

By: Representative Zuber

To: Judiciary B

HOUSE BILL NO. 1170

1 AN ACT TO AUTHORIZE A CHANCERY COURT TO GRANT REASONABLE  
 2 VISITATION RIGHTS TO SISTERS OR BROTHERS, REGARDLESS OF THE DEGREE  
 3 OF BLOOD RELATIONSHIP; TO BRING FORWARD SECTION 93-5-24,  
 4 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR TYPES OF CUSTODY, FOR  
 5 PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Any chancery court, upon petition from any person  
 8 who is a brother or sister, regardless of the degree of blood  
 9 relationship or, if the person is a minor, upon petition by a  
 10 parent, guardian, or next friend on behalf of the minor, may grant  
 11 reasonable visitation rights to the petitioner to allow the  
 12 petitioner the right to visit any brother or sister, regardless of  
 13 the degree of blood relationship, whose parents have denied such  
 14 access, if the best interests of the child will not be harmed.  
 15 The circuit courts may issue any further order that may be  
 16 necessary to enforce the visitation rights authorized by this act.

17 **SECTION 2.** Section 93-5-24, Mississippi Code of 1972, is  
 18 brought forward as follows:



19           93-5-24. (1) Custody shall be awarded as follows according  
20 to the best interests of the child:

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

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

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

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

28           (e) Upon a finding by the court that both of the  
29 parents of the child have abandoned or deserted such child or that  
30 both such parents are mentally, morally or otherwise unfit to rear  
31 and train the child the court may award physical and legal custody  
32 to:

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

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

38           In making an order for custody to either parent or to both  
39 parents jointly, the court, in its discretion, may require the  
40 parents to submit to the court a plan for the implementation of  
41 the custody order.



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

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

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

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

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

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

60                   (d) For the purposes of this section, "legal custody"  
61 means the decision-making rights, the responsibilities and the  
62 authority relating to the health, education and welfare of a  
63 child.

64                   (e) For the purposes of this section, "joint legal  
65 custody" means that the parents or parties share the  
66 decision-making rights, the responsibilities and the authority



67 relating to the health, education and welfare of a child. An  
68 award of joint legal custody obligates the parties to exchange  
69 information concerning the health, education and welfare of the  
70 minor child, and to confer with one another in the exercise of  
71 decision-making rights, responsibilities and authority.

72 An award of joint physical and legal custody obligates the  
73 parties to exchange information concerning the health, education  
74 and welfare of the minor child, and unless allocated, apportioned  
75 or decreed, the parents or parties shall confer with one another  
76 in the exercise of decision-making rights, responsibilities and  
77 authority.

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

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

85 (8) Notwithstanding any other provision of law, access to  
86 records and information pertaining to a minor child, including,  
87 but not limited to, medical, dental and school records, shall not  
88 be denied to a parent because the parent is not the child's  
89 custodial parent.

90 (9) (a) (i) In every proceeding where the custody of a  
91 child is in dispute, there shall be a rebuttable presumption that



92 it is detrimental to the child and not in the best interest of the  
93 child to be placed in sole custody, joint legal custody or joint  
94 physical custody of a parent who has a history of perpetrating  
95 family violence. The court may find a history of perpetrating  
96 family violence if the court finds, by a preponderance of the  
97 evidence, one (1) incident of family violence that has resulted in  
98 serious bodily injury to, or a pattern of family violence against,  
99 the party making the allegation or a family household member of  
100 either party. The court shall make written findings to document  
101 how and why the presumption was or was not triggered.

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

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

107 1. Whether the perpetrator of family violence  
108 has demonstrated that giving sole or joint physical or legal  
109 custody of a child to the perpetrator is in the best interest of  
110 the child because of the other parent's absence, mental illness,  
111 substance abuse or such other circumstances which affect the best  
112 interest of the child or children;

113 2. Whether the perpetrator has successfully  
114 completed a batterer's treatment program;



115                   3. Whether the perpetrator has successfully  
116 completed a program of alcohol or drug abuse counseling if the  
117 court determines that counseling is appropriate;

118                   4. Whether the perpetrator has successfully  
119 completed a parenting class if the court determines the class to  
120 be appropriate;

121                   5. If the perpetrator is on probation or  
122 parole, whether he or she is restrained by a protective order  
123 granted after a hearing, and whether he or she has complied with  
124 its terms and conditions; and

125                   6. Whether the perpetrator of domestic  
126 violence has committed any further acts of domestic violence.

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

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

133                   (ii) If the court finds that both parents have a  
134 history of perpetrating family violence, but the court finds that  
135 parental custody would be in the best interest of the child,  
136 custody may be awarded solely to the parent less likely to  
137 continue to perpetrate family violence. In such a case, the court  
138 may mandate completion of a treatment program by the custodial  
139 parent.



140 (c) If the court finds that the allegations of domestic  
141 violence are completely unfounded, the chancery court shall order  
142 the alleging party to pay all court costs and reasonable  
143 attorney's fees incurred by the defending party in responding to  
144 such allegations.

145 (d) (i) A court may award visitation by a parent who  
146 committed domestic or family violence only if the court finds that  
147 adequate provision for the safety of the child and the parent who  
148 is a victim of domestic or family violence can be made.

149 (ii) In a visitation order, a court may take any  
150 of the following actions:

151 1. Order an exchange of the child to occur in  
152 a protected setting;

153 2. Order visitation supervised in a manner to  
154 be determined by the court;

155 3. Order the perpetrator of domestic or  
156 family violence to attend and complete to the satisfaction of the  
157 court a program of intervention for perpetrators or other  
158 designated counseling as a condition of visitation;

159 4. Order the perpetrator of domestic or  
160 family violence to abstain from possession or consumption of  
161 alcohol or controlled substances during the visitation and for  
162 twenty-four (24) hours preceding the visitation;



163                   5. Order the perpetrator of domestic or  
164 family violence to pay a fee to defray the cost of supervised  
165 visitation;

166                   6. Prohibit overnight visitation;

167                   7. Require a bond from the perpetrator of  
168 domestic or family violence for the return and safety of the  
169 child; or

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

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

176                   (e) The court may refer but shall not order an adult  
177 who is a victim of family or domestic violence to attend  
178 counseling relating to the victim's status or behavior as a  
179 victim, individually or with the perpetrator of domestic or family  
180 violence, as a condition of receiving custody of a child or as a  
181 condition of visitation.

182                   (f) If a court allows a family or household member to  
183 supervise visitation, the court shall establish conditions to be  
184 followed during visitation.

185                   **SECTION 3.** This act shall take effect and be in force from  
186 and after July 1, 2018.

