

By: Representative Arnold

To: Judiciary B

## HOUSE BILL NO. 282

1 AN ACT TO PROVIDE THAT CERTAIN PERSONS FOUND IN CONTEMPT FOR  
2 FAILURE TO PAY CHILD SUPPORT AND IMPRISONED FOR SUCH FAILURE,  
3 SHALL BE BROUGHT BEFORE THE COURT WITHIN TWENTY-FOUR HOURS OF  
4 IMPRISONMENT TO ASSESS THE AMOUNT OF ANY CHILD SUPPORT PAYMENTS;  
5 TO REQUIRE THE COURT TO DETERMINE WHETHER THE PERSON IS EMPLOYED;  
6 TO REQUIRE THE COURT TO ENTER AN ORDER FOR COMMITMENT FOR  
7 ELECTRONIC HOUSE ARREST FOR ANY PERSON WHO IS EMPLOYED; TO AMEND  
8 SECTIONS 9-1-17, 9-5-87, 47-5-1003, 93-5-23 AND 93-9-33,  
9 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTIONS; TO  
10 BRING FORWARD SECTIONS 47-5-1001, 47-5-1005, 47-5-1007, 47-5-1011,  
11 47-5-1013 AND 47-5-1014, MISSISSIPPI CODE OF 1972, WHICH PROVIDE  
12 FOR ELECTRONIC MONITORING DEVICES, HOUSE ARREST AND THE INTENSIVE  
13 SUPERVISION PROGRAM; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** (1) Any person found in contempt for failure to  
16 pay child support, imprisoned for such failure, and who does not  
17 have an electronic monitoring device for contempt for failure to  
18 pay child support at the time of such imprisonment shall be  
19 brought before the court within twenty-four (24) hours of  
20 imprisonment to assess the amount of any child support payments  
21 owed by the person and to determine whether the person is  
22 employed. If the person is employed, the court shall enter an  
23 order for commitment for electronic house arrest with an intensive



24 supervision program as provided by Sections 47-5-1001 through  
25 47-5-1015, and release the person from imprisonment no more than  
26 forty-eight (48) hours after the initial imprisonment for contempt  
27 for failure to pay child support. The person shall remain on  
28 electronic house arrest until the person becomes current with all  
29 child support payments.

30 If the court determines that the person is not employed, the  
31 court, at its discretion, may refer the person for placement in a  
32 state, county or municipal restitution, house arrest as provided  
33 in this section, or restorative justice center or program,  
34 provided such person meets the qualifications prescribed in  
35 Section 99-37-19.

36 (2) The provisions of this section may not be applied to any  
37 person who is before the court for contempt for failure to pay  
38 child support, and:

39 (a) The person is on house arrest with an electronic  
40 monitoring device because the person was found in contempt for  
41 failure to pay child support; or

42 (b) The person has been on house arrest with an  
43 electronic monitoring device for contempt for failure to pay child  
44 support with an electronic monitoring device within the past  
45 twelve (12) months.

46 **SECTION 2.** Section 9-1-17, Mississippi Code of 1972, is  
47 amended as follows:



48           9-1-17. The Supreme, circuit, chancery and county courts and  
49 the Court of Appeals shall have power to fine and imprison any  
50 person guilty of contempt of the court while sitting, but the fine  
51 shall not exceed One Hundred Dollars (\$100.00) for each offense,  
52 nor shall the imprisonment continue longer than thirty (30) days.  
53 If any witness refuse to be sworn or to give evidence, or if any  
54 officer or person refuse to obey or perform any rules, order, or  
55 judgment of the court, such court shall have power to fine and  
56 imprison such officer or person until he shall give evidence, or  
57 until the rule, order, or judgment shall be complied with.

58           At the discretion of the court, any person found in contempt  
59 for failure to pay child support and imprisoned therefor may be  
60 referred for placement in a state, county or municipal  
61 restitution, house arrest as provided in Section 1 of this act, or  
62 restorative justice center or program, provided such person meets  
63 the qualifications prescribed in Section 99-37-19.

64           **SECTION 3.** Section 9-5-87, Mississippi Code of 1972, is  
65 amended as follows:

66           9-5-87. The chancery court, or the chancellor in vacation,  
67 or judge granting the writ, shall have power to punish any person  
68 for breach of injunction, or any other order, decree, or process  
69 of the court, by fine or imprisonment, or both, or the chancellor  
70 or judge granting the writ may require bail for the appearance of  
71 the party at the next term of the court to answer for the  
72 contempt; but such person shall be first cited to appear and



73 answer. And any person so punished by order of the chancellor in  
74 vacation, may on five (5) days' notice to the opposite party,  
75 apply to a judge of the Supreme Court, who, for good cause shown,  
76 may supersede the punishment until the meeting of the said  
77 chancery court.

