

By: Senator(s) Doty, Wiggins, Branning,
Jackson (11th)

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2703

1 AN ACT TO AMEND SECTION 93-5-1, MISSISSIPPI CODE OF 1972, TO
2 CREATE DOMESTIC VIOLENCE AS ADDITIONAL GROUNDS FOR FAULT DIVORCE;
3 AND 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 twelve
9 (12) 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~~ If established by clear and
23 convincing evidence, cruel and inhuman treatment, including one or
24 more incidents of domestic violence where the perpetrator: (a)
25 attempted to cause or purposely, knowingly or recklessly caused
26 bodily injury to the complaining spouse; or (b) attempted by
27 physical menace to put the complaining spouse in fear of imminent
28 serious bodily harm.

29 Eighth. Having mental illness or an intellectual disability
30 at the time of marriage, if the party complaining did not know of
31 that infirmity.

32 Ninth. Marriage to some other person at the time of the
33 pretended marriage between the parties.

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

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

39 Twelfth. Incurable mental illness. However, no divorce
40 shall be granted upon this ground unless the party with mental
41 illness has been under regular treatment for mental illness and
42 causes thereof, confined in an institution for persons with mental
43 illness for a period of at least three (3) years immediately



44 preceding the commencement of the action. However, transfer of a
45 party with mental illness to his or her home for treatment or a
46 trial visit on prescription or recommendation of a licensed
47 physician, which treatment or trial visit proves unsuccessful
48 after a bona fide effort by the complaining party to effect a
49 cure, upon the reconfinement of the party with mental illness in
50 an institution for persons with mental illness, shall be regular
51 treatment for mental illness and causes thereof, and the period of
52 time so consumed in seeking to effect a cure or while on a trial
53 visit home shall be added to the period of actual confinement in
54 an institution for persons with mental illness in computing the
55 required period of three (3) years confinement immediately
56 preceding the beginning of the action. No divorce shall be
57 granted because of mental illness until after a thorough
58 examination of the person with mental illness by two (2)
59 physicians who are recognized authorities on mental diseases. One
60 (1) of those physicians shall be either the superintendent of a
61 state psychiatric hospital or institution or a veterans hospital
62 for persons with mental illness in which the patient is confined,
63 or a member of the medical staff of that hospital or institution
64 who has had the patient in charge. Before incurable mental
65 illness can be successfully proven as a ground for divorce, it
66 shall be necessary that both of those physicians make affidavit
67 that the patient is a person with mental illness at the time of
68 the examination, and both affidavits shall be made a part of the



69 permanent record of the divorce proceedings and shall create the
70 prima facie presumption of incurable mental illness, such as would
71 justify a divorce based on that ground. Service of process shall
72 be made on the superintendent of the hospital or institution in
73 which the defendant is a patient. If the patient is in a hospital
74 or institution outside the state, process shall be served by
75 publication, as in other cases of service by publication, together
76 with the sending of a copy by registered mail to the
77 superintendent of the hospital or institution. In addition,
78 process shall be served upon the next blood relative and guardian,
79 if any. If there is no legal guardian, the court shall appoint a
80 guardian ad litem to represent the interest of the person with
81 mental illness. The relative or guardian and superintendent of
82 the hospital or institution shall be entitled to appear and be
83 heard upon any and all issues. The status of the parties as to
84 the support and maintenance of the person with mental illness
85 shall not be altered in any way by the granting of the divorce.

86 However, in the discretion of the chancery court, and in
87 those cases as the court may deem it necessary and proper, before
88 any such decree is granted on the ground of incurable mental
89 illness, the complainant, when ordered by the court, shall enter
90 into bond, to be approved by the court, in such an amount as the
91 court may think just and proper, conditioned for the care and
92 keeping of the person with mental illness during the remainder of



93 his or her natural life, unless the person with mental illness has
94 a sufficient estate in his or her own right for that purpose.

95 **SECTION 2.** This act shall take effect and be in force from
96 and after July 1, 2017.

