

By: Representative Currie

To: Judiciary A

HOUSE BILL NO. 295

1 AN ACT TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THAT EQUALLY SHARED PARENT TIME IS IN THE BEST INTEREST OF
3 A CHILD; TO BRING FORWARD SECTION 93-11-65, MISSISSIPPI CODE OF
4 1972, WHICH PROVIDES FOR THE CUSTODY AND SUPPORT OF A CHILD; AND
5 FOR RELATED PURPOSES.

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

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

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

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

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

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

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

18 (e) Upon a finding by the court that both of the
19 parents of the child have abandoned or deserted such child or that



20 both such parents are mentally, morally or otherwise unfit to rear
21 and train the child the court may award physical and legal custody
22 to:

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

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

28 In making an order for custody to either parent or to both
29 parents jointly, the court, in its discretion, may require the
30 parents to submit to the court a plan for the implementation of
31 the custody order.

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

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

37 (4) There shall be a presumption that joint custody * * *
38 and equally shared parenting time are in the best interest of a
39 minor child where both parents have agreed to an award of joint
40 custody.

41 (5) (a) For the purposes of this section, "joint custody"
42 means joint physical and legal custody and shall include equally
43 shared parenting time.



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

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

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

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

65 An award of joint physical and legal custody obligates the
66 parties to exchange information concerning the health, education
67 and welfare of the minor child, and unless allocated, apportioned
68 or decreed, the parents or parties shall confer with one another



69 in the exercise of decision-making rights, responsibilities * * *,
70 authority and equally shared parenting time.

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

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

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

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



93 either party. The court shall make written findings to document
94 how and why the presumption was or was not triggered.

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

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

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

106 2. Whether the perpetrator has successfully
107 completed a batterer's treatment program;

108 3. Whether the perpetrator has successfully
109 completed a program of alcohol or drug abuse counseling if the
110 court determines that counseling is appropriate;

111 4. Whether the perpetrator has successfully
112 completed a parenting class if the court determines the class to
113 be appropriate;

114 5. If the perpetrator is on probation or
115 parole, whether he or she is restrained by a protective order
116 granted after a hearing, and whether he or she has complied with
117 its terms and conditions; and



118 6. Whether the perpetrator of domestic
119 violence has committed any further acts of domestic violence.

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

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

126 (ii) If the court finds that both parents have a
127 history of perpetrating family violence, but the court finds that
128 parental custody would be in the best interest of the child,
129 custody may be awarded solely to the parent less likely to
130 continue to perpetrate family violence. In such a case, the court
131 may mandate completion of a treatment program by the custodial
132 parent.

133 (c) If the court finds that the allegations of domestic
134 violence are completely unfounded, the chancery court shall order
135 the alleging party to pay all court costs and reasonable
136 attorney's fees incurred by the defending party in responding to
137 such allegations.

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



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

144 1. Order an exchange of the child to occur in
145 a protected setting;

146 2. Order visitation supervised in a manner to
147 be determined by the court;

148 3. Order the perpetrator of domestic or
149 family violence to attend and complete to the satisfaction of the
150 court a program of intervention for perpetrators or other
151 designated counseling as a condition of visitation;

152 4. Order the perpetrator of domestic or
153 family violence to abstain from possession or consumption of
154 alcohol or controlled substances during the visitation and for
155 twenty-four (24) hours preceding the visitation;

156 5. Order the perpetrator of domestic or
157 family violence to pay a fee to defray the cost of supervised
158 visitation;

159 6. Prohibit overnight visitation;

160 7. Require a bond from the perpetrator of
161 domestic or family violence for the return and safety of the
162 child; or

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



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

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

175 (f) If a court allows a family or household member to
176 supervise visitation, the court shall establish conditions to be
177 followed during visitation.

178 **SECTION 2.** Section 93-11-65, Mississippi Code of 1972, is
179 brought forward as follows:

180 93-11-65. (1) (a) In addition to the right to proceed
181 under Section 93-5-23, Mississippi Code of 1972, and in addition
182 to the remedy of habeas corpus in proper cases, and other existing
183 remedies, the chancery court of the proper county shall have
184 jurisdiction to entertain suits for the custody, care, support and
185 maintenance of minor children and to hear and determine all such
186 matters, and shall, if need be, require bond, sureties or other
187 guarantee to secure any order for periodic payments for the
188 maintenance or support of a child. In the event a legally
189 responsible parent has health insurance available to him or her
190 through an employer or organization that may extend benefits to



191 the dependents of such parent, any order of support issued against
192 such parent may require him or her to exercise the option of
193 additional coverage in favor of such children as he or she is
194 legally responsible to support. Proceedings may be brought by or
195 against a resident or nonresident of the State of Mississippi,
196 whether or not having the actual custody of minor children, for
197 the purpose of judicially determining the legal custody of a
198 child. All actions herein authorized may be brought in the county
199 where the child is actually residing, or in the county of the
200 residence of the party who has actual custody, or of the residence
201 of the defendant. Process shall be had upon the parties as
202 provided by law for process in person or by publication, if they
203 be nonresidents of the state or residents of another jurisdiction
204 or are not found therein after diligent search and inquiry or are
205 unknown after diligent search and inquiry; provided that the court
206 or chancellor in vacation may fix a date in termtime or in
207 vacation to which process may be returnable and shall have power
208 to proceed in termtime or vacation. Provided, however, that if
209 the court shall find that both parties are fit and proper persons
210 to have custody of the children, and that either party is able to
211 adequately provide for the care and maintenance of the children,
212 the chancellor may consider the preference of a child of twelve
213 (12) years of age or older as to the parent with whom the child
214 would prefer to live in determining what would be in the best
215 interest and welfare of the child. The chancellor shall place on



216 the record the reason or reasons for which the award of custody
217 was made and explain in detail why the wishes of any child were or
218 were not honored.