78 At the discretion of the court, any person found in contempt  
79 for failure to pay child support and imprisoned therefor may be  
80 referred for placement in a state, county or municipal  
81 restitution, house arrest as provided by Section 1 of this act, or  
82 restorative justice center or program, provided such person meets  
83 the qualifications prescribed in Section 99-37-19.

84 **SECTION 4.** Section 47-5-1003, Mississippi Code of 1972, is  
85 amended as follows:

86 47-5-1003. (1) An intensive supervision program may be used  
87 as an alternative to incarceration for offenders who are not  
88 convicted of a crime of violence pursuant to Section 97-3-2 as  
89 selected by the court \* \* \*, for juvenile offenders as provided in  
90 Section 43-21-605 and for persons who are held in contempt for  
91 failure to pay child support. Any offender convicted of a sex  
92 crime shall not be placed in the program.

93 (2) The court may place the defendant on intensive  
94 supervision, except when a death sentence or life imprisonment is  
95 the maximum penalty which may be imposed by a court or judge.

96 (3) To protect and to ensure the safety of the state's  
97 citizens, any offender who violates an order or condition of the



108 intensive supervision program may be arrested by the correctional  
109 field officer and placed in the actual custody of the Department  
100 of Corrections. Such offender is under the full and complete  
101 jurisdiction of the department and subject to removal from the  
102 program by the classification hearing officer.

103 (4) When any circuit or county court places an offender in  
104 an intensive supervision program, the court shall give notice to  
105 the Mississippi Department of Corrections within fifteen (15) days  
106 of the court's decision to place the offender in an intensive  
107 supervision program. Notice shall be delivered to the central  
108 office of the Mississippi Department of Corrections and to the  
109 regional office of the department which will be providing  
110 supervision to the offender in an intensive supervision program.

111 The courts may not require an offender to participate in the  
112 intensive supervision program during a term of probation or  
113 post-release supervision.

114 (5) The Department of Corrections shall provide to the  
115 Oversight Task Force all relevant data regarding the offenders  
116 participating in the intensive supervision program including the  
117 number of offenders admitted to the program annually, the number  
118 of offenders who leave the program annually and why they leave,  
119 the number of offenders who are arrested or convicted annually and  
120 the circumstances of the arrest and any other information  
121 requested.



122       **SECTION 5.** Section 93-5-23, Mississippi Code of 1972, is  
123 amended as follows:

124       93-5-23. When a divorce shall be decreed from the bonds of  
125 matrimony, the court may, in its discretion, having regard to the  
126 circumstances of the parties and the nature of the case, as may  
127 seem equitable and just, make all orders touching the care,  
128 custody and maintenance of the children of the marriage, and also  
129 touching the maintenance and alimony of the wife or the husband,  
130 or any allowance to be made to her or him, and shall, if need be,  
131 require bond, sureties or other guarantee for the payment of the  
132 sum so allowed. Orders touching on the custody of the children of  
133 the marriage shall be made in accordance with the provisions of  
134 Section 93-5-24. For the purposes of orders touching the  
135 maintenance and alimony of the wife or husband, "property" and "an  
136 asset of a spouse" shall not include any interest a party may have  
137 as an heir at law of a living person or any interest under a  
138 third-party will, nor shall any such interest be considered as an  
139 economic circumstance or other factor. The court may afterwards,  
140 on petition, change the decree, and make from time to time such  
141 new decrees as the case may require. However, where proof shows  
142 that both parents have separate incomes or estates, the court may  
143 require that each parent contribute to the support and maintenance  
144 of the children of the marriage in proportion to the relative  
145 financial ability of each. In the event a legally responsible  
146 parent has health insurance available to him or her through an



147 employer or organization that may extend benefits to the  
148 dependents of such parent, any order of support issued against  
149 such parent may require him or her to exercise the option of  
150 additional coverage in favor of such children as he or she is  
151 legally responsible to support.

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

164 At the discretion of the court, any person found in contempt  
165 for failure to pay child support and imprisoned therefor may be  
166 referred for placement in a state, county or municipal  
167 restitution, house arrest as provided in Section 1 of this act or  
168 restorative justice center or program, provided such person meets  
169 the qualifications prescribed in Section 99-37-19.

170 Whenever in any proceeding in the chancery court concerning  
171 the custody of a child a party alleges that the child whose



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

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

191       The court may investigate, hear and make a determination in a  
192 custody action when a charge of abuse and/or neglect arises in the  
193 course of a custody action as provided in Section 43-21-151, and  
194 in such cases the court shall appoint a guardian ad litem for the  
195 child as provided under Section 43-21-121, who shall be an  
196 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.

