

By: Senator(s) Carlton

To: Judiciary

SENATE BILL NO. 2706

1 AN ACT TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF 1972, TO
2 CREATE A REBUTTABLE PRESUMPTION THAT IT IS NOT IN THE BEST
3 INTEREST OF A CHILD TO BE PLACED IN THE CUSTODY OF AN ABUSIVE
4 PARENT; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

75 (8) Notwithstanding any other provision of law, access to
76 records and information pertaining to a minor child, including but
77 not limited to medical, dental and school records, shall not be
78 denied to a parent because the parent is not the child's custodial
79 parent.

80 (9) In every proceeding where the custody of a child is in
81 dispute, there shall be a rebuttable presumption that it is
82 detrimental to the child and not in the best interest of the child
83 to be placed in sole custody, joint legal custody or joint
84 physical custody of a parent who has a history of perpetrating
85 family violence. The court may find a history of perpetrating
86 family violence if the court finds, by a preponderance of the
87 evidence, one (1) incident of family violence that has resulted in
88 serious bodily injury to, or a pattern of family violence against,
89 the party making the allegation or a family household member of
90 either party. The court shall make written findings to document
91 how and why the presumption was or was not triggered.

92 (10) (a) This presumption may only be rebutted by a
93 preponderance of the evidence.



94 (b) In determining whether the presumption set forth in
95 subsection (9) has been overcome, the court shall consider all of
96 the following factors:

97 (i) Whether the perpetrator of family violence has
98 demonstrated that giving sole or joint physical or legal custody
99 of a child to the perpetrator is in the best interest of the child
100 because of the other parent's absence, mental illness, or
101 substance abuse or such other circumstances which affect the best
102 interest of the child or children;

103 (ii) Whether the perpetrator has successfully
104 completed a batterer's treatment program;

105 (iii) Whether the perpetrator has successfully
106 completed a program of alcohol or drug abuse counseling if the
107 court determines that counseling is appropriate;

108 (iv) Whether the perpetrator has successfully
109 completed a parenting class if the court determines the class to
110 be appropriate;

111 (v) If the perpetrator is on probation or parole,
112 whether he or she is restrained by a protective order granted
113 after a hearing, and whether he or she has complied with its terms
114 and conditions; and

115 (vi) Whether the perpetrator of domestic violence
116 has committed any further acts of domestic violence.

117 (c) The court shall make written findings to document
118 how and why the presumption was or was not rebutted.

119 (11) If the court finds that both parents have a history of
120 perpetrating family violence, custody shall be awarded solely to
121 the parent less likely to continue to perpetrate family violence.
122 In such a case, the court may mandate completion of a treatment
123 program by the custodial parent. If necessary to protect the
124 child, custody may be awarded to a suitable third person, provided
125 that the person would not allow access to a violent parent except
126 as ordered by the court. In cases in which both parents are



127 perpetrators of domestic violence, this presumption shall not be
128 applicable.

129 (12) If the court finds that the allegations of domestic
130 violence are completely unfounded, the chancery court may order
131 the alleging party to pay all court costs and reasonable
132 attorney's fees incurred by the defending party in responding to
133 such allegation.

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

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

140 (i) Order an exchange of the child to occur in a
141 protected setting;

142 (ii) Order visitation supervised in a manner to be
143 determined by the court;

144 (iii) Order the perpetrator of domestic or family
145 violence to attend and complete to the satisfaction of the court,
146 a program of intervention for perpetrators or other designated
147 counseling as a condition of visitation;

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

152 (v) Order the perpetrator of domestic or family
153 violence to pay a fee to defray the cost of supervised visitation;

154 (vi) Prohibit overnight visitation;

155 (vii) Require a bond from the perpetrator of
156 domestic or family violence for the return and safety of the
157 child; or



158 (viii) Impose any other condition that is deemed
159 necessary to provide for the safety of the child, the victim of
160 family or domestic violence or other family or household member.

161 (c) Whether or not visitation is allowed, the court may
162 order the address of the child of the victim of family or domestic
163 violence to be kept confidential.

164 (d) The court may refer but shall not order an adult
165 who is a victim of family or domestic violence to attend
166 counseling relating to the victim's status or behavior as a
167 victim, individually or with the perpetrator of domestic or family
168 violence, as a condition of receiving custody of a child or as a
169 condition of visitation.

170 (e) If a court allows a family or household member to
171 supervise visitation, the court shall establish conditions to be
172 followed during visitation.

173 **SECTION 2.** This act shall take effect and be in force from
174 and after July 1, 2003.

