

By: Senator(s) White

To: Judiciary

SENATE BILL NO. 2673
(As Sent to Governor)

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 or both parents.

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

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

41 (b) For the purposes of this section, "physical
42 custody" means those periods of time in which a child resides with
43 or is under the care and supervision of one (1) of the parents.

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

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

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



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

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

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

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

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

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



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

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

102 2. Whether the perpetrator has successfully
103 completed a batterer's treatment program;

104 3. Whether the perpetrator has successfully
105 completed a program of alcohol or drug abuse counseling if the
106 court determines that counseling is appropriate;

107 4. Whether the perpetrator has successfully
108 completed a parenting class if the court determines the class to
109 be appropriate;

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

114 6. Whether the perpetrator of domestic
115 violence has committed any further acts of domestic violence.

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

118 (b) (i) If custody is awarded to a suitable third
119 person, it shall not be until the natural grandparents of the
120 child have been excluded and such person shall not allow access to
121 a violent parent except as ordered by the court.

122 (ii) If the court finds that both parents have a
123 history of perpetrating family violence, but the court finds that
124 parental custody would be in the best interest of the child,
125 custody may be awarded solely to the parent less likely to



126 continue to perpetrate family violence. In such a case, the court
127 may mandate completion of a treatment program by the custodial
128 parent.

129 (c) If the court finds that the allegations of domestic
130 violence are completely unfounded, the chancery court shall 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 allegations.

134 (d) (i) 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 (ii) In a visitation order, a court may take any
139 of the following actions:

140 1. Order an exchange of the child to occur in
141 a protected setting;

142 2. Order visitation supervised in a manner to
143 be determined by the court;

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

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

152 5. Order the perpetrator of domestic or
153 family violence to pay a fee to defray the cost of supervised
154 visitation;

155 6. Prohibit overnight visitation;

156 7. Require a bond from the perpetrator of
157 domestic or family violence for the return and safety of the
158 child; or



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

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

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

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

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

