

**Not Germane
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

House Bill No. 783

BY: Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

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

18 93-5-24. (1) Custody shall be awarded as follows according
19 to the best interests of the child:

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

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

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



26 (d) Physical and legal custody to either parent
27 pursuant to subsections (2) through (9).

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

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

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

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

42 (2) Joint custody may be awarded where irreconcilable
43 differences or any other ground is the ground for divorce * * *.
44 Joint custody may be awarded whether irreconcilable differences or
45 any other ground is the ground for divorce.

46 (3) * * * Whether after a trial on the merits or a
47 presentation of an agreement between the parties, the court shall
48 make a finding, on the record, if the court awards the mother
49 paramount physical custody over the father. If the court awards
50 the mother paramount physical custody over the father, the court



51 shall order a parenting time schedule that favors both parents
52 equally subject to the best interests of the child.

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

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

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

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

66 (d) For the purposes of this section, "legal custody"
67 means the decision-making rights, the responsibilities and the
68 authority relating to the health, education and welfare of a
69 child.

70 (e) For the purposes of this section, "joint legal
71 custody" means that the parents or parties share the
72 decision-making rights, the responsibilities and the authority
73 relating to the health, education and welfare of a child. An
74 award of joint legal custody obligates the parties to equally
75 share parenting time, to exchange information concerning the



76 health, education and welfare of the minor child, and to confer
77 with one another in the exercise of decision-making rights,
78 responsibilities and authority.

79 An award of joint physical and legal custody obligates the
80 parties to exchange information concerning the health, education
81 and welfare of the minor child, and unless allocated, apportioned
82 or decreed, the parents or parties shall confer with one another
83 in the exercise of decision-making rights, responsibilities and
84 authority.

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

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

92 (8) Notwithstanding any other provision of law, access to
93 records and information pertaining to a minor child, including,
94 but not limited to, medical, dental and school records, shall not
95 be denied to a parent because the parent is not the child's
96 custodial parent.

97 (9) (a) (i) In every proceeding where the custody of a
98 child is in dispute, there shall be a rebuttable presumption that
99 it is detrimental to the child and not in the best interest of the
100 child to be placed in sole custody, joint legal custody or joint



101 physical custody of a parent who has a history of perpetrating
102 family violence. The court may find a history of perpetrating
103 family violence if the court finds, by a preponderance of the
104 evidence, one (1) incident of family violence that has resulted in
105 serious bodily injury to, or a pattern of family violence against,
106 the party making the allegation or a family household member of
107 either party. The court shall make written findings to document
108 how and why the presumption was or was not triggered.

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

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

114 1. Whether the perpetrator of family violence
115 has demonstrated that giving sole or joint physical or legal
116 custody of a child to the perpetrator is in the best interest of
117 the child because of the other parent's absence, mental illness,
118 substance abuse or such other circumstances which affect the best
119 interest of the child or children;

120 2. Whether the perpetrator has successfully
121 completed a batterer's treatment program;

122 3. Whether the perpetrator has successfully
123 completed a program of alcohol or drug abuse counseling if the
124 court determines that counseling is appropriate;



125 4. Whether the perpetrator has successfully
126 completed a parenting class if the court determines the class to
127 be appropriate;

128 5. If the perpetrator is on probation or
129 parole, whether he or she is restrained by a protective order
130 granted after a hearing, and whether he or she has complied with
131 its terms and conditions; and

132 6. Whether the perpetrator of domestic
133 violence has committed any further acts of domestic violence.

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

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

140 (ii) If the court finds that both parents have a
141 history of perpetrating family violence, but the court finds that
142 parental custody would be in the best interest of the child,
143 custody may be awarded solely to the parent less likely to
144 continue to perpetrate family violence. In such a case, the court
145 may mandate completion of a treatment program by the custodial
146 parent.

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



150 attorney's fees incurred by the defending party in responding to
151 such allegations.

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

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

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

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

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

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

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

173 6. Prohibit overnight visitation;



174 7. Require a bond from the perpetrator of
175 domestic or family violence for the return and safety of the
176 child; or

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

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

183 (e) The court may refer but shall not order an adult
184 who is a victim of family or domestic violence to attend
185 counseling relating to the victim's status or behavior as a
186 victim, individually or with the perpetrator of domestic or family
187 violence, as a condition of receiving custody of a child or as a
188 condition of visitation.

189 (f) If a court allows a family or household member to
190 supervise visitation, the court shall establish conditions to be
191 followed during visitation.

192 **SECTION 2.** Section 93-5-1, Mississippi Code of 1972, is
193 amended as follows:

194 93-5-1. Divorces from the bonds of matrimony may be decreed
195 to the injured party for any one or more of the following * * *
196 thirteen (13) causes:

197 First. Natural impotency.



198 Second. Adultery, unless it should appear that it was
199 committed by collusion of the parties for the purpose of procuring
200 a divorce, or unless the parties cohabited after a knowledge by
201 complainant of the adultery.

