

By: Representative Darnell

To: Judiciary B

HOUSE BILL NO. 1326

1 AN ACT TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF 1972, TO
 2 REQUIRE ANY COURT, IN WHICH CUSTODY IS IN DISPUTE AND ALLEGATIONS
 3 REGARDING EXPOSURE TO A CONVICTED SEX OFFENDER EXIST, TO
 4 INVESTIGATE AND CONSIDER THE FINDINGS OF THE ALLEGATIONS WHEN
 5 CONSIDERING THE BEST INTERESTS OF THE CHILD; TO REQUIRE A
 6 REBUTTABLE PRESUMPTION THAT SUCH EXPOSURE IS NOT IN THE BEST
 7 INTEREST OF THE CHILD; TO AMEND SECTION 97-5-42, MISSISSIPPI CODE
 8 OF 1972, TO REVISE THE PROVISIONS OF FELONY PARENTAL CHILD SEXUAL
 9 ABUSE TO INCLUDE GRANDPARENTS WHO ARE CONVICTED FOR SEXUAL ABUSE
 10 OF THEIR GRANDCHILDREN; TO AMEND SECTION 93-16-3, MISSISSIPPI CODE
 11 OF 1972, TO CONFORM GRANDPARENTS' VISITATION RIGHTS TO THE
 12 PRECEDING SECTIONS; AND FOR RELATED PURPOSES.

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

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

16 93-5-24. (1) Custody shall be awarded as follows according
 17 to the best interests of the child:

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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



73 in the exercise of decision-making rights, responsibilities and
74 authority.

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

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

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

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



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

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

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

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

110 2. Whether the perpetrator has successfully
111 completed a batterer's treatment program;

112 3. Whether the perpetrator has successfully
113 completed a program of alcohol or drug abuse counseling if the
114 court determines that counseling is appropriate;

115 4. Whether the perpetrator has successfully
116 completed a parenting class if the court determines the class to
117 be appropriate;

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



122 6. Whether the perpetrator of domestic
123 violence has committed any further acts of domestic violence.

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

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

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

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

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



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

148 1. Order an exchange of the child to occur in
149 a protected setting;

150 2. Order visitation supervised in a manner to
151 be determined by the court;

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

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

160 5. Order the perpetrator of domestic or
161 family violence to pay a fee to defray the cost of supervised
162 visitation;

163 6. Prohibit overnight visitation;

164 7. Require a bond from the perpetrator of
165 domestic or family violence for the return and safety of the
166 child; or

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



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

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

179 (f) If a court allows a family or household member to
180 supervise visitation, the court shall establish conditions to be
181 followed during visitation.

182 (10) In every proceeding where the custody of a child is in
183 dispute, and a parent, guardian, person in loco parentis or person
184 with legal or physical custody of a child asserts that the other
185 parent, guardian, person in loco parentis or person with legal or
186 physical custody of a child, will place the child in the care,
187 custody or physical presence of a convicted sex offender, the
188 court shall investigate such assertion, and if found to be true,
189 restrict custody and/or visitation based on its findings. There
190 shall be a rebuttable presumption that it is detrimental to the
191 child and not in the best interest of the child to be placed in
192 sole custody, joint legal custody or joint physical custody of a
193 parent, guardian, person in loco parentis or person with legal or
194 physical custody of a child, who has a history of placing or plans



195 to place the child in the care, custody or physical presence of a
196 convicted sex offender. The court shall make written findings to
197 document how and why the presumption was or was not triggered.

198 **SECTION 2.** Section 97-5-42, Mississippi Code of 1972, is
199 amended as follows:

200 97-5-42. (1) (a) For purposes of this section, a
201 conviction of felony parental child sexual abuse shall include any
202 nolo contendere plea, guilty plea or conviction at trial to any
203 offense enumerated in Section 93-15-121(h) or any other statute of
204 the State of Mississippi whereby a parent may be penalized as a
205 felon on account of sexual abuse of his or her own child, or a
206 grandparent may be penalized as a felon on account of sexual abuse
207 of his or her own grandchild; and shall include any conviction by
208 plea or trial in any other state of the United States to an
209 offense whereby a parent may be penalized as a felon for sexual
210 abuse of his or her own child, or grandchild, as applicable under
211 the laws of that state, or which would be so penalized for such
212 conduct had the act or acts been committed in the State of
213 Mississippi.

214 (b) A certified copy of the court order or judgment
215 evidencing such a conviction shall be accepted by any public
216 office with responsibilities pursuant to this section, and by any
217 court in the State of Mississippi, as conclusive evidence of the
218 conviction.



219 (2) (a) No person who has been convicted of felony parental
220 child sexual abuse shall contact or attempt to contact the victim
221 child nor the siblings of the victim child that reside in the same
222 household as the victim child without the prior express written
223 permission of the child's then legal custodian, who may be the
224 other parent, a guardian, person in loco parentis or person with
225 legal or physical custody of a child.

226 (b) No person who has been convicted of felony parental
227 child sexual abuse shall harass, threaten, intimidate or by any
228 other means menace the victim child * * *, any sibling of the
229 victim child or any legal custodian of the child, who may be the
230 other parent, a guardian, person in loco parentis or person with
231 legal or physical custody of a child.

