

By: Representative Yancey

To: Judiciary A

HOUSE BILL NO. 1257

1 AN ACT TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF 1972, TO
 2 REDUCE PARENTAL ALIENATION BY REQUIRING A HEARING ON PETITIONS FOR
 3 MODIFICATION OR TERMINATION OF CUSTODY OR VISITATION MATTERS
 4 WITHIN A CERTAIN TIME; TO AMEND SECTION 93-5-34, MISSISSIPPI CODE
 5 OF 1972, TO REDUCE PARENTAL ALIENATION OF MILITARY PARENTS BY
 6 REQUIRING A HEARING ON PETITIONS FOR MODIFICATION OR TERMINATION
 7 OF CUSTODY OR VISITATION MATTERS WITHIN A CERTAIN TIME; AND FOR
 8 RELATED PURPOSES.

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

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

12 93-5-24. (1) Custody shall be awarded as follows according
 13 to the best interests of the child:

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

71 (6) (a) 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 (b) When any parent files a petition to modify or
76 terminate custody, joint custody or visitation, or enforce the
77 terms of a custody, joint custody or visitation order, the court
78 shall have a hearing to address the petition no more than
79 forty-five (45) days of the filing of the petition. Upon hearing
80 the petition, the court shall issue an order to resolve the issue
81 of the petition no more than ten (10) days from the date of the
82 hearing.

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

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

91 (9) (a) (i) In every proceeding where the custody of a
92 child is in dispute, there shall be a rebuttable presumption that
93 it is detrimental to the child and not in the best interest of the



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

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

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

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

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

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



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

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

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

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

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

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

141 (c) If the court finds that the allegations of domestic
142 violence are completely unfounded, the chancery court shall order
143 the alleging party to pay all court costs and reasonable



144 attorney's fees incurred by the defending party in responding to
145 such allegations.

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

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

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

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

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

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

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

167 6. Prohibit overnight visitation;



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

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

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

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

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

186 **SECTION 2.** Section 93-5-34, Mississippi Code of 1972, is
187 amended as follows:

188 93-5-34. (1) It is the purpose of this section to provide a
189 means by which to facilitate a fair, efficient and swift process
190 to resolve matters regarding custody and visitation when a parent
191 receives temporary duty, deployment or mobilization orders from
192 the military. It is also the purpose of this section to



193 facilitate continued communication between military parents and
194 their minor children when the parent is on temporary duty or under
195 deployment or mobilization orders.

196 (2) As used in this section:

197 (a) The term "deployment" means the temporary transfer
198 of a service member serving in an active-duty status to another
199 location in support of combat or some other military operation.

200 (b) The term "mobilization" means the call-up of a
201 National Guard or Reserve service member to extended active duty
202 status. For purposes of this definition, "mobilization" does not
203 include National Guard or Reserve annual training.

204 (c) The term "temporary duty" means the transfer of a
205 service member from one military base to a different location,
206 usually another base, for a limited period of time to accomplish
207 training or to assist in the performance of a noncombat mission.

208 (d) The term "family member" means a person related by
209 blood or marriage and may include, for purposes of this statute, a
210 step-parent, grandparent, aunt, uncle, adult sibling or other
211 person related by blood or marriage.

212 (3) When a parent who has custody, or has joint custody with
213 primary physical custody, receives temporary duty, deployment or
214 mobilization orders from the military that involve moving a
215 substantial distance from the parent's residence having a material
216 effect on the parent's ability to exercise custody
217 responsibilities:



218 (a) Any temporary custody order for the child during
219 the parent's absence shall end no later than ten (10) days after
220 the parent returns, but shall not impair the discretion of the
221 court to conduct a hearing for emergency custody upon return of
222 the parent and within ten (10) days of the filing of a verified
223 motion for emergency custody alleging an immediate danger of
224 irreparable harm to the child; and

225 (b) The temporary duty, mobilization or deployment of
226 the service member and the temporary disruption to the child's
227 schedule shall not be factors in a determination of change of
228 circumstances if a motion is filed to transfer custody from the
229 service member.

230 (c) Any order entered under this section shall require
231 that:

232 (i) The nondeployed parent shall make the child or
233 children reasonably available to the deployed parent when the
234 latter parent has leave;

235 (ii) The nondeployed parent shall facilitate
236 opportunities for telephonic, "webcam" and electronic mail contact
237 between the deployed parent and the child or children during
238 deployment; and

239 (iii) The deployed parent shall provide timely
240 information regarding the parent's leave schedule to the
241 nondeployed parent.



242 (4) If the parent with visitation rights receives military
243 temporary duty, deployment or mobilization orders that involve
244 moving a substantial distance from the parent's residence or
245 otherwise have a material effect on the parent's ability to
246 exercise rights, the court otherwise may delegate the parent's
247 visitation rights, or a portion thereof, to a family member with a
248 close and substantial relationship to the service member's minor
249 child for the duration of the parent's absence, if delegating
250 visitation rights is in the child's best interest.

251 (5) Upon motion of a parent who has received military
252 temporary duty, deployment or mobilization orders, the court
253 shall, for a good cause shown, hold an expedited hearing in
254 custody and visitation matters instituted under this section when
255 the military duties of the parent have a material effect on the
256 parent's ability, or anticipated ability, to appear in person at a
257 regularly scheduled hearing.

258 (6) Upon motion of a parent who has received military
259 temporary duty, deployment or mobilization orders, the court
260 shall, upon reasonable advance notice and for good cause shown,
261 allow the parent to present testimony and evidence by affidavit or
262 electronic means in custody and visitation matters instituted
263 under this section when the military duties of the parent have a
264 material effect on the parent's ability to appear in person at a
265 regularly scheduled teleconference, or the Internet.



266 (7) Nothing in this section shall alter the duty of the
267 court to consider the best interest of the child in deciding
268 custody or visitation matters.

269 (8) When any parent files a petition to modify or terminate
270 custody, joint custody or visitation, or enforce the terms of a
271 custody, joint custody or visitation order, the court shall have a
272 hearing to address the petition no more than forty-five (45) days
273 of the filing of the petition. Upon hearing the petition, the
274 court shall issue an order to resolve the issue of the petition
275 no more than ten (10) days from the date of the hearing.

276 (* * *9) Any hearing pursuant to this section shall take
277 precedence over all other causes not involving the public
278 interest, to the end that these cases may be expedited.

279 **SECTION 3.** This act shall take effect and be in force from
280 and after July 1, 2023.