202 Third. Being sentenced to any penitentiary, and not pardoned
203 before being sent there.

204 Fourth. * * * Continued * * * desertion for the space of one
205 (1) year.

206 Fifth. Habitual drunkenness.

207 Sixth. Habitual and excessive use of opium, morphine or
208 other like drug.

209 Seventh. Habitual cruel and inhuman treatment, including
210 spousal domestic abuse.

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

214 That the injured party's spouse attempted to cause, or
215 purposely, knowingly or recklessly caused bodily injury to the
216 injured party, or that the injured party's spouse attempted by
217 physical menace to put the injured party in fear of imminent
218 serious bodily harm; or

219 That the injured party's spouse engaged in a pattern of
220 behavior against the injured party of threats or intimidation,
221 emotional or verbal abuse, forced isolation, sexual extortion or
222 sexual abuse, or stalking or aggravated stalking as defined in



223 Section 97-3-107, if the pattern of behavior rises above the level
224 of unkindness or rudeness or incompatibility or want of affection.

225 Eighth. Having mental illness or an intellectual disability
226 at the time of marriage, if the party complaining did not know of
227 that infirmity.

228 Ninth. Marriage to some other person at the time of the
229 pretended marriage between the parties.

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

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

235 Twelfth. Incurable mental illness. However, no divorce
236 shall be granted upon this ground unless the party with mental
237 illness has been under regular treatment for mental illness and
238 causes thereof, confined in an institution for persons with mental
239 illness for a period of at least three (3) years immediately
240 preceding the commencement of the action. However, transfer of a
241 party with mental illness to his or her home for treatment or a
242 trial visit on prescription or recommendation of a licensed
243 physician, which treatment or trial visit proves unsuccessful
244 after a bona fide effort by the complaining party to effect a
245 cure, upon the reconfinement of the party with mental illness in
246 an institution for persons with mental illness, shall be regular
247 treatment for mental illness and causes thereof, and the period of



248 time so consumed in seeking to effect a cure or while on a trial
249 visit home shall be added to the period of actual confinement in
250 an institution for persons with mental illness in computing the
251 required period of three (3) years confinement immediately
252 preceding the beginning of the action. No divorce shall be
253 granted because of mental illness until after a thorough
254 examination of the person with mental illness by two (2)
255 physicians who are recognized authorities on mental diseases. One
256 (1) of those physicians shall be either the superintendent of a
257 state psychiatric hospital or institution or a veterans hospital
258 for persons with mental illness in which the patient is confined,
259 or a member of the medical staff of that hospital or institution
260 who has had the patient in charge. Before incurable mental
261 illness can be successfully proven as a ground for divorce, it
262 shall be necessary that both of those physicians make affidavit
263 that the patient is a person with mental illness at the time of
264 the examination, and both affidavits shall be made a part of the
265 permanent record of the divorce proceedings and shall create the
266 prima facie presumption of incurable mental illness, such as would
267 justify a divorce based on that ground. Service of process shall
268 be made on the superintendent of the hospital or institution in
269 which the defendant is a patient. If the patient is in a hospital
270 or institution outside the state, process shall be served by
271 publication, as in other cases of service by publication, together
272 with the sending of a copy by registered mail to the



273 superintendent of the hospital or institution. In addition,
274 process shall be served upon the next blood relative and guardian,
275 if any. If there is no legal guardian, the court shall appoint a
276 guardian ad litem to represent the interest of the person with
277 mental illness. The relative or guardian and superintendent of
278 the hospital or institution shall be entitled to appear and be
279 heard upon any and all issues. The status of the parties as to
280 the support and maintenance of the person with mental illness
281 shall not be altered in any way by the granting of the divorce.

282 However, in the discretion of the chancery court, and in
283 those cases as the court may deem it necessary and proper, before
284 any such decree is granted on the ground of incurable mental
285 illness, the complainant, when ordered by the court, shall enter
286 into bond, to be approved by the court, in such an amount as the
287 court may think just and proper, conditioned for the care and
288 keeping of the person with mental illness during the remainder of
289 his or her natural life, unless the person with mental illness has
290 a sufficient estate in his or her own right for that purpose.

291 Thirteenth. Upon application of either party, the court may
292 grant a divorce when the court finds there has been an
293 irretrievable breakdown of the marriage and that further attempts
294 at reconciliation are impractical or futile and not in the best
295 interests of the parties or family.

296 **SECTION 3.** This act shall take effect and be in force from
297 and after July 1, 2024.



Further, amend by striking the title in its entirety and inserting in lieu thereof the following:

1 AN ACT TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT JOINT CUSTODY MAY BE AWARDED WHETHER IRRECONCILABLE
3 DIFFERENCES OR ANY OTHER GROUND IS THE GROUND FOR DIVORCE; TO
4 REQUIRE THE COURT TO MAKE A FINDING, ON THE RECORD, IF THE COURT
5 AWARDS THE MOTHER PARAMOUNT PHYSICAL CUSTODY OVER THE FATHER AND
6 ORDER A PARENTING TIME SCHEDULE THAT FAVORS BOTH PARENTS EQUALLY
7 SUBJECT TO THE BEST INTERESTS OF THE CHILD; TO AMEND SECTION
8 93-5-1, MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENT OF
9 WILLFUL AND OBSTINATE FROM THE GROUND OF DIVORCE FOR DESERTION; TO
10 PROVIDE AN ADDITIONAL GROUND OF DIVORCE WHEN THE COURT FINDS THERE
11 HAS BEEN AN IRRETRIEVABLE BREAKDOWN OF THE MARRIAGE AND THAT
12 FURTHER ATTEMPTS AT RECONCILIATION ARE IMPRACTICAL OR FUTILE AND
13 NOT IN THE BEST INTERESTS OF THE PARTIES OR FAMILY; AND FOR
14 RELATED PURPOSES.

