

By: Senator(s) Doty, Branning, Wiggins

To: Judiciary, Division A

SENATE BILL NO. 2418

1 AN ACT TO AMEND SECTION 93-5-1, MISSISSIPPI CODE OF 1972, TO  
2 CREATE DOMESTIC VIOLENCE AS AN ADDITIONAL GROUND FOR DIVORCE; AND  
3 FOR RELATED PURPOSES.

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

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

7 93-5-1. Divorces from the bonds of matrimony may be decreed  
8 to the injured party for any one or more of the following \* \* \*  
9 thirteen (13) causes:

10 First. Natural impotency.

11 Second. Adultery, unless it should appear that it was  
12 committed by collusion of the parties for the purpose of procuring  
13 a divorce, or unless the parties cohabited after a knowledge by  
14 complainant of the adultery.

15 Third. Being sentenced to any penitentiary, and not pardoned  
16 before being sent there.

17 Fourth. Willful, continued and obstinate desertion for the  
18 space of one (1) year.



19 Fifth. Habitual drunkenness.

20 Sixth. Habitual and excessive use of opium, morphine or  
21 other like drug.

22 Seventh. Habitual cruel and inhuman treatment.

23 Eighth. Having mental illness or an intellectual disability  
24 at the time of marriage, if the party complaining did not know of  
25 that infirmity.

26 Ninth. Marriage to some other person at the time of the  
27 pretended marriage between the parties.

28 Tenth. Pregnancy of the wife by another person at the time  
29 of the marriage, if the husband did not know of the pregnancy.

30 Eleventh. Either party may have a divorce if they are  
31 related to each other within the degrees of kindred between whom  
32 marriage is prohibited by law.

33 Twelfth. Incurable mental illness. However, no divorce  
34 shall be granted upon this ground unless the party with mental  
35 illness has been under regular treatment for mental illness and  
36 causes thereof, confined in an institution for persons with mental  
37 illness for a period of at least three (3) years immediately  
38 preceding the commencement of the action. However, transfer of a  
39 party with mental illness to his or her home for treatment or a  
40 trial visit on prescription or recommendation of a licensed  
41 physician, which treatment or trial visit proves unsuccessful  
42 after a bona fide effort by the complaining party to effect a  
43 cure, upon the reconfinement of the party with mental illness in



44 an institution for persons with mental illness, shall be regular  
45 treatment for mental illness and causes thereof, and the period of  
46 time so consumed in seeking to effect a cure or while on a trial  
47 visit home shall be added to the period of actual confinement in  
48 an institution for persons with mental illness in computing the  
49 required period of three (3) years confinement immediately  
50 preceding the beginning of the action. No divorce shall be  
51 granted because of mental illness until after a thorough  
52 examination of the person with mental illness by two (2)  
53 physicians who are recognized authorities on mental diseases. One  
54 (1) of those physicians shall be either the superintendent of a  
55 state psychiatric hospital or institution or a veterans hospital  
56 for persons with mental illness in which the patient is confined,  
57 or a member of the medical staff of that hospital or institution  
58 who has had the patient in charge. Before incurable mental  
59 illness can be successfully proven as a ground for divorce, it  
60 shall be necessary that both of those physicians make affidavit  
61 that the patient is a person with mental illness at the time of  
62 the examination, and both affidavits shall be made a part of the  
63 permanent record of the divorce proceedings and shall create the  
64 prima facie presumption of incurable mental illness, such as would  
65 justify a divorce based on that ground. Service of process shall  
66 be made on the superintendent of the hospital or institution in  
67 which the defendant is a patient. If the patient is in a hospital  
68 or institution outside the state, process shall be served by



69 publication, as in other cases of service by publication, together  
70 with the sending of a copy by registered mail to the  
71 superintendent of the hospital or institution. In addition,  
72 process shall be served upon the next blood relative and guardian,  
73 if any. If there is no legal guardian, the court shall appoint a  
74 guardian ad litem to represent the interest of the person with  
75 mental illness. The relative or guardian and superintendent of  
76 the hospital or institution shall be entitled to appear and be  
77 heard upon any and all issues. The status of the parties as to  
78 the support and maintenance of the person with mental illness  
79 shall not be altered in any way by the granting of the divorce.

80         However, in the discretion of the chancery court, and in  
81 those cases as the court may deem it necessary and proper, before  
82 any such decree is granted on the ground of incurable mental  
83 illness, the complainant, when ordered by the court, shall enter  
84 into bond, to be approved by the court, in such an amount as the  
85 court may think just and proper, conditioned for the care and  
86 keeping of the person with mental illness during the remainder of  
87 his or her natural life, unless the person with mental illness has  
88 a sufficient estate in his or her own right for that purpose.

89         Thirteenth. One or more instances of domestic violence as  
90 defined in Section 97-3-7, if established by clear and convincing  
91 evidence.

92         **SECTION 2.** This act shall take effect and be in force from  
93 and after July 1, 2016.

