such other circumstances which affect the best  
102 interest of the child or children;

103           (ii) Whether the perpetrator has successfully  
104 completed a batterer's treatment program;

105           (iii) Whether the perpetrator has successfully  
106 completed a program of alcohol or drug abuse counseling if the  
107 court determines that counseling is appropriate;

108           (iv) Whether the perpetrator has successfully  
109 completed a parenting class if the court determines the class to  
110 be appropriate;

111           (v) If the perpetrator is on probation or parole,  
112 whether he or she is restrained by a protective order granted  
113 after a hearing, and whether he or she has complied with its terms  
114 and conditions; and

115           (vi) Whether the perpetrator of domestic violence  
116 has committed any further acts of domestic violence.

117           (c) The court shall make written findings to document  
118 how and why the presumption was or was not rebutted.

119           (11) If the court finds that both parents have a history of  
120 perpetrating family violence, custody shall be awarded solely to  
121 the parent less likely to continue to perpetrate family violence.  
122 In such a case, the court may mandate completion of a treatment  
123 program by the custodial parent. If necessary to protect the  
124 child, custody may be awarded to a suitable third person, provided  
125 that the person would not allow access to a violent parent except  
126 as ordered by the court. In cases in which both parents are



127 perpetrators of domestic violence, this presumption shall not be  
128 applicable.

129 (12) If the court finds that the allegations of domestic  
130 violence are completely unfounded, the chancery court may order  
131 the alleging party to pay all court costs and reasonable  
132 attorney's fees incurred by the defending party in responding to  
133 such allegation.

134 (13) (a) A court may award visitation by a parent who  
135 committed domestic or family violence only if the court finds that  
136 adequate provision for the safety of the child and the parent who  
137 is a victim of domestic or family violence can be made.

138 (b) In a visitation order, a court may take any of the  
139 following actions:

140 (i) Order an exchange of the child to occur in a  
141 protected setting;

142 (ii) Order visitation supervised in a manner to be  
143 determined by the court;

144 (iii) Order the perpetrator of domestic or family  
145 violence to attend and complete to the satisfaction of the court,  
146 a program of intervention for perpetrators or other designated  
147 counseling as a condition of visitation;

148 (iv) Order the perpetrator of domestic or family  
149 violence to abstain from possession or consumption of alcohol or  
150 controlled substances during the visitation and for twenty-four  
151 (24) hours preceding the visitation;

152 (v) Order the perpetrator of domestic or family  
153 violence to pay a fee to defray the cost of supervised visitation;

154 (vi) Prohibit overnight visitation;

155 (vii) Require a bond from the perpetrator of  
156 domestic or family violence for the return and safety of the  
157 child; or



158                   (viii) Impose any other condition that is deemed  
159 necessary to provide for the safety of the child, the victim of  
160 family or domestic violence or other family or household member.

161                   (c) Whether or not visitation is allowed, the court may  
162 order the address of the child of the victim of family or domestic  
163 violence to be kept confidential.

164                   (d) The court may refer but shall not order an adult  
165 who is a victim of family or domestic violence to attend  
166 counseling relating to the victim's status or behavior as a  
167 victim, individually or with the perpetrator of domestic or family  
168 violence, as a condition of receiving custody of a child or as a  
169 condition of visitation.

170                   (e) If a court allows a family or household member to  
171 supervise visitation, the court shall establish conditions to be  
172 followed during visitation.

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