232 (c) Any person who believes that a person who has been
233 convicted of felony parental child sexual abuse may violate the
234 provisions of paragraph (a) or (b) of this subsection may register
235 with the sheriff and any municipal law enforcement agency of the
236 child's county and municipality of residence, setting forth the
237 factual basis for that belief which shall include a certified copy
238 of the court order or judgment evidencing the conviction of the
239 child sexual abuse felon. The sheriff's office of each county and
240 all municipal law enforcement agencies shall maintain a separate
241 and distinct register for the purpose of recording the data
242 required herein, and shall advise the reporting party of how
243 emergency contact can be made with that office at any time with



244 respect to a threatened violation of paragraph (a) or (b) of this
245 subsection. Immediate response with police protection shall be
246 provided to any emergency contact made pursuant to this section,
247 which police protection shall be continued in such reasonable
248 manner as to deter future violations and protect the child and any
249 person with legal custody of the child.

250 (d) Any person who has been convicted of felony
251 parental child sexual abuse who violates paragraph (a) of this
252 subsection shall, upon conviction, be punished by imprisonment in
253 the county jail for not more than one (1) year. Any person who
254 has been convicted of felony parental child sexual abuse who
255 violates paragraph (b) of this subsection shall, upon conviction,
256 be punished by imprisonment in the State Penitentiary for not more
257 than five (5) years.

258 (3) No person who has been convicted of felony parental
259 child sexual abuse shall be entitled to have parental or other
260 visitation rights as to that child who was the victim, or any
261 sibling of that child who resides in the same residence with that
262 child unless he or she files a petition in the chancery court of
263 the county in which the child resides, reciting the conviction,
264 and joining as parties defendant any other parent, guardian,
265 person standing in loco parentis or having legal or physical
266 custody of the child. A guardian ad litem shall be appointed to
267 represent the child at petitioner's expense. The court shall
268 appoint a qualified psychologist or psychiatrist to conduct an



269 independent examination of the petitioner to determine whether
270 contact with that person poses a physical or emotional risk to the
271 child, and report to the court. Such examination shall be at
272 petitioner's expense. The court shall require any such petitioner
273 to deposit with the court sufficient funds to pay expenses
274 chargeable to a petitioner hereunder, the amount of such deposit
275 to be within the discretion of the chancellor. Any defendant and
276 the child through his or her guardian ad litem shall be entitled
277 to a full evidentiary hearing on the petition. In no event shall
278 a child be required to testify in court or by deposition, or be
279 subjected to any psychological examination, without the express
280 consent of the child through his or her guardian ad litem. Such
281 guardian ad litem shall consult with the child's legal guardian or
282 custodians before consenting to such testimony or examination. At
283 any hearing there is a rebuttable presumption that contact with
284 the child poses a physical and emotional risk to the child. That
285 presumption may be rebutted and visitation or contact allowed on
286 such terms and conditions that the chancery court shall set only
287 upon specific written findings by the court that:

288 (a) Contact between the child and the offending parent
289 is appropriate and poses minimal risk to the child;

290 (b) If the child has received counseling, that the
291 child's counselor believes such contact is in the child's best
292 interest;



293 (c) The offending parent has successfully engaged in
294 treatment for sex offenders or is engaged in such treatment and
295 making progress; and

296 (d) The offending parent's treatment provider believes
297 contact with the child is appropriate and poses minimal risk to
298 the child. If the court, in its discretion, allows visitation or
299 contact it may impose such conditions to the visitation or contact
300 which it finds reasonable, including supervision of contact or
301 visitation by a neutral and independent adult with a detailed plan
302 for supervision of any such contact or visitation.

303 **SECTION 3.** Section 93-16-3, Mississippi Code of 1972, is
304 amended as follows:

305 93-16-3. (1) Whenever a court of this state enters a decree
306 or order awarding custody of a minor child to one (1) of the
307 parents of the child or terminating the parental rights of one (1)
308 of the parents of a minor child, or whenever one (1) of the
309 parents of a minor child dies, either parent of the child's
310 parents may petition the court in which the decree or order was
311 rendered or, in the case of the death of a parent, petition the
312 chancery court in the county in which the child resides, and seek
313 visitation rights with the child.

314 (2) Any grandparent who is not authorized to petition for
315 visitation rights pursuant to subsection (1) of this section may
316 petition the chancery court and seek visitation rights with his or



317 her grandchild, and the court may grant visitation rights to the
318 grandparent, provided the court finds:

319 (a) That the grandparent of the child had established a
320 viable relationship with the child and the parent or custodian of
321 the child unreasonably denied the grandparent visitation rights
322 with the child; and

323 (b) That visitation rights of the grandparent with the
324 child would be in the best interests of the child using guidelines
325 provided in Section 93-5-24.

326 (3) For purposes of subsection (2) of this section, the term
327 "viable relationship" means a relationship in which the
328 grandparents or either of them have voluntarily and in good faith
329 supported the child financially in whole or in part for a period
330 of not less than six (6) months before filing any petition for
331 visitation rights with the child, the grandparents have had
332 frequent visitation including occasional overnight visitation with
333 said child for a period of not less than one (1) year, or the
334 child has been cared for by the grandparents or either of them
335 over a significant period of time during the time the parent has
336 been in jail or on military duty that necessitates the absence of
337 the parent from the home.

338 (4) Any petition for visitation rights under subsection (2)
339 of this section shall be filed in the county where an order of
340 custody as to the child has previously been entered. If no
341 custody order has been entered, then the grandparents' petition



342 shall be filed in the county where the child resides or may be
343 found. Upon a showing of financial hardship for the parents, the
344 court shall on motion of the parent or parents direct the
345 grandparents to pay reasonable attorney's fees to the parent or
346 parents at any time, including before a hearing, without regard to
347 the outcome of the petition.

348 **SECTION 4.** This act shall take effect and be in force from
349 and after July 1, 2022.

