

By: Representative Aguirre

To: Judiciary A

HOUSE BILL NO. 1304
(As Passed the House)

1 AN ACT TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT JOINT CUSTODY MAY BE AWARDED IN ANY TYPE OF DIVORCE;
3 TO REQUIRE THE COURT TO MAKE A FINDING ON THE RECORD AND ORDER A
4 PARENTING TIME SCHEDULE THAT FAVORS BOTH PARENTS EQUALLY SUBJECT
5 TO THE BEST INTERESTS OF THE CHILD, IF THE COURT AWARDS EITHER
6 PARENT PARAMOUNT PHYSICAL CUSTODY OVER THE OTHER PARENT; AND FOR
7 RELATED PURPOSES.

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

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

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

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

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

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

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



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 or any other ground is the ground for divorce * * *.
37 Joint custody may be awarded whether irreconcilable differences or
38 any other ground is the ground for divorce.

39 (3) * * * After a trial on the merits where custody is in
40 dispute, the court shall make a finding on the record, if the
41 court awards either parent paramount physical custody over the
42 other parent. If the court awards either parent paramount
43 physical custody over the other parent, the court shall order a
44 parenting time schedule that favors both parents equally subject
45 to the best interests of the child.



46 (4) There shall be a presumption that joint custody is in
47 the best interest of a minor child * * *.

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

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

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

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

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



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

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

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

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

88 (9) (a) (i) In every proceeding where the custody of a
89 child is in dispute, there shall be a rebuttable presumption that
90 it is detrimental to the child and not in the best interest of the
91 child to be placed in sole custody, joint legal custody or joint
92 physical custody of a parent who has a history of perpetrating
93 family violence. The court may find a history of perpetrating
94 family violence if the court finds, by a preponderance of the



95 evidence, one (1) incident of family violence that has resulted in
96 serious bodily injury to, or a pattern of family violence against,
97 the party making the allegation or a family household member of
98 either party. The court shall make written findings to document
99 how and why the presumption was or was not triggered.

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

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

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

111 2. Whether the perpetrator has successfully
112 completed a batterer's treatment program;

113 3. Whether the perpetrator has successfully
114 completed a program of alcohol or drug abuse counseling if the
115 court determines that counseling is appropriate;

116 4. Whether the perpetrator has successfully
117 completed a parenting class if the court determines the class to
118 be appropriate;



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

123 6. Whether the perpetrator of domestic
124 violence has committed any further acts of domestic violence.

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

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

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

138 (c) If the court finds that the allegations of domestic
139 violence are completely unfounded, the chancery court shall order
140 the alleging party to pay all court costs and reasonable
141 attorney's fees incurred by the defending party in responding to
142 such allegations.



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

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

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

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

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

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

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

164 6. Prohibit overnight visitation;

165 7. Require a bond from the perpetrator of
166 domestic or family violence for the return and safety of the
167 child; or



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

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

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

180 (f) If a court allows a family or household member to
181 supervise visitation, the court shall establish conditions to be
182 followed during visitation.

183 **SECTION 2.** This act shall take effect and be in force from
184 and after its passage.

