

By: Representatives Aguirre, Nelson

To: Judiciary B

HOUSE BILL NO. 783

1 AN ACT TO AMEND SECTION 93-5-24, MISSISSIPPI CODE OF 1972, TO
 2 REVISE CUSTODY STANDARDS TO PROVIDE A REBUTTABLE PRESUMPTION OF
 3 JOINT CUSTODY WITH EQUAL PARENTING TIME IN ALL CUSTODY MATTERS; TO
 4 REQUIRE A COURT TO DOCUMENT REASONS FOR DEVIATION FROM JOINT
 5 CUSTODY IF THE COURT FAILS TO GRANT JOINT CUSTODY; TO BRING
 6 FORWARD SECTION 93-11-65, MISSISSIPPI CODE OF 1972, WHICH PROVIDES
 7 ADDITIONAL REMEDIES PROVIDED BY CHANCERY COURT, FOR PURPOSES OF
 8 AMENDMENT; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

20 (d) Physical and legal custody to either parent
 21 pursuant to subsections (2) through (7).



22 (e) Upon a finding by the court that both of the
23 parents of the child have abandoned or deserted such child or that
24 both such parents are mentally, morally or otherwise unfit to rear
25 and train the child the court may award physical and legal custody
26 to:

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

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

32 In making an order for custody to either parent or to both
33 parents jointly, the court, in its discretion, may require the
34 parents to submit to the court a plan for the implementation of
35 the custody order.

36 (2) * * * (a) There shall be a presumption, rebuttable by a
37 preponderance of evidence, that joint custody and equally shared
38 parenting time is in the best interest of the child. If the court
39 does not grant joint custody and/or equally shared parenting time,
40 the court shall construct a parenting time schedule which
41 maximizes the time each parent has with the child and ensuring the
42 best interest of the child is met.

43 (b) Upon petition of both parents, the court may grant
44 legal and/or physical custody to one parent.

45 * * *



46 (* * *3) (a) For the purposes of this section, "joint
47 custody" means joint physical and legal custody.

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

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

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

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

69 An award of joint physical and legal custody obligates the
70 parties to exchange information concerning the health, education



71 and welfare of the minor child, and unless allocated, apportioned
72 or decreed, the parents or parties shall confer with one another
73 in the exercise of decision-making rights, responsibilities and
74 authority.

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

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

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

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



96 family violence against, the party making the allegation or a
97 family household member of either party. The court shall make
98 written findings to document how and why the presumption was or
99 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 this subsection * * * 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.** Section 93-11-65, Mississippi Code of 1972, is
184 brought forward as follows:

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



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



218 (12) years of age or older as to the parent with whom the child
219 would prefer to live in determining what would be in the best
220 interest and welfare of the child. The chancellor shall place on
221 the record the reason or reasons for which the award of custody
222 was made and explain in detail why the wishes of any child were or
223 were not honored.

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

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

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

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



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

254 (4) When a charge of abuse or neglect of a child first
255 arises in the course of a custody or maintenance action pending in
256 the chancery court pursuant to this section, the chancery court
257 may proceed with the investigation, hearing and determination of
258 such abuse or neglect charge as a part of its hearing and
259 determination of the custody or maintenance issue as between the
260 parents, as provided in Section 43-21-151, notwithstanding the
261 other provisions of the Youth Court Law. The proceedings in
262 chancery court on the abuse or neglect charge shall be
263 confidential in the same manner as provided in youth court
264 proceedings, and the chancery court shall appoint a guardian ad
265 litem in such cases, as provided under Section 43-21-121 for youth
266 court proceedings, who shall be an attorney. In determining



267 whether any portion of a guardian ad litem's fee shall be assessed
268 against any party or parties as a cost of court for reimbursement
269 to the county, the court shall consider each party's individual
270 ability to pay. Unless the chancery court's jurisdiction has been
271 terminated, all disposition orders in such cases for placement
272 with the Department of Human Services shall be reviewed by the
273 court or designated authority at least annually to determine if
274 continued placement with the department is in the best interest of
275 the child or the public.

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

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

289 (7) In any subsequent child support enforcement action
290 between the parties, upon sufficient showing that diligent effort
291 has been made to ascertain the location of a party, due process



292 requirements for notice and service of process shall be deemed to
293 be met with respect to the party upon delivery of written notice
294 to the most recent residential or employer address filed with the
295 state case registry.

296 (8) (a) The duty of support of a child terminates upon the
297 emancipation of the child. Unless otherwise provided for in the
298 underlying child support judgment, emancipation shall occur when
299 the child:

300 (i) Attains the age of twenty-one (21) years, or

301 (ii) Marries, or

302 (iii) Joins the military and serves on a full-time
303 basis, or

304 (iv) Is convicted of a felony and is sentenced to
305 incarceration of two (2) or more years for committing such
306 felony; * * *

307 (b) Unless otherwise provided for in the underlying
308 child support judgment, the court may determine that emancipation
309 has occurred and no other support obligation exists when the
310 child:

311 (i) Discontinues full-time enrollment in school
312 having attained the age of eighteen (18) years, unless the child
313 is disabled, or

314 (ii) Voluntarily moves from the home of the
315 custodial parent or guardian, establishes independent living
316 arrangements, obtains full-time employment and discontinues



317 educational endeavors prior to attaining the age of twenty-one
318 (21) years, or

319 (iii) Cohabits with another person without the
320 approval of the parent obligated to pay support; * * *

321 (c) The duty of support of a child who is incarcerated
322 but not emancipated shall be suspended for the period of the
323 child's incarceration.

324 (9) A determination of emancipation does not terminate any
325 obligation of the noncustodial parent to satisfy arrearage
326 existing as of the date of emancipation; the total amount of
327 periodic support due prior to the emancipation plus any periodic
328 amounts ordered paid toward the arrearage shall continue to be
329 owed until satisfaction of the arrearage in full, in addition to
330 the right of the person for whom the obligation is owed to execute
331 for collection as may be provided by law.

332 (10) Upon motion of a party requesting temporary child
333 support pending a determination of parentage, temporary support
334 shall be ordered if there is clear and convincing evidence of
335 paternity on the basis of genetic tests or other evidence, unless
336 the court makes written findings of fact on the record that the
337 award of temporary support would be unjust or inappropriate in a
338 particular case.

339 (11) Custody and visitation upon military temporary duty,
340 deployment or mobilization shall be governed by Section 93-5-34.



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

