

By: Senator(s) Fillingane

To: Judiciary, Division A

SENATE BILL NO. 2546

1 AN ACT TO AMEND SECTIONS 93-5-24 AND 93-11-65, MISSISSIPPI
2 CODE OF 1972, TO PROHIBIT A COURT FROM MODIFYING AN ORDER OF CHILD
3 CUSTODY IF THE PARTY WHO HAS CUSTODY OF THE CHILD HAS BEEN CALLED
4 TO ACTIVE MILITARY DUTY; TO PROHIBIT A COURT FROM BASING A BEST
5 INTEREST DETERMINATION ON THE SEPARATION OF A PARENT FROM THE
6 CHILD DUE TO ACTIVE MILITARY DUTY; TO PROVIDE EXCEPTIONS; 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 (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) Joint custody may be awarded where irreconcilable
35 differences is the ground for divorce, in the discretion of the
36 court, upon application of both parents.

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

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

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

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

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

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

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

62 minor child, and to confer with one another in the exercise of
63 decision-making rights, responsibilities and authority.

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

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

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

77 (8) If a parent is called to military service, the court
78 shall not make a best interest determination based on that
79 parent's separation from the child or children due to military
80 service unless the party has died while on active duty.

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

86 (10) (a) (i) In every proceeding where the custody of a
87 child is in dispute, there shall be a rebuttable presumption that
88 it is detrimental to the child and not in the best interest of the
89 child to be placed in sole custody, joint legal custody or joint
90 physical custody of a parent who has a history of perpetrating
91 family violence. The court may find a history of perpetrating
92 family violence if the court finds, by a preponderance of the
93 evidence, one (1) incident of family violence that has resulted in
94 serious bodily injury to, or a pattern of family violence against,

95 the party making the allegation or a family household member of
96 either party. The court shall make written findings to document
97 how and why the presumption was or was not triggered.

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

100 (iii) In determining whether the presumption set
101 forth in subsection (10) has been overcome, the court shall
102 consider all of the following factors:

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

109 2. Whether the perpetrator has successfully
110 completed a batterer's treatment program;

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

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

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

121 6. Whether the perpetrator of domestic
122 violence has committed any further acts of domestic violence.

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

125 (b) (i) If custody is awarded to a suitable third
126 person, it shall not be until the natural grandparents of the

127 child have been excluded and such person shall not allow access to
128 a violent parent except as ordered by the court.

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

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

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

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

147 1. Order an exchange of the child to occur in
148 a protected setting;

149 2. Order visitation supervised in a manner to
150 be determined by the court;

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

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

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

162 6. Prohibit overnight visitation;

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

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

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

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

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

181 **SECTION 2.** Section 93-11-65, Mississippi Code of 1972, is
182 amended as follows:

183 93-11-65. (1) (a) (i) In addition to the right to proceed
184 under Section 93-5-23, Mississippi Code of 1972, and in addition
185 to the remedy of habeas corpus in proper cases, and other existing
186 remedies, the chancery court of the proper county shall have
187 jurisdiction to entertain suits for the custody, care, support and
188 maintenance of minor children and to hear and determine all such
189 matters, and shall, if need be, require bond, sureties or other
190 guarantee to secure any order for periodic payments for the
191 maintenance or support of a child. In the event a legally

192 responsible parent has health insurance available to him or her
193 through an employer or organization that may extend benefits to
194 the dependents of such parent, any order of support issued against
195 such parent may require him or her to exercise the option of
196 additional coverage in favor of such children as he or she is
197 legally responsible to support. Proceedings may be brought by or
198 against a resident or nonresident of the State of Mississippi,
199 whether or not having the actual custody of minor children, for
200 the purpose of judicially determining the legal custody of a
201 child. All actions herein authorized may be brought in the county
202 where the child is actually residing, or in the county of the
203 residence of the party who has actual custody, or of the residence
204 of the defendant. Process shall be had upon the parties as
205 provided by law for process in person or by publication, if they
206 be nonresidents of the state or residents of another jurisdiction
207 or are not found therein after diligent search and inquiry or are
208 unknown after diligent search and inquiry; provided that the court
209 or chancellor in vacation may fix a date in termtime or in
210 vacation to which process may be returnable and shall have power
211 to proceed in termtime or vacation.

212 (ii) * * * If the court finds that both parties
213 are fit and proper persons to have custody of the children, and
214 that either party is able to adequately provide for the care and
215 maintenance of the children, the chancellor may consider the
216 preference of a child of twelve (12) years of age or older as to
217 the parent with whom the child would prefer to live in determining
218 what would be in the best interest and welfare of the child. The
219 chancellor shall place on the record the reason or reasons for
220 which the award of custody was made and explain in detail why the
221 wishes of any child were or were not honored.

222 (iii) If a party is called to active duty military
223 service, the court shall not make a best interest determination

224 based on that party's separation from the child or children due to
225 military service unless the party has died while on active duty.

226 (b) An order of child support shall specify the sum to
227 be paid weekly or otherwise. In addition to providing for support
228 and education, the order shall also provide for the support of the
229 child prior to the making of the order for child support, and such
230 other expenses as the court may deem proper.

