

By: Representatives Yates, Summers,
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To: Judiciary A; Corrections

HOUSE BILL NO. 933

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; TO BRING FORWARD SECTION 93-11-71, MISSISSIPPI
14 CODE OF 1972, WHICH REGULATE THE PROCEDURE FOR LATE OR UNPAID
15 CHILD SUPPORT, FOR PURPOSES OF AMENDMENT; AND FOR RELATED
16 PURPOSES.

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

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

20 43-19-36. (1) For the purposes of this section, the
21 following terms shall be defined as follows, unless the context
22 otherwise indicates:

23 (a) "Incarcerated or involuntarily institutionalized"
24 includes, but is not limited to, involuntary confinement to the
25 Department of Corrections, a federal or state correctional



26 facility, a county jail, a juvenile detention center or a mental
27 health facility. This term does not include probation or work
28 release.

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

32 (c) "Suspension" means a child support obligation being
33 administratively set to Zero Dollars (\$0.00) and the interest rate
34 on preexisting arrears being administratively set to zero percent
35 (0%) for the period in which the person owing support is
36 incarcerated or involuntarily institutionalized, and prevents the
37 accrual of arrears during that period of incarceration.

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

43 (a) The person owing support has the means to pay
44 support in accordance with the guidelines established in Sections
45 43-19-101 and 43-19-103 while incarcerated or involuntarily
46 institutionalized; or

47 (b) The person owing support was incarcerated or
48 involuntarily institutionalized for an offense constituting
49 domestic violence under Section 97-3-7, child abuse under Section



97-5-39, or criminal nonpayment of child support under Section 97-5-3.

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

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

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

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

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



74 (b) If either the support obligor or obligee objects to
75 the administrative adjustment set forth in this subsection, the
76 department shall file a petition with the court for a
77 determination of the arrears balance.

78 (c) The department may perform this adjustment without
79 regard to whether it was enforcing the child support order at the
80 time the parent owing support qualified for relief under this
81 section.

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

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

88 **SECTION 2.** Section 93-11-71, Mississippi Code of 1972, is
89 brought forward as follows:

90 93-11-71. (1) Whenever a court orders any person to make
91 periodic payments of a sum certain for the maintenance or support
92 of a child, and whenever such payments as have become due remain
93 unpaid for a period of at least thirty (30) days, a judgment by
94 operation of law shall arise against the obligor in an amount
95 equal to all payments that are then due and owing.

96 (a) A judgment arising under this section shall have
97 the same effect and be fully enforceable as any other judgment



98 entered in this state. A judicial or administrative action to
99 enforce the judgment may be begun at any time; and

100 (b) Such judgments arising in other states by operation
101 of law shall be given full faith and credit in this state.

102 (2) Any judgment arising under the provisions of this
103 section shall operate as a lien upon all the property of the
104 judgment debtor, both real and personal, which lien shall be
105 perfected as to third parties without actual notice thereof only
106 upon enrollment on the judgment roll. The department or attorney
107 representing the party to whom support is owed shall furnish an
108 abstract of the judgment for periodic payments for the maintenance
109 and support of a child, along with sworn documentation of the
110 delinquent child support, to the circuit clerk of the county where
111 the judgment is rendered, and it shall be the duty of the circuit
112 clerk to enroll the judgment on the judgment roll. Liens arising
113 under the provisions of this section may be executed upon and
114 enforced in the same manner and to the same extent as any other
115 judgment.

116 (3) Notwithstanding the provisions in subsection (2) of this
117 section, any judgment arising under the provisions of this section
118 shall subject the following assets to interception or seizure
119 without regard to the entry of the judgment on the judgment roll
120 of the situs district or jurisdiction and such assets shall apply
121 to all child support owed including all arrears:



122 (a) Periodic or lump-sum payments from a federal, state
123 or local agency, including unemployment compensation, workers'
124 compensation and other benefits;

125 (b) Winnings from lotteries and gaming winnings that
126 are received in periodic payments made over a period in excess of
127 thirty (30) days;

128 (c) Assets held in financial institutions;

129 (d) Settlements and awards resulting from civil
130 actions;

131 (e) Public and private retirement funds, only to the
132 extent that the obligor is qualified to receive and receives a
133 lump-sum or periodic distribution from the funds; and

134 (f) Lump-sum payments as defined in Section 93-11-101.

135 (4) Notwithstanding the provisions of subsections (1) and
136 (2) of this section, upon disestablishment of paternity granted
137 pursuant to Section 93-9-10 and a finding of clear and convincing
138 evidence including negative DNA testing that the obligor is not
139 the biological father of the child or children for whom support
140 has been ordered, the court shall disestablish paternity and may
141 forgive any child support arrears of the obligor for the child or
142 children determined by the court not to be the biological child or
143 children of the obligor, if the court makes a written finding
144 that, based on the totality of the circumstances, the forgiveness
145 of the arrears is equitable under the circumstances.



(5) In any case in which a child receives assistance from block grants for Temporary Assistance for Needy Families (TANF), and the obligor owes past-due child support, the obligor, if not incapacitated, may be required by the court to participate in any work programs offered by any state agency.

(6) A parent who receives social security disability insurance payments who is liable for a child support arrearage and whose disability insurance benefits provide for the payment of past due disability insurance benefits for the support of the minor child or children for whom the parent owes a child support arrearage shall receive credit toward the arrearage for the payment or payments for the benefit of the minor child or children if the arrearage accrued after the date of disability onset as determined by the Social Security Administration.

SECTION 3. This act shall take effect and be in force from and after July 1, 2021.

