

By: Senator(s) Carlton

To: Judiciary

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2534

1 AN ACT TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE ENTRY OF AN ORDER OF CUSTODY IN CASES INVOLVING FAMILY
3 VIOLENCE AND CHILD SEXUAL ABUSE; AND FOR RELATED PURPOSES.

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

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

7 93-5-24. (1) Custody shall be awarded as follows according
8 to the best interests of the child:

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

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

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

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

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

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

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

26 In making an order for custody to either parent or to both
27 parents jointly, the court, in its discretion, may require the



28 parents to submit to the court a plan for the implementation of
29 the custody order.

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

33 (3) In other cases, joint custody may be awarded, in the
34 discretion of the court, upon application of one (1) or both
35 parents.

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

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

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

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

49 (d) For the purposes of this section, "legal custody"
50 means the decision-making rights, the responsibilities and the
51 authority relating to the health, education and welfare of a
52 child.

53 (e) For the purposes of this section, "joint legal
54 custody" means that the parents or parties share the
55 decision-making rights, the responsibilities and the authority
56 relating to the health, education and welfare of a child. An
57 award of joint legal custody obligates the parties to exchange
58 information concerning the health, education and welfare of the
59 minor child, and to confer with one another in the exercise of
60 decision-making rights, responsibilities and authority.



61 An award of joint physical and legal custody obligates the
62 parties to exchange information concerning the health, education
63 and welfare of the minor child, and unless allocated, apportioned
64 or decreed, the parents or parties shall confer with one another
65 in the exercise of decision-making rights, responsibilities and
66 authority.

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

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

74 (8) (a) There is created a presumption that no parent who
75 has a history of perpetrating family violence, with one or more
76 subsequent conviction of such charges, shall be awarded sole or
77 joint custody of children. For the purposes of this section, the
78 term "history of perpetrating family violence" shall mean a
79 pattern of behavior or a course of conduct, and not a single
80 incident. The presumption against custody shall be overcome only
81 by a preponderance of the evidence that the perpetrating parent
82 (i) has successfully completed a treatment program defined as a
83 course of evaluation and psychotherapy designed specifically for
84 perpetrators of family violence and conducted by licensed mental
85 health professionals; (ii) is not abusing alcohol or illegally
86 using drugs; and (iii) that the best interests of the child or
87 children requires that parent's participation as a custodial
88 parent because of the other parent's absence, mental illness or
89 substance abuse or other such circumstances which affect the best
90 interests of the child or children. The presumption may otherwise
91 be overcome only if the court finds evidence that there is no
92 significant risk of future family violence coupled with additional
93 extraordinary circumstances that warrant the rejection of the



94 presumption, including, but not limited to, habitual drug or
95 alcohol abuse by the nonabusive parent which renders that parent
96 unable to satisfactorily care for the child or children. The fact
97 that the abused parent suffers from effects of the abuse shall not
98 be grounds for denying that parent custody.

99 (b) If the court finds that both parents have a history
100 of perpetrating family violence, custody shall be awarded solely
101 to the parent who is less likely to continue to perpetrate family
102 violence. In such case, the court shall mandate completion of a
103 treatment program by the custodial parent. If necessary to
104 protect the welfare of the child, custody may be awarded to a
105 suitable third person, provided, that the person shall not allow
106 access to a violent parent, except as ordered by the court.

107 (c) If the court finds that a person has a history of
108 family violence, the court shall allow only supervised child
109 visitation with that parent, conditioned upon that parent's
110 participation in and completion of a treatment program.
111 Unsupervised visitation shall only be allowed if it is shown by a
112 preponderance of the evidence that the violent parent has
113 successfully completed a treatment program, is not abusing alcohol
114 or illegal drugs, poses no danger to the child, and that such
115 visitation is in the child's best interests.

116 (d) If the court finds that a parent has sexually
117 abused his or her child or children, the court shall prohibit all
118 visitation and contact between the abusive parent and the children
119 until such time as the court finds that the abusive parent has
120 successfully completed a treatment program designed for such
121 sexual abusers and that supervised visitation is in the best
122 interests of the child.

123 (e) For the purposes of this section, the term "family
124 violence" is defined as physical harm, bodily injury, sexual
125 activity compelled by physical force, simple or aggravated
126 assault, or the intentional infliction of reasonable fear of



127 imminent physical harm, bodily injury, sexual activity compelled
128 by physical force, or simple or aggravated assault committed by
129 one (1) parent against the other parent, the child or children of
130 either or both of the parents, or the perpetrator's current spouse
131 or cohabitating intimate partner. Family violence does not
132 include reasonable acts of self-defense utilized by one (1) parent
133 to protect himself or herself or a child in the family from the
134 violence of the other parent or reasonable physical discipline of
135 a child or children, such as spanking.

136 (9) All court costs, attorney's fees, evaluation fees and
137 expert witness fees, in a divorce, child custody or child
138 visitation action involving allegations of family violence where
139 there has been a conviction for an incident of family violence
140 shall be paid by the convicted party.

141 (10) Notwithstanding any other provision of law, access to
142 records and information pertaining to a minor child, including,
143 but not limited to, medical, dental and school records, shall not
144 be denied to a parent because the parent is not the child's
145 custodial parent.

146 **SECTION 2.** This act shall take effect and be in force from
147 and after July 1, 2002.

