

By: Senator(s) Hickman

To: Judiciary, Division A

SENATE BILL NO. 2527

1 AN ACT TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF 1972, TO
 2 CREATE A REBUTTABLE PRESUMPTION IN FAVOR OF JOINT CUSTODY WITH
 3 EQUAL PARENTING TIME IN ALL CUSTODY MATTERS; TO PROVIDE THAT THE
 4 PRESUMPTION SHALL BE REBUTTABLE BY A PREPONDERANCE OF THE
 5 EVIDENCE; TO REQUIRE A COURT TO DOCUMENT THE REASONS FROM
 6 DEVIATING FROM THE PRESUMPTION; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

18 (d) Physical and legal custody to either parent
 19 pursuant to subsections (2) though (7).



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

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

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

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

34 (2) * * * (a) (i) There shall be a rebuttable presumption
35 that joint custody and equally shared parenting time is in the
36 best interest of the child. If the court does not grant joint
37 custody and/or equally shared parenting time, the court shall
38 construct a parenting time schedule which maximizes the time each
39 parent has with the child and ensures the best interest of the
40 child is met.

41 (ii) The presumption created in subparagraph (i)
42 of this paragraph shall be rebuttable by a preponderance of the
43 evidence. A court that does not award joint custody with equally



44 shared parenting time shall document the reasons for deviating
45 from the presumption.

46 (b) Upon petition of both parents, the court may grant
47 legal and/or physical custody to one (1) parent.

48 * * *

49 (* * *3) (a) For the purposes of this section, "joint
50 custody" means joint physical and legal custody.

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

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

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

63 (e) For the purposes of this section, "joint legal
64 custody" means that the parents or parties share the
65 decision-making rights, the responsibilities and the authority
66 relating to the health, education and welfare of a child. An
67 award of joint legal custody obligates the parties to equally
68 share parenting time, to exchange information concerning the



69 health, education and welfare of the minor child, and to confer
70 with one another in the exercise of decision-making rights,
71 responsibilities and authority.

72 An award of joint physical and legal custody obligates the
73 parties to exchange information concerning the health, education
74 and welfare of the minor child, and unless allocated, apportioned
75 or decreed, the parents or parties shall confer with one another
76 in the exercise of decision-making rights, responsibilities and
77 authority.

78 (* * *4) Any order for joint custody may be modified or
79 terminated upon the petition of both parents or upon the petition
80 of one (1) parent showing that a material change in circumstances
81 has occurred.

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

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

90 (* * *7) (a) (i) In every proceeding where the custody of
91 a child is in dispute, there shall be a rebuttable presumption
92 that it is detrimental to the child and not in the best interest
93 of the child to be placed in sole custody, joint legal custody or



94 joint physical custody of a parent who has a history of
95 perpetrating family violence. The court may find a history of
96 perpetrating family violence if the court finds, by a
97 preponderance of the evidence, one (1) incident of family violence
98 that has resulted in serious bodily injury to, or a pattern of
99 family violence against, the party making the allegation or a
100 family household member of either party. The court shall make
101 written findings to document how and why the presumption was or
102 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 this subsection * * * 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.** This act shall take effect and be in force from
187 and after July 1, 2024.

