**CUSTODY V. GAP ACT**

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|  | **CUSTODY ACTIONS** | **THE GAP ACT** |
| **Tests for award** | 1. Abandonment, desertion, unfitness  2. Constructive abandonment  3. Exceptional circumstances test  4. 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 court  Multi-state actions: UCCJEA (child’s home state) | In state: chancery court  Multi-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 matter  Publication permitted  Defects waived by appearance or failure to object | Rule 81(d), 7 day matter  Publication permitted  Waiver: all parties but minor may waive |
| **Parties** | Parents  Physical custodians | Minor over 14  Parents or relative  All 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 oversight  Duty to provide care and support  No ongoing duty of support after custodianship ends | Duty to provide care  Reporting requirements  Oath required  Certificate of attorney and fiduciary  Notice requirements to parents  Duties may be limited by order  May be required to maintain counsel or requirement may be excused  May 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 interests  Litigated custody to third party: Material change in circumstances test | Parent is no longer “unable or unwilling  to provide care; UNLESS  Termination would be harmful to minor, *and*  Minor’s interest outweighs parent’s interest in regaining custody |