

By: Representative Evans

To: Judiciary A

## HOUSE BILL NO. 849

1 AN ACT TO AMEND SECTIONS 93-16-1 THROUGH 93-16-7, MISSISSIPPI  
2 CODE OF 1972, TO REVISE GRANDPARENTS' VISITATION RIGHTS TO INCLUDE  
3 GREAT-GRANDPARENTS; TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF  
4 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED  
5 PURPOSES.

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

7 **SECTION 1.** Section 93-16-1, Mississippi Code of 1972, is  
8 amended as follows:

9 93-16-1. Any court of this state which is competent to  
10 decide child custody matters shall have jurisdiction to grant  
11 visitation rights with a minor child or children to the  
12 grandparents or great-grandparents, or both, of such minor child  
13 or children as provided in this chapter.

14 **SECTION 2.** Section 93-16-3, Mississippi Code of 1972, is  
15 amended as follows:

16 93-16-3. (1) Whenever a court of this state enters a decree  
17 or order awarding custody of a minor child to one (1) of the  
18 parents of the child or terminating the parental rights of one (1)  
19 of the parents of a minor child, or whenever one (1) of the



20 parents of a minor child dies, either \* \* \* grandparent or  
21 great-grandparent, or both of the minor child may petition the  
22 court in which the decree or order was rendered or, in the case of  
23 the death of a parent, petition the chancery court in the county  
24 in which the child resides, and seek visitation rights with the  
25 child.

26 (2) Any grandparent or great-grandparent who is not  
27 authorized to petition for visitation rights pursuant to  
28 subsection (1) of this section may petition the chancery court and  
29 seek visitation rights with his or her grandchild, and the court  
30 may grant visitation rights to the grandparent or  
31 great-grandparent, provided the court finds:

32 (a) That the grandparent or great-grandparent of the  
33 child had established a viable relationship with the child and the  
34 parent or custodian of the child unreasonably denied the  
35 grandparent or great-grandparent visitation rights with the child;  
36 and

37 (b) That visitation rights of the grandparent or  
38 great-grandparent with the child would be in the best interests of  
39 the child.

40 (3) For purposes of subsection (2) of this section, the term  
41 "viable relationship" means a relationship in which the  
42 grandparents or great-grandparents or either of them have  
43 voluntarily and in good faith supported the child financially in  
44 whole or in part for a period of not less than six (6) months



before filing any petition for visitation rights with the child, the grandparents or great-grandparents have had frequent visitation including occasional overnight visitation with said child for a period of not less than one (1) year, or the child has been cared for by the grandparents or great-grandparents or either of them over a significant period of time during the time the parent has been in jail or on military duty that necessitates the absence of the parent from the home.

(4) Any petition for visitation rights under subsection (2) of this section shall be filed in the county where an order of custody as to the child has previously been entered. If no custody order has been entered, then the grandparents' or great-grandparents' petition shall be filed in the county where the child resides or may be found. Upon a showing of financial hardship for the parents, the court shall on motion of the parent or parents direct the grandparents or great-grandparents to pay reasonable attorney's fees to the parent or parents at any time, including before a hearing, without regard to the outcome of the petition.

**SECTION 3.** Section 93-16-5, Mississippi Code of 1972, is amended as follows:

93-16-5. All persons required to be made parties in child custody proceedings or proceedings for the termination of parental rights shall be made parties to any proceeding in which a grandparent or great-grandparent, or both, of a minor child or



70 children seeks to obtain visitation rights with such minor child  
71 or children; and the court may, in its discretion, if it finds  
72 that such visitation rights would be in the best interest of the  
73 child, grant to a grandparent or great-grandparent, or both,  
74 reasonable visitation rights with the child. Whenever visitation  
75 rights are granted to a grandparent, or great-grandparent, or  
76 both, the court may issue such orders as shall be necessary to  
77 enforce such rights and may modify or terminate such visitation  
78 rights for cause at any time.

79       **SECTION 4.** Section 93-16-7, Mississippi Code of 1972, is  
80 amended as follows:

81       93-16-7. This chapter shall not apply to the granting of  
82 visitation rights to the natural grandparents or  
83 great-grandparents, or both, of any child who has been adopted by  
84 order or decree of any court unless: (a) one (1) of the legal  
85 parents of such child is also a natural parent of such child; or  
86 (b) one (1) of the legal parents of such child was related to the  
87 child by blood or marriage prior to the adoption. This chapter  
88 shall apply to persons who become grandparents or  
89 great-grandparents, or both, of a child by virtue of adoption.

