**CUSTODY V. GAP ACT**

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|  | **CUSTODY ACTIONS** | **THE GAP ACT** |
| **Tests for award**  | 1. Abandonment, desertion, unfitness 2. Constructive abandonment3. Exceptional circumstances test4. History of family violence | Parent not “willing or able” to care for child*Prior law:* parent “unsuitable” (interpreted to incorporate traditional custody tests) |
| **Cause of action** | Miss. Code Ann. § 93-11-65 | Miss. Code Ann. § 93-20-201 |
| **Jurisdiction** | In state: chancery courtMulti-state actions: UCCJEA (child’s home state) | In state: chancery courtMulti-state actions: UCCJEA (child’s home state) |
| **Venue** | County where child, custodian, or defendant lives | County where minor resides or is located or county where action regarding child is pending |
| **Personal jurisdiction** | Not required | Not required |
| **Service of process** | Rule 81(d), 30 day matterPublication permittedDefects waived by appearance or failure to object | Rule 81(d), 7 day matter Publication permittedWaiver: all parties but minor may waive |
| **Parties** | ParentsPhysical custodians | Minor over 14Parents or relativeAll persons who had custody for 60 days within 6 months of filing  |
| **Pleadings** | Petition, UCCJEA affidavit | Filed by any interested person; §93-20-203(3) mandatory paragraph; Notice under §93-20-113 |
| **Hearings** | No attendance requirement | Required:* Minor (unless excused)
* guardian

Parents may attend |
| **Guardian ad litem** | Appointment mandatory if allegations of abuse or neglect; otherwise discretionary | Court has discretion to appoint – Cannot be same person as attorney for the child |
| **Custodian duties** | No oversightDuty to provide care and supportNo ongoing duty of support after custodianship ends | Duty to provide care Reporting requirementsOath requiredCertificate of attorney and fiduciaryNotice requirements to parentsDuties may be limited by orderMay be required to maintain counsel or requirement may be excusedMay apply for benefits for minor |
| **Visitation and** **Support**  | Custodian may petition for support; personal jurisdiction required | May seek child support for minor from parents;Court may grant parent visitation and certain decision-making rights to parents  |
| **Termination by parent** | Agreed custody to third party: Child’s best interestsLitigated custody to third party: Material change in circumstances test | Parent is no longer “unable or unwillingto provide care; UNLESSTermination would be harmful to minor, *and*Minor’s interest outweighs parent’s interest in regaining custody |