

By: Senator(s) Wiggins, England, Carter,
Boyd, McCaughn

To: Judiciary, Division A

SENATE BILL NO. 2644

1 AN ACT TO AMEND SECTION 93-5-1, MISSISSIPPI CODE OF 1972, TO
2 DELETE THE REQUIREMENT OF WILLFUL AND OBSTINATE FROM THE GROUND OF
3 DIVORCE FOR DESERTION; TO PROVIDE AN ADDITIONAL GROUND OF DIVORCE
4 WHERE WHEN THE COURT FINDS THERE HAS BEEN AN IRRETRIEVABLE
5 BREAKDOWN OF THE MARRIAGE AND THAT FURTHER ATTEMPTS AT
6 RECONCILIATION ARE IMPRACTICAL OR FUTILE AND NOT IN THE BEST
7 INTERESTS OF THE PARTIES OR FAMILY; AND FOR RELATED PURPOSES.

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

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

11 93-5-1. Divorces from the bonds of matrimony may be decreed
12 to the injured party for any one or more of the following * * *
13 thirteen (13) causes:

14 First. Natural impotency.

15 Second. Adultery, unless it should appear that it was
16 committed by collusion of the parties for the purpose of procuring
17 a divorce, or unless the parties cohabited after a knowledge by
18 complainant of the adultery.

19 Third. Being sentenced to any penitentiary, and not pardoned
20 before being sent there.



21 Fourth. * * * Continued * * * desertion for the space of one
22 (1) year.

23 Fifth. Habitual drunkenness.

24 Sixth. Habitual and excessive use of opium, morphine or
25 other like drug.

26 Seventh. Habitual cruel and inhuman treatment, including
27 spousal domestic abuse.

28 Spousal domestic abuse may be established through the
29 reliable testimony of a single credible witness, who may be the
30 injured party, and includes, but is not limited to:

31 That the injured party's spouse attempted to cause, or
32 purposely, knowingly or recklessly caused bodily injury to the
33 injured party, or that the injured party's spouse attempted by
34 physical menace to put the injured party in fear of imminent
35 serious bodily harm; or

36 That the injured party's spouse engaged in a pattern of
37 behavior against the injured party of threats or intimidation,
38 emotional or verbal abuse, forced isolation, sexual extortion or
39 sexual abuse, or stalking or aggravated stalking as defined in
40 Section 97-3-107, if the pattern of behavior rises above the level
41 of unkindness or rudeness or incompatibility or want of affection.

42 Eighth. Having mental illness or an intellectual disability
43 at the time of marriage, if the party complaining did not know of
44 that infirmity.



45 Ninth. Marriage to some other person at the time of the
46 pretended marriage between the parties.

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

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

52 Twelfth. Incurable mental illness. However, no divorce
53 shall be granted upon this ground unless the party with mental
54 illness has been under regular treatment for mental illness and
55 causes thereof, confined in an institution for persons with mental
56 illness for a period of at least three (3) years immediately
57 preceding the commencement of the action. However, transfer of a
58 party with mental illness to his or her home for treatment or a
59 trial visit on prescription or recommendation of a licensed
60 physician, which treatment or trial visit proves unsuccessful
61 after a bona fide effort by the complaining party to effect a
62 cure, upon the reconfinement of the party with mental illness in
63 an institution for persons with mental illness, shall be regular
64 treatment for mental illness and causes thereof, and the period of
65 time so consumed in seeking to effect a cure or while on a trial
66 visit home shall be added to the period of actual confinement in
67 an institution for persons with mental illness in computing the
68 required period of three (3) years confinement immediately
69 preceding the beginning of the action. No divorce shall be



70 granted because of mental illness until after a thorough
71 examination of the person with mental illness by two (2)
72 physicians who are recognized authorities on mental diseases. One
73 (1) of those physicians shall be either the superintendent of a
74 state psychiatric hospital or institution or a veterans hospital
75 for persons with mental illness in which the patient is confined,
76 or a member of the medical staff of that hospital or institution
77 who has had the patient in charge. Before incurable mental
78 illness can be successfully proven as a ground for divorce, it
79 shall be necessary that both of those physicians make affidavit
80 that the patient is a person with mental illness at the time of
81 the examination, and both affidavits shall be made a part of the
82 permanent record of the divorce proceedings and shall create the
83 prima facie presumption of incurable mental illness, such as would
84 justify a divorce based on that ground. Service of process shall
85 be made on the superintendent of the hospital or institution in
86 which the defendant is a patient. If the patient is in a hospital
87 or institution outside the state, process shall be served by
88 publication, as in other cases of service by publication, together
89 with the sending of a copy by registered mail to the
90 superintendent of the hospital or institution. In addition,
91 process shall be served upon the next blood relative and guardian,
92 if any. If there is no legal guardian, the court shall appoint a
93 guardian ad litem to represent the interest of the person with
94 mental illness. The relative or guardian and superintendent of



95 the hospital or institution shall be entitled to appear and be
96 heard upon any and all issues. The status of the parties as to
97 the support and maintenance of the person with mental illness
98 shall not be altered in any way by the granting of the divorce.

99 However, in the discretion of the chancery court, and in
100 those cases as the court may deem it necessary and proper, before
101 any such decree is granted on the ground of incurable mental
102 illness, the complainant, when ordered by the court, shall enter
103 into bond, to be approved by the court, in such an amount as the
104 court may think just and proper, conditioned for the care and
105 keeping of the person with mental illness during the remainder of
106 his or her natural life, unless the person with mental illness has
107 a sufficient estate in his or her own right for that purpose.

108 Thirteenth. Upon application of either party, the court may
109 grant a divorce when the court finds there has been an
110 irretrievable breakdown of the marriage and that further attempts
111 at reconciliation are impractical or futile and not in the best
112 interests of the parties or family.

113 **SECTION 2.** This act shall take effect and be in force from
114 and after July 1, 2023.

