

By: Senator(s) Tindell

To: Judiciary, Division A

SENATE BILL NO. 2680
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 43-19-34, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT CHILD SUPPORT MODIFICATIONS CAN BE RETROACTIVE UP
3 TO ONE YEAR OR THE DATE OF FILING THE PETITION, WHICHEVER IS LESS;
4 TO AMEND SECTION 93-5-23, MISSISSIPPI CODE OF 1972, TO PROVIDE
5 THAT FAILURE TO PAY GUARDIAN AD LITEM FEES DOES NOT CONSTITUTE
6 GROUND TO DENY OR RESTRICT VISITATION; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 43-19-34, Mississippi Code of 1972, is
9 amended as follows:

10 43-19-34. (1) In lieu of legal proceedings instituted to
11 obtain a modification for an order for support, a written
12 stipulated agreement for modification executed by the responsible
13 parent when acknowledged before a clerk of the court having
14 jurisdiction over those matters or a notary public and filed with
15 and approved by the judge of that court shall have the same force
16 and effect, retroactively and prospectively, in accordance with
17 the terms of the agreement as an order for modification of support
18 entered by the court, and shall be enforceable and subject to
19 later modification in the same manner as is provided by law for
20 orders of the court in those cases.



21 (2) With respect to a child support order in cases initiated
22 or enforced by the Department of Human Services under Title IV-D
23 of the Social Security Act, in which the department has determined
24 that a modification is appropriate, the department shall send a
25 motion and notice of intent to modify the order, together with the
26 proposed modification of the order under this section to the last
27 known mailing address of the defendant. The notice shall specify
28 the date and time certain of the hearing and shall be sent by
29 certified mail, restricted delivery, return receipt requested;
30 notice shall be deemed complete as of the date of delivery as
31 evidenced by the return receipt. The required notice may also be
32 delivered by personal service in accordance with Rule 4 of the
33 Mississippi Rules of Civil Procedure insofar as it may be applied
34 to service of an administrative order or notice. The defendant
35 may accept the proposed modification by signing and returning it
36 to the department before the date of hearing for presentation to
37 the court for approval. If the defendant does not sign and return
38 the proposed modification, the court shall on the date and time
39 previously set for hearing review the proposal and make a
40 determination as to whether it should be approved, in whole or in
41 part.

42 (3) Every three (3) years, the Department of Human Services
43 shall notify both parents of their right to request a review, and
44 upon the request of either parent, or if there is an assignment
45 under Section 43-19-35, the department, after a review and



46 determination of appropriateness, or either parent may seek an
47 adjustment to a support order being enforced under Section
48 43-19-31 in accordance with the guidelines established under
49 Section 43-19-101, if the amount of the child support award under
50 the order differs from the amount that would be awarded in
51 accordance with the guidelines, taking into account the best
52 interests of the child involved. If a recipient of Title IV-D
53 services receives TANF, the Department of Human Services shall
54 conduct a review every three (3) years and, after a determination
55 of appropriateness, shall seek an adjustment to a support order
56 according to the guidelines under Section 43-19-101. No proof of
57 a material change in circumstances is necessary in the three-year
58 review for adjustment under this subsection (3). A preexisting
59 arrearage in support payments shall not serve as a bar to the
60 department's review and adjustment procedure. Proof of a material
61 change in circumstances is necessary for modification outside the
62 three-year cycle.

63 (4) Any order for the support of minor children, whether
64 entered through the judicial system or through an expedited
65 process, * * * may be subject to a downward modification as
66 follows: downward modification based on a material change in
67 circumstances as determined by the court may be retroactive for no
68 more than one (1) year or the date the petition for modification
69 is filed, whichever is less. The modification amount may be
70 realized by the payor as a credit in an amount and frequency to be



71 determined by the court or as a credit against any existing
72 arrears. An upward retroactive modification may be ordered back
73 to the date of the event justifying the upward modification.

74 (5) If a downward modification is determined to be warranted
75 under the guidelines contained in subsection (3), the noncustodial
76 parent's arrears, if any, shall not be a basis for contesting
77 the downward modification in any later legal proceedings.

78 **SECTION 2.** Section 93-5-23, Mississippi Code of 1972, is
79 amended as follows:

80 93-5-23. When a divorce shall be decreed from the bonds of
81 matrimony, the court may, in its discretion, having regard to the
82 circumstances of the parties and the nature of the case, as may
83 seem equitable and just, make all orders touching the care,
84 custody and maintenance of the children of the marriage, and also
85 touching the maintenance and alimony of the wife or the husband,
86 or any allowance to be made to her or him, and shall, if need be,
87 require bond, sureties or other guarantee for the payment of the
88 sum so allowed. Orders touching on the custody of the children of
89 the marriage shall be made in accordance with the provisions of
90 Section 93-5-24. For the purposes of orders touching the
91 maintenance and alimony of the wife or husband, "property" and "an
92 asset of a spouse" shall not include any interest a party may have
93 as an heir at law of a living person or any interest under a
94 third-party will, nor shall any such interest be considered as an
95 economic circumstance or other factor. The court may afterwards,



96 on petition, change the decree, and make from time to time such
97 new decrees as the case may require. However, where proof shows
98 that both parents have separate incomes or estates, the court may
99 require that each parent contribute to the support and maintenance
100 of the children of the marriage in proportion to the relative
101 financial ability of each. In the event a legally responsible
102 parent has health insurance available to him or her through an
103 employer or organization that may extend benefits to the
104 dependents of such parent, any order of support issued against
105 such parent may require him or her to exercise the option of
106 additional coverage in favor of such children as he or she is
107 legally responsible to support.

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



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

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

141 If after investigation by the Department of Human Services or
142 final disposition by the youth court or family court allegations
143 of child abuse are found to be without foundation, the chancery
144 court shall order the alleging party to pay all court costs and



145 reasonable attorney's fees incurred by the defending party in
146 responding to such allegation. Failure to pay guardian ad litem
147 fees as ordered by the court shall not be a factor affecting the
148 visitation rights of the nonpaying party; this provision shall in
149 no way affect the court's discretion or authority to deny or alter
150 visitation rights of any party based on other applicable law.

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

162 The duty of support of a child terminates upon the
163 emancipation of the child. The court may determine that
164 emancipation has occurred pursuant to Section 93-11-65.

165 Custody and visitation upon military temporary duty,
166 deployment or mobilization shall be governed by Section 93-5-34.

167 **SECTION 3.** This act shall take effect and be in force from
168 and after July 1, 2016.