90       **SECTION 5.** Section 93-5-24, Mississippi Code of 1972, is  
91 amended as follows:

92       93-5-24. (1) Custody shall be awarded as follows according  
93 to the best interests of the child:



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

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

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

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

101 (e) Upon a finding by the court that both of the  
102 parents of the child have abandoned or deserted such child or that  
103 both such parents are mentally, morally or otherwise unfit to rear  
104 and train the child the court may award physical and legal custody  
105 to:

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

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

111 In making an order for custody to either parent or to both  
112 parents jointly, the court, in its discretion, may require the  
113 parents to submit to the court a plan for the implementation of  
114 the custody order.

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



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

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

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

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

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

133 (d) For the purposes of this section, "legal custody"  
134 means the decision-making rights, the responsibilities and the  
135 authority relating to the health, education and welfare of a  
136 child.

137 (e) For the purposes of this section, "joint legal  
138 custody" means that the parents or parties share the  
139 decision-making rights, the responsibilities and the authority  
140 relating to the health, education and welfare of a child. An  
141 award of joint legal custody obligates the parties to exchange  
142 information concerning the health, education and welfare of the



143 minor child, and to confer with one another in the exercise of  
144 decision-making rights, responsibilities and authority.

145 An award of joint physical and legal custody obligates the  
146 parties to exchange information concerning the health, education  
147 and welfare of the minor child, and unless allocated, apportioned  
148 or decreed, the parents or parties shall confer with one another  
149 in the exercise of decision-making rights, responsibilities and  
150 authority.

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

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

158 (8) Notwithstanding any other provision of law, access to  
159 records and information pertaining to a minor child, including,  
160 but not limited to, medical, dental and school records, shall not  
161 be denied to a parent because the parent is not the child's  
162 custodial parent.

163 (9) (a) (i) In every proceeding where the custody of a  
164 child is in dispute, there shall be a rebuttable presumption that  
165 it is detrimental to the child and not in the best interest of the  
166 child to be placed in sole custody, joint legal custody or joint  
167 physical custody of a parent who has a history of perpetrating



168 family violence. The court may find a history of perpetrating  
169 family violence if the court finds, by a preponderance of the  
170 evidence, one (1) incident of family violence that has resulted in  
171 serious bodily injury to, or a pattern of family violence against,  
172 the party making the allegation or a family household member of  
173 either party. The court shall make written findings to document  
174 how and why the presumption was or was not triggered.

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

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

180 1. Whether the perpetrator of family violence  
181 has demonstrated that giving sole or joint physical or legal  
182 custody of a child to the perpetrator is in the best interest of  
183 the child because of the other parent's absence, mental illness,  
184 substance abuse or such other circumstances which affect the best  
185 interest of the child or children;

186 2. Whether the perpetrator has successfully  
187 completed a batterer's treatment program;

188 3. Whether the perpetrator has successfully  
189 completed a program of alcohol or drug abuse counseling if the  
190 court determines that counseling is appropriate;





191                   4. Whether the perpetrator has successfully  
192 completed a parenting class if the court determines the class to  
193 be appropriate;

194                   5. If the perpetrator is on probation or  
195 parole, whether he or she is restrained by a protective order  
196 granted after a hearing, and whether he or she has complied with  
197 its terms and conditions; and

198                   6. Whether the perpetrator of domestic  
199 violence has committed any further acts of domestic violence.

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

202                   (b) (i) If custody is awarded to a suitable third  
203 person, it shall not be until the natural grandparents or  
204 great-grandparents, or both, of the child have been excluded and  
205 such person shall not allow access to a violent parent except as  
206 ordered by the court.

207                   (ii) If the court finds that both parents have a  
208 history of perpetrating family violence, but the court finds that  
209 parental custody would be in the best interest of the child,  
210 custody may be awarded solely to the parent less likely to  
211 continue to perpetrate family violence. In such a case, the court  
212 may mandate completion of a treatment program by the custodial  
213 parent.

214                   (c) If the court finds that the allegations of domestic  
215 violence are completely unfounded, the chancery court shall order



the alleging party to pay all court costs and reasonable attorney's fees incurred by the defending party in responding to such allegations.

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

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

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

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

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

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

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

6. Prohibit overnight visitation;



241                   7.   Require a bond from the perpetrator of  
242 domestic or family violence for the return and safety of the  
243 child; or

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

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

250                   (e) The court may refer but shall not order an adult  
251 who is a victim of family or domestic violence to attend  
252 counseling relating to the victim's status or behavior as a  
253 victim, individually or with the perpetrator of domestic or family  
254 violence, as a condition of receiving custody of a child or as a  
255 condition of visitation.

256                   (f) If a court allows a family or household member to  
257 supervise visitation, the court shall establish conditions to be  
258 followed during visitation.

259                   **SECTION 6.** This act shall take effect and be in force from  
260 and after July 1, 2024.