231 (c) The court may require the payment to be made to the
232 custodial parent, or to some person or corporation to be
233 designated by the court as trustee, but if the child or custodial
234 parent is receiving public assistance, the Department of Human
235 Services shall be made the trustee.

236 (d) The noncustodial parent's liabilities for past
237 education and necessary support and maintenance and other expenses
238 are limited to a period of one (1) year next preceding the
239 commencement of an action.

240 (2) Provided further, that where the proof shows that both
241 parents have separate incomes or estates, the court may require
242 that each parent contribute to the support and maintenance of the
243 children in proportion to the relative financial ability of each.

244 (3) Whenever the court has ordered a party to make periodic
245 payments for the maintenance or support of a child, but no bond,
246 sureties or other guarantee has been required to secure such
247 payments, and whenever such payments as have become due remain
248 unpaid for a period of at least thirty (30) days, the court may,
249 upon petition of the person to whom such payments are owing, or
250 such person's legal representative, enter an order requiring that
251 bond, sureties or other security be given by the person obligated
252 to make such payments, the amount and sufficiency of which shall
253 be approved by the court. The obligor shall, as in other civil
254 actions, be served with process and shall be entitled to a hearing
255 in such case.

256 (4) When a charge of abuse or neglect of a child first
257 arises in the course of a custody or maintenance action pending in
258 the chancery court pursuant to this section, the chancery court
259 may proceed with the investigation, hearing and determination of
260 such abuse or neglect charge as a part of its hearing and
261 determination of the custody or maintenance issue as between the
262 parents, as provided in Section 43-21-151, notwithstanding the
263 other provisions of the Youth Court Law. The proceedings in
264 chancery court on the abuse or neglect charge shall be
265 confidential in the same manner as provided in youth court
266 proceedings, and the chancery court shall appoint a guardian ad
267 litem in such cases, as provided under Section 43-21-121 for youth
268 court proceedings, who shall be an attorney. In determining
269 whether any portion of a guardian ad litem's fee shall be assessed
270 against any party or parties as a cost of court for reimbursement
271 to the county, the court shall consider each party's individual
272 ability to pay. Unless the chancery court's jurisdiction has been
273 terminated, all disposition orders in such cases for placement
274 with the Department of Human Services shall be reviewed by the
275 court or designated authority at least annually to determine if
276 continued placement with the department is in the best interest of
277 the child or the public.

278 (5) Each party to a paternity or child support proceeding
279 shall notify the other within five (5) days after any change of
280 address. In addition, the noncustodial and custodial parent shall
281 file and update, with the court and with the state case registry,
282 information on that party's location and identity, including
283 social security number, residential and mailing addresses,
284 telephone numbers, photograph, driver's license number, and name,
285 address and telephone number of the party's employer. This
286 information shall be required upon entry of an order or within
287 five (5) days of a change of address.

288 (6) In any case subsequently enforced by the Department of
289 Human Services pursuant to Title IV-D of the Social Security Act,
290 the court shall have continuing jurisdiction.

291 (7) In any subsequent child support enforcement action
292 between the parties, upon sufficient showing that diligent effort
293 has been made to ascertain the location of a party, due process
294 requirements for notice and service of process shall be deemed to
295 be met with respect to the party upon delivery of written notice
296 to the most recent residential or employer address filed with the
297 state case registry.

298 (8) The duty of support of a child terminates upon the
299 emancipation of the child. The court may determine that
300 emancipation has occurred and no other support obligation exists
301 when the child:

302 (a) Attains the age of twenty-one (21) years, or

303 (b) Marries, or

304 (c) Discontinues full-time enrollment in school having
305 attained the age of eighteen (18) years, unless the child is
306 disabled, or

307 (d) Voluntarily moves from the home of the custodial
308 parent or guardian, establishes independent living arrangements,
309 obtains full-time employment and discontinues educational
310 endeavors prior to attaining the age of twenty-one (21) years, or

311 (e) Joins the military and serves on a full-time basis,
312 or

313 (f) Is convicted of a felony and is incarcerated for
314 committing such felony, or

315 (g) Cohabits with another person without the approval
316 of the parent obligated to pay support.

317 (9) A determination of emancipation does not terminate any
318 obligation of the noncustodial parent to satisfy arrearage
319 existing as of the date of emancipation; the total amount of
320 periodic support due prior to the emancipation plus any periodic

321 amounts ordered paid toward the arrearage shall continue to be
322 owed until satisfaction of the arrearage in full, in addition to
323 the right of the person for whom the obligation is owed to execute
324 for collection as may be provided by law.

325 (10) Upon motion of a party requesting temporary child
326 support pending a determination of parentage, temporary support
327 shall be ordered if there is clear and convincing evidence of
328 paternity on the basis of genetic tests or other evidence, unless
329 the court makes written findings of fact on the record that the
330 award of temporary support would be unjust or inappropriate in a
331 particular case.

332 **SECTION 3.** This act shall take effect and be in force from
333 and after its passage.