

By: Senator(s) Doty, Branning, Wiggins

To: Judiciary, Division A

SENATE BILL NO. 2418

1 AN ACT TO AMEND SECTION 93-5-1, MISSISSIPPI CODE OF 1972, TO
2 CREATE DOMESTIC VIOLENCE AS AN ADDITIONAL GROUND FOR DIVORCE; AND
3 FOR RELATED PURPOSES.

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

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

7 93-5-1. Divorces from the bonds of matrimony may be decreed
8 to the injured party for any one or more of the following * * *
9 thirteen (13) causes:

10 First. Natural impotency.

11 Second. Adultery, unless it should appear that it was
12 committed by collusion of the parties for the purpose of procuring
13 a divorce, or unless the parties cohabited after a knowledge by
14 complainant of the adultery.

15 Third. Being sentenced to any penitentiary, and not pardoned
16 before being sent there.

17 Fourth. Willful, continued and obstinate desertion for the
18 space of one (1) year.



19 Fifth. Habitual drunkenness.

20 Sixth. Habitual and excessive use of opium, morphine or
21 other like drug.

22 Seventh. Habitual cruel and inhuman treatment.

23 Eighth. Having mental illness or an intellectual disability
24 at the time of marriage, if the party complaining did not know of
25 that infirmity.

26 Ninth. Marriage to some other person at the time of the
27 pretended marriage between the parties.

28 Tenth. Pregnancy of the wife by another person at the time
29 of the marriage, if the husband did not know of the pregnancy.

30 Eleventh. Either party may have a divorce if they are
31 related to each other within the degrees of kindred between whom
32 marriage is prohibited by law.

33 Twelfth. Incurable mental illness. However, no divorce
34 shall be granted upon this ground unless the party with mental
35 illness has been under regular treatment for mental illness and
36 causes thereof, confined in an institution for persons with mental
37 illness for a period of at least three (3) years immediately
38 preceding the commencement of the action. However, transfer of a
39 party with mental illness to his or her home for treatment or a
40 trial visit on prescription or recommendation of a licensed
41 physician, which treatment or trial visit proves unsuccessful
42 after a bona fide effort by the complaining party to effect a
43 cure, upon the reconfinement of the party with mental illness in



44 an institution for persons with mental illness, shall be regular
45 treatment for mental illness and causes thereof, and the period of
46 time so consumed in seeking to effect a cure or while on a trial
47 visit home shall be added to the period of actual confinement in
48 an institution for persons with mental illness in computing the
49 required period of three (3) years confinement immediately
50 preceding the beginning of the action. No divorce shall be
51 granted because of mental illness until after a thorough
52 examination of the person with mental illness by two (2)
53 physicians who are recognized authorities on mental diseases. One
54 (1) of those physicians shall be either the superintendent of a
55 state psychiatric hospital or institution or a veterans hospital
56 for persons with mental illness in which the patient is confined,
57 or a member of the medical staff of that hospital or institution
58 who has had the patient in charge. Before incurable mental
59 illness can be successfully proven as a ground for divorce, it
60 shall be necessary that both of those physicians make affidavit
61 that the patient is a person with mental illness at the time of
62 the examination, and both affidavits shall be made a part of the
63 permanent record of the divorce proceedings and shall create the
64 prima facie presumption of incurable mental illness, such as would
65 justify a divorce based on that ground. Service of process shall
66 be made on the superintendent of the hospital or institution in
67 which the defendant is a patient. If the patient is in a hospital
68 or institution outside the state, process shall be served by



69 publication, as in other cases of service by publication, together
70 with the sending of a copy by registered mail to the
71 superintendent of the hospital or institution. In addition,
72 process shall be served upon the next blood relative and guardian,
73 if any. If there is no legal guardian, the court shall appoint a
74 guardian ad litem to represent the interest of the person with
75 mental illness. The relative or guardian and superintendent of
76 the hospital or institution shall be entitled to appear and be
77 heard upon any and all issues. The status of the parties as to
78 the support and maintenance of the person with mental illness
79 shall not be altered in any way by the granting of the divorce.

80 However, in the discretion of the chancery court, and in
81 those cases as the court may deem it necessary and proper, before
82 any such decree is granted on the ground of incurable mental
83 illness, the complainant, when ordered by the court, shall enter
84 into bond, to be approved by the court, in such an amount as the
85 court may think just and proper, conditioned for the care and
86 keeping of the person with mental illness during the remainder of
87 his or her natural life, unless the person with mental illness has
88 a sufficient estate in his or her own right for that purpose.

89 Thirteenth. One or more instances of domestic violence as
90 defined in Section 97-3-7, if established by clear and convincing
91 evidence.

92 **SECTION 2.** This act shall take effect and be in force from
93 and after July 1, 2016.

