

By: Representative Horan

To: Judiciary B

HOUSE BILL NO. 1237

1 AN ACT TO CREATE NEW SECTION 43-19-36, MISSISSIPPI CODE OF
 2 1972, TO PROVIDE THAT CHILD SUPPORT OBLIGATIONS SHALL BE SUSPENDED
 3 BY OPERATION OF LAW FOR PERSONS ORDERED TO PAY CHILD SUPPORT WHO
 4 ARE INCARCERATED OR INVOLUNTARILY INSTITUTIONALIZED FOR MORE THAN
 5 180 DAYS, WITH CERTAIN EXCEPTIONS; TO PROVIDE THAT THE CHILD
 6 SUPPORT OBLIGATION WILL RESUME 60 DAYS AFTER THE NONCUSTODIAL
 7 PARENT IS RELEASED FROM INCARCERATION, AND THE NONCUSTODIAL
 8 PARENT'S CHILD SUPPORT ORDER AND OBLIGATION WILL BECOME
 9 ENFORCEABLE ON THAT DATE; TO AUTHORIZE THE DEPARTMENT OF HUMAN
 10 SERVICES WHEN ENFORCING A CHILD SUPPORT ORDER TO ADMINISTRATIVELY
 11 ADJUST THE ARREARS BALANCE FOR AN ORDER FOR CHILD SUPPORT THAT WAS
 12 SUSPENDED BECAUSE OF INCARCERATION OR INSTITUTIONALIZATION UNDER
 13 CERTAIN CONDITIONS; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** The following shall be codified as Section
 16 43-19-36, Mississippi Code of 1972:

17 43-19-36. (1) For the purposes of this section, the
 18 following terms shall be defined as provided in this subsection:

19 (a) "Incarcerated or involuntarily institutionalized"
 20 includes, but is not limited to, involuntary confinement to a
 21 federal or state prison or correctional facility, a county jail, a
 22 juvenile detention center or a mental health facility. This term
 23 does not include probation or work release, and the one hundred



24 and eighty (180) consecutive days excludes credit for time served
25 before sentencing.

26 (b) "Child support obligation" means the payment due on
27 the current child support order, an arrears payment on a
28 preexisting arrears balance, or interest on arrears.

29 (c) "Suspension" means a child support obligation being
30 administratively set to Zero Dollars (\$0.00) for the period in
31 which the person owing support is incarcerated or involuntarily
32 institutionalized, and prevents the accrual of arrears during that
33 period of incarceration.

34 (2) Child support obligations shall be suspended, by
35 operation of law, for any period exceeding one hundred and eighty
36 (180) consecutive days in which the person ordered to pay support
37 is incarcerated or involuntarily institutionalized, unless either
38 of the following conditions exists:

39 (a) The person owing support has the means to pay
40 support in accordance with the guidelines established in 43-19-101
41 and 43-19-103 while incarcerated or involuntarily
42 institutionalized; or

43 (b) The person owing support was incarcerated or
44 involuntarily institutionalized for an offense constituting
45 domestic violence under Section 97-3-7, child abuse under Section
46 97-5-39, or criminal nonpayment of child support under Section
47 97-5-3.



48 (3) The child support obligation will resume the first day
49 of the month following the expiration of sixty (60) days after the
50 date the noncustodial parent is released from incarceration, and
51 the noncustodial parent's child support order and obligation will
52 become enforceable on that date. This section does not preclude a
53 person owing support from seeking a modification of the child
54 support order based on a change in circumstances or other
55 appropriate reason.

56 (4) (a) The Department of Human Services enforcing a child
57 support order under Title IV-D of the Social Security Act (42 USC
58 Section 651 et seq.) may, upon written notice of the proposed
59 adjustment to the obligor and the obligee, administratively adjust
60 the arrears balance for an order for child support suspended under
61 subsection (2) of this act if all of the following occur:

62 (i) The department verifies that arrears were
63 accrued in violation of this section;

64 (ii) The department verifies that neither of the
65 conditions set forth in paragraph (a) or (b) of subsection (2) of
66 this section exist; and

67 (iii) Neither the support obligor nor obligee
68 objects in writing within thirty (30) days of receipt of the
69 notice of proposed adjustment by the department.

70 (b) If either the support obligor or obligee objects to
71 the administrative adjustment set forth in this subsection, the



72 department shall file a petition with the court for a
73 determination of the arrears balance.

74 (c) The department may perform this adjustment without
75 regard to whether it was enforcing the child support order at the
76 time the parent owing support qualified for relief under this
77 section.

78 (5) This section does not prohibit the department or a party
79 from petitioning a court for a determination of child support or
80 arrears amounts.

81 (6) This section applies to every child support obligation
82 in which the person who is ordered to pay is incarcerated for one
83 hundred and eighty (180) days after the enactment of this section.

84 **SECTION 2.** This act shall take effect and be in force from
85 and after July 1, 2018.