219 (b) An order of child support shall specify the sum to
220 be paid weekly or otherwise. In addition to providing for support
221 and education, the order shall also provide for the support of the
222 child prior to the making of the order for child support, and such
223 other expenses as the court may deem proper.

224 (c) The court may require the payment to be made to the
225 custodial parent, or to some person or corporation to be
226 designated by the court as trustee, but if the child or custodial
227 parent is receiving public assistance, the Department of Human
228 Services shall be made the trustee.

229 (d) The noncustodial parent's liabilities for past
230 education and necessary support and maintenance and other expenses
231 are limited to a period of one (1) year next preceding the
232 commencement of an action.

233 (2) Provided further, that where the proof shows that both
234 parents have separate incomes or estates, the court may require
235 that each parent contribute to the support and maintenance of the
236 children in proportion to the relative financial ability of each.

237 (3) Whenever the court has ordered a party to make periodic
238 payments for the maintenance or support of a child, but no bond,
239 sureties or other guarantee has been required to secure such
240 payments, and whenever such payments as have become due remain



241 unpaid for a period of at least thirty (30) days, the court may,
242 upon petition of the person to whom such payments are owing, or
243 such person's legal representative, enter an order requiring that
244 bond, sureties or other security be given by the person obligated
245 to make such payments, the amount and sufficiency of which shall
246 be approved by the court. The obligor shall, as in other civil
247 actions, be served with process and shall be entitled to a hearing
248 in such case.

249 (4) When a charge of abuse or neglect of a child first
250 arises in the course of a custody or maintenance action pending in
251 the chancery court pursuant to this section, the chancery court
252 may proceed with the investigation, hearing and determination of
253 such abuse or neglect charge as a part of its hearing and
254 determination of the custody or maintenance issue as between the
255 parents, as provided in Section 43-21-151, notwithstanding the
256 other provisions of the Youth Court Law. The proceedings in
257 chancery court on the abuse or neglect charge shall be
258 confidential in the same manner as provided in youth court
259 proceedings, and the chancery court shall appoint a guardian ad
260 litem in such cases, as provided under Section 43-21-121 for youth
261 court proceedings, who shall be an attorney. In determining
262 whether any portion of a guardian ad litem's fee shall be assessed
263 against any party or parties as a cost of court for reimbursement
264 to the county, the court shall consider each party's individual
265 ability to pay. Unless the chancery court's jurisdiction has been



266 terminated, all disposition orders in such cases for placement
267 with the Department of Human Services shall be reviewed by the
268 court or designated authority at least annually to determine if
269 continued placement with the department is in the best interest of
270 the child or the public.

271 (5) Each party to a paternity or child support proceeding
272 shall notify the other within five (5) days after any change of
273 address. In addition, the noncustodial and custodial parent shall
274 file and update, with the court and with the state case registry,
275 information on that party's location and identity, including
276 social security number, residential and mailing addresses,
277 telephone numbers, photograph, driver's license number, and name,
278 address and telephone number of the party's employer. This
279 information shall be required upon entry of an order or within
280 five (5) days of a change of address.

281 (6) In any case subsequently enforced by the Department of
282 Human Services pursuant to Title IV-D of the Social Security Act,
283 the court shall have continuing jurisdiction.

284 (7) In any subsequent child support enforcement action
285 between the parties, upon sufficient showing that diligent effort
286 has been made to ascertain the location of a party, due process
287 requirements for notice and service of process shall be deemed to
288 be met with respect to the party upon delivery of written notice
289 to the most recent residential or employer address filed with the
290 state case registry.



291 (8) (a) The duty of support of a child terminates upon the
292 emancipation of the child. Unless otherwise provided for in the
293 underlying child support judgment, emancipation shall occur when
294 the child:

295 (i) Attains the age of twenty-one (21) years, or

296 (ii) Marries, or

297 (iii) Joins the military and serves on a full-time
298 basis, or

299 (iv) Is convicted of a felony and is sentenced to
300 incarceration of two (2) or more years for committing such felony;

301 (b) Unless otherwise provided for in the underlying
302 child support judgment, the court may determine that emancipation
303 has occurred and no other support obligation exists when the
304 child:

305 (i) Discontinues full-time enrollment in school
306 having attained the age of eighteen (18) years, unless the child
307 is disabled, or

308 (ii) Voluntarily moves from the home of the
309 custodial parent or guardian, establishes independent living
310 arrangements, obtains full-time employment and discontinues
311 educational endeavors prior to attaining the age of twenty-one
312 (21) years, or

313 (iii) Cohabits with another person without the
314 approval of the parent obligated to pay support;



315 (c) The duty of support of a child who is incarcerated
316 but not emancipated shall be suspended for the period of the
317 child's incarceration.

318 (9) A determination of emancipation does not terminate any
319 obligation of the noncustodial parent to satisfy arrearage
320 existing as of the date of emancipation; the total amount of
321 periodic support due prior to the emancipation plus any periodic
322 amounts ordered paid toward the arrearage shall continue to be
323 owed until satisfaction of the arrearage in full, in addition to
324 the right of the person for whom the obligation is owed to execute
325 for collection as may be provided by law.

326 (10) Upon motion of a party requesting temporary child
327 support pending a determination of parentage, temporary support
328 shall be ordered if there is clear and convincing evidence of
329 paternity on the basis of genetic tests or other evidence, unless
330 the court makes written findings of fact on the record that the
331 award of temporary support would be unjust or inappropriate in a
332 particular case.

333 (11) Custody and visitation upon military temporary duty,
334 deployment or mobilization shall be governed by Section 93-5-34.

335 **SECTION 3.** This act shall take effect and be in force from
336 and after July 1, 2020.