**SECTION 6.** Section 93-9-33, Mississippi Code of 1972, is amended as follows:

93-9-33. The court also has power, on default as aforesaid, to adjudge the father in contempt and to order him committed to jail in the same manner and with the same powers as in case of commitment for default in giving security. The commitment of the father shall not operate to stay execution upon the judgment of the bond. Any father adjudged in contempt for failure to pay child support and committed to jail for such failure shall be brought before the court as provided in Section 1 of this act.

**SECTION 7.** Section 47-5-1001, Mississippi Code of 1972, is brought forward as follows:

47-5-1001. For purposes of Sections 47-5-1001 through 47-5-1015, the following words shall have the meaning ascribed herein unless the context shall otherwise require:



(a) "Approved electronic monitoring device" means a device approved by the department which is primarily intended to record and transmit information regarding the offender's presence or nonpresence in the home.

(b) "Correctional field officer" means the supervising probation and parole officer in charge of supervising the offender.

(c) "Court" means a circuit court having jurisdiction to place an offender into the intensive supervision program.

(d) "Department" means the Department of Corrections.

(e) "House arrest" means the confinement of a person convicted or charged with a crime to his place of residence under the terms and conditions established by the department or court.

(f) "Operating capacity" means the total number of state offenders which can be safely and reasonably housed in facilities operated by the department and in local or county jails or other facilities authorized to house state offenders as certified by the department, subject to applicable federal and state laws and rules and regulations.

(g) "Participant" means an offender placed into an intensive supervision program.

**SECTION 8.** Section 47-5-1005, Mississippi Code of 1972, is brought forward as follows:

47-5-1005. (1) The department shall promulgate rules that prescribe reasonable guidelines under which an intensive



supervision program shall operate. These rules shall include, but not be limited to, the following:

(a) The participant shall remain within the interior premises or within the property boundaries of his or her residence at all times during the hours designated by the correctional field officer.

(b) Approved absences from the home may include, but are not limited to, the following:

(i) Working or employment approved by the court or department and traveling to or from approved employment;

(ii) Unemployed and seeking employment approved for the participant by the court or department;

(iii) Undergoing medical, psychiatric, mental health treatment, counseling or other treatment programs approved for the participant by the court or department;

(iv) Attending an educational institution or a program approved for the participant by the court or department;

(v) Participating in community work release or a community service program approved for the participant by the court or department; or

(vi) For another compelling reason consistent with the public interest, as approved by the court or department.

(c) Except in case of a medical emergency and approval by the Commissioner of the Department of Corrections, or his designee, or by circuit court order for medical purposes, no



participant in the intensive supervision program may leave the jurisdiction of the State of Mississippi.

(2) The department shall select and approve all electronic monitoring devices used under Sections 47-5-1001 through 47-5-1015.

(3) The department may lease the equipment necessary to implement the intensive supervision program and to contract for the monitoring of such devices. The department is authorized to select the lowest price and best source in contracting for these services.

**SECTION 9.** Section 47-5-1007, Mississippi Code of 1972, is brought forward as follows:

47-5-1007. (1) Any participant in the intensive supervision program who engages in employment shall pay a monthly fee to the department for each month such person is enrolled in the program. The department may waive the monthly fee if the offender is a full-time student or is engaged in vocational training. Juvenile offenders shall pay a monthly fee of not less than Ten Dollars (\$10.00) but not more than Fifty Dollars (\$50.00) based on a sliding scale using the standard of need for each family that is used to calculate TANF benefits. Money received by the department from participants in the program shall be deposited into a special fund which is hereby created in the State Treasury. It shall be used, upon appropriation by the Legislature, for the purpose of helping to defray the costs involved in administering and



297 supervising such program. Unexpended amounts remaining in such  
298 special fund at the end of a fiscal year shall not lapse into the  
299 State General Fund, and any interest earned on amounts in such  
300 special fund shall be deposited to the credit of the special fund.

301 (2) The participant shall admit any correctional officer  
302 into his residence at any time for purposes of verifying the  
303 participant's compliance with the conditions of his detention.

304 (3) The participant shall make the necessary arrangements to  
305 allow for correctional officers to visit the participant's place  
306 of education or employment at any time, based upon the approval of  
307 the educational institution or employer, for the purpose of  
308 verifying the participant's compliance with the conditions of his  
309 detention.

310 (4) The participant shall acknowledge and participate with  
311 the approved electronic monitoring device as designated by the  
312 department at any time for the purpose of verifying the  
313 participant's compliance with the conditions of his detention.

