

West's Annotated Mississippi Code
Title 93. Domestic Relations
Chapter 5. Divorce and Alimony

Miss. Code Ann. § 93-5-23

§ 93-5-23. Children; spousal maintenance or alimony; referrals for failure to pay child support

Currentness

When a divorce shall be decreed from the bonds of matrimony, the court may, in its discretion, having regard to the circumstances of the parties and the nature of the case, as may seem equitable and just, make all orders touching the care, custody and maintenance of the children of the marriage, and also touching the maintenance and alimony of the wife or the husband, or any allowance to be made to her or him, and shall, if need be, require bond, sureties or other guarantee for the payment of the sum so allowed. Orders touching on the custody of the children of the marriage shall be made in accordance with the provisions of [Section 93-5-24](#). For the purposes of orders touching the maintenance and alimony of the wife or husband, “property” and “an asset of a spouse” shall not include any interest a party may have as an heir at law of a living person or any interest under a third-party will, nor shall any such interest be considered as an economic circumstance or other factor. The court may afterwards, on petition, change the decree, and make from time to time such new decrees as the case may require. However, where proof shows that both parents have separate incomes or estates, the court may require that each parent contribute to the support and maintenance of the children of the marriage in proportion to the relative financial ability of each. In the event a legally responsible parent has health insurance available to him or her through an employer or organization that may extend benefits to the dependents of such parent, any order of support issued against such parent may require him or her to exercise the option of additional coverage in favor of such children as he or she is legally responsible to support.

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

At the discretion of the court, any person found in contempt for failure to pay child support and imprisoned therefor may be referred for placement in a state, county or municipal restitution, house arrest or restorative justice center or program, provided such person meets the qualifications prescribed in [Section 99-37-19](#).

Whenever in any proceeding in the chancery court concerning the custody of a child a party alleges that the child whose custody is at issue has been the victim of sexual or physical abuse by the other party, the court may, on its own motion, grant a continuance in the custody proceeding only until such allegation has been investigated by the Department of Human Services. At the time of ordering such continuance, the court may direct the party and his attorney making such allegation of child abuse to report in writing and provide all evidence touching on the allegation of abuse to the Department of Human Services. The Department of Human Services shall investigate such allegation and take such action as it deems appropriate and as provided in such cases under the Youth Court Law (being Chapter 21 of Title 43, Mississippi Code of 1972) or under the laws establishing family courts (being Chapter 23 of Title 43, Mississippi Code of 1972).

If after investigation by the Department of Human Services or final disposition by the youth court or family court allegations of child abuse are found to be without foundation, the chancery court shall order the alleging party to pay all court costs and reasonable attorney's fees incurred by the defending party in responding to such allegation.

The court may investigate, hear and make a determination in a custody action when a charge of abuse and/or neglect arises in the course of a custody action as provided in [Section 43-21-151](#), and in such cases the court shall appoint a guardian ad litem for the child as provided under [Section 43-21-121](#), who shall be an attorney. Unless the chancery court's jurisdiction has been terminated, all disposition orders in such cases for placement with the Department of Human Services shall be reviewed by the court or designated authority at least annually to determine if continued placement with the department is in the best interest of the child or public.

The duty of support of a child terminates upon the emancipation of the child. The court may determine that emancipation has occurred pursuant to [Section 93-11-65](#).

Custody and visitation upon military temporary duty, deployment or mobilization shall be governed by [Section 93-5-34](#).

Credits

Laws 1954, Ch. 228, § 1; Laws 1979, Ch. 497, § 1; Laws 1983, Ch. 513, § 3; Laws 1985, Ch. 518, § 15; Laws 1989, Ch. 434, § 1; [Laws 1993, Ch. 558, § 2](#); [Laws 1994, Ch. 591, § 6](#); [Laws 1996, Ch. 345, § 1](#), eff. from and after passage (approved March 17, 1996); [Laws 2000, Ch. 453, § 2](#), eff. July 1, 2000; [Laws 2006, Ch. 565, § 1](#), eff. July 1, 2006. Amended by [Laws 2008, Ch. 389, § 2](#), eff. July 1, 2008; [Laws 2008, Ch. 547, § 2](#), eff. July 1, 2008; [Laws 2009, Ch. 367, § 3](#), eff. July 1, 2009.

[Notes of Decisions \(3322\)](#)

Miss. Code Ann. § 93-5-23, MS ST § 93-5-23

The statutes and Constitution are current through general laws from the 2013 Regular Session. Titles 17, 23, 31, 37, 73, and 75 are current through general laws from the 2012 Regular Session. These Titles will be updated once notes from the revisor meeting are received and information is applied.

West's Annotated Mississippi Code
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Miss. Code Ann. § 93-5-24

§ 93-5-24. Custody order; access to information; custody by parent with history of perpetrating family violence

Currentness

(1) Custody shall be awarded as follows according to the best interests of the child:

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

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

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

(d) Physical and legal custody to either parent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Order the perpetrator of domestic or family violence to attend and complete to the satisfaction of the court a program of intervention for perpetrators or other designated counseling as a condition of visitation;
4. Order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four (24) hours preceding the visitation;
5. Order the perpetrator of domestic or family violence to pay a fee to defray the cost of supervised visitation;
6. Prohibit overnight visitation;
7. Require a bond from the perpetrator of domestic or family violence for the return and safety of the child; or
8. Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family or domestic violence, or other family or household member.

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

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

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

Credits

Laws 1983, Ch. 513, §§ 1, 2, eff. July 1, 1983; [Laws 2000, Ch. 453, § 1, eff. July 1, 2000](#); [Laws 2003, Ch. 475, § 1, eff. July 1, 2003](#).

[Notes of Decisions \(1392\)](#)

Miss. Code Ann. § 93-5-24, MS ST § 93-5-24

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Miss. Code Ann. § 93-5-26

§ 93-5-26. Noncustodial parent's right to information

Currentness

Notwithstanding any other provisions of law, except those provisions protecting the confidentiality of adoption records and except for cases in which parental rights have been legally terminated, access to records and information pertaining to a minor child, including but not limited to medical, dental and school records, shall not be denied to a parent because the parent is not the child's custodial parent if such parent's parental rights have not been terminated by adoption or by a termination of parental rights proceeding.

Credits

Laws 1989, Ch. 581, § 1, eff. from and after passage (approved April 21, 1989).

Miss. Code Ann. § 93-5-26, MS ST § 93-5-26

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