314 (5) The participant shall be responsible for and shall  
315 maintain the following:

- 316 (a) A working telephone line in the participant's home;
- 317 (b) A monitoring device in the participant's home, or  
318 on the participant's person, or both; and
- 319 (c) A monitoring device in the participant's home and  
320 on the participant's person in the absence of a telephone.



(6) The participant shall obtain approval from the correctional field officer before the participant changes residence.

(7) The participant shall not commit another crime during the period of home detention ordered by the court or department.

(8) Notice shall be given to the participant that violation of the order of home detention shall subject the participant to prosecution for the crime of escape as a felony.

(9) The participant shall abide by other conditions as set by the court or the department.

**SECTION 10.** Section 47-5-1011, Mississippi Code of 1972, is brought forward as follows:

47-5-1011. (1) Before entering an order for commitment for electronic house arrest, the department shall inform the participant and other persons residing in the home of the nature and extent of the approved electronic monitoring devices by doing the following:

(a) Securing the written consent of the participant in the program to comply with the rules and regulations of the program.

(b) Advising adult persons residing in the home of the participant at the time an order or commitment for electronic house arrest is entered and asking such persons to acknowledge the nature and extent of approved electronic monitoring devices.



(c) Insuring that the approved electronic devices are minimally intrusive upon the privacy of other persons residing in the home while remaining in compliance with Sections 47-5-1001 through 47-5-1015.

(2) The participant shall be responsible for the cost of equipment and any damage to such equipment. Any intentional damage, any attempt to defeat monitoring, any committing of a criminal offense or any associating with felons or known criminals, shall constitute a violation of the program.

(3) Any person whose residence is utilized in the program shall agree to keep the home drug and alcohol free and to exclude known felons and criminals in order to provide a noncriminal environment.

**SECTION 11.** Section 47-5-1013, Mississippi Code of 1972, is brought forward as follows:

47-5-1013. Participants enrolled in an intensive supervision program shall be required to:

(a) Maintain employment if physically able, or full-time student status at an approved school or vocational trade, and make progress deemed satisfactory to the correctional field officer, or both, or be involved in supervised job searches.

(b) Pay restitution and program fees as directed by the department. Program fees shall not be less than Eighty-eight Dollars (\$88.00) per month. The sentencing judge may charge a program fee of less than Eighty-eight Dollars (\$88.00) per month



in cases of extreme financial hardship, when such judge determines that the offender's participation in the program would provide a benefit to his community. Juvenile offenders shall not pay a program fee but shall pay a monthly fee as provided in Section 47-5-1007. Program fees shall be deposited in the special fund created in Section 47-5-1007.

(c) Establish a place of residence at a place approved by the correctional field officer, and not change his residence without the officer's approval. The correctional officer shall be allowed to inspect the place of residence for alcoholic beverages, controlled substances and drug paraphernalia.

(d) Remain at his place of residence at all times except to go to work, to attend school, to perform community service and as specifically allowed in each instance by the correctional field officer.

(e) Allow administration of drug and alcohol tests as requested by the field officer.

(f) Perform not less than ten (10) hours of community service each month.

(g) Meet any other conditions imposed by the court to meet the needs of the offender and limit the risks to the community.

**SECTION 12.** Section 47-5-1014, Mississippi Code of 1972, is brought forward as follows:





47-5-1014. (1) Participants who have been in the intensive supervision program since July 1, 2004, whether placed into the program before or after July 1, 2004, shall pay a Fifty Dollar (\$50.00) monthly supervision fee to the Mississippi Department of Corrections for their supervision from July 1, 2004, or from the date the participant entered the program after July 1, 2004, until completion of the program, or April 6, 2005, or whichever occurs first. From and after April 6, 2005, all participants of the intensive supervision program shall pay the fee as established in Section 47-5-1013.

(2) The Department of Corrections shall use its best effort to collect the monthly supervision fees in arrearage under this section.

(3) A participant's failure to pay the monthly fees in arrearage shall not be deemed a violation of a condition of the program, and the participant shall not be removed from the program for failure to pay the monthly fees in arrearage.

(4) This section shall not apply to any fees incurred after April 6, 2005.

(5) Any arrearage remaining under this section at the end of the offender's participation in the program shall automatically be reduced to a civil judgment and upon notice by the Department of Corrections shall be recorded with the circuit court clerk in the county wherein the participant resides. The Department of



418 Corrections and/or the district attorney shall use best efforts to  
419 collect the judgment.

420       **SECTION 13.** This act shall take effect and be in force from  
421 and after July 1, 2018.

