

By: Representatives Cockerham, Anthony,
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To: Judiciary A

HOUSE BILL NO. 592
(As Passed the House)

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 AMEND SECTIONS 93-11-65, 93-11-71 AND
14 93-5-23, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
15 SECTION; AND FOR RELATED PURPOSES.

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

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

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

21 (a) "Incarcerated or involuntarily institutionalized"
22 includes, but is not limited to, involuntary confinement to a
23 federal or state prison or correctional facility, a county jail, a
24 juvenile detention center or a mental health facility. This term



25 does not include probation or work release, and the one hundred
26 and eighty (180) consecutive days excludes credit for time served
27 before sentencing.

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

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

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

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

45 (b) The person owing support was incarcerated or
46 involuntarily institutionalized for an offense constituting
47 domestic violence under Section 97-3-7, child abuse under Section
48 97-5-39, or criminal nonpayment of child support under Section
49 97-5-3.



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

58 (b) Every four (4) months within a twenty-four-month
59 period after expiration of the sixty (60) days described in
60 paragraph (a) of this subsection (3), the court, on its own
61 motion, shall assess all factors related to the noncustodial
62 parent's ability to pay in order to determine whether the child
63 support obligations may be increased.

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

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

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



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

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

82 (c) The department may perform this adjustment without
83 regard to whether it was enforcing the child support order at the
84 time the parent owing support qualified for relief under this
85 section.

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

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

93 (7) The provisions of this section shall only apply to child
94 support obligations for:

95 (a) A child who receives financial or medical benefits
96 from the Department of Human Services or Child Protection
97 Services; or



98 (b) A child whose custodial parent receives financial
99 or medical benefits from the Department of Human Services or Child
100 Protection Services.

101 **SECTION 2.** Section 93-11-65, Mississippi Code of 1972, is
102 amended as follows:

103 93-11-65. (1) (a) In addition to the right to proceed
104 under Section 93-5-23, Mississippi Code of 1972, and in addition
105 to the remedy of habeas corpus in proper cases, and other existing
106 remedies, the chancery court of the proper county shall have
107 jurisdiction to entertain suits for the custody, care, support and
108 maintenance of minor children and to hear and determine all such
109 matters, and shall, if need be, require bond, sureties or other
110 guarantee to secure any order for periodic payments for the
111 maintenance or support of a child. In the event a legally
112 responsible parent has health insurance available to him or her
113 through an employer or organization that may extend benefits to
114 the dependents of such parent, any order of support issued against
115 such parent may require him or her to exercise the option of
116 additional coverage in favor of such children as he or she is
117 legally responsible to support. Proceedings may be brought by or
118 against a resident or nonresident of the State of Mississippi,
119 whether or not having the actual custody of minor children, for
120 the purpose of judicially determining the legal custody of a
121 child. All actions herein authorized may be brought in the county
122 where the child is actually residing, or in the county of the



123 residence of the party who has actual custody, or of the residence
124 of the defendant. Process shall be had upon the parties as
125 provided by law for process in person or by publication, if they
126 be nonresidents of the state or residents of another jurisdiction
127 or are not found therein after diligent search and inquiry or are
128 unknown after diligent search and inquiry; provided that the court
129 or chancellor in vacation may fix a date in termtime or in
130 vacation to which process may be returnable and shall have power
131 to proceed in termtime or vacation. Provided, however, that if
132 the court shall find that both parties are fit and proper persons
133 to have custody of the children, and that either party is able to
134 adequately provide for the care and maintenance of the children,
135 the chancellor may consider the preference of a child of twelve
136 (12) years of age or older as to the parent with whom the child
137 would prefer to live in determining what would be in the best
138 interest and welfare of the child. The chancellor shall place on
139 the record the reason or reasons for which the award of custody
140 was made and explain in detail why the wishes of any child were or
141 were not honored.

142 (b) An order of child support shall specify the sum to
143 be paid weekly or otherwise. In addition to providing for support
144 and education, the order shall also provide for the support of the
145 child prior to the making of the order for child support, and such
146 other expenses as the court may deem proper.



147 (c) The court may require the payment to be made to the
148 custodial parent, or to some person or corporation to be
149 designated by the court as trustee, but if the child or custodial
150 parent is receiving public assistance, the Department of Human
151 Services shall be made the trustee.

152 (d) The noncustodial parent's liabilities for past
153 education and necessary support and maintenance and other expenses
154 are limited to a period of one (1) year next preceding the
155 commencement of an action.

156 (2) Provided further, that where the proof shows that both
157 parents have separate incomes or estates, the court may require
158 that each parent contribute to the support and maintenance of the
159 children in proportion to the relative financial ability of each.

160 (3) Except as otherwise provided in Section 1 of this act
161 for persons who are incarcerated or involuntarily
162 institutionalized, whenever the court has ordered a party to make
163 periodic payments for the maintenance or support of a child, but
164 no bond, sureties or other guarantee has been required to secure
165 such payments, and whenever such payments as have become due
166 remain unpaid for a period of at least thirty (30) days, the court
167 may, upon petition of the person to whom such payments are owing,
168 or such person's legal representative, enter an order requiring
169 that bond, sureties or other security be given by the person
170 obligated to make such payments, the amount and sufficiency of
171 which shall be approved by the court. The obligor shall, as in



172 other civil actions, be served with process and shall be entitled
173 to a hearing in such case.

174 (4) When a charge of abuse or neglect of a child first
175 arises in the course of a custody or maintenance action pending in
176 the chancery court pursuant to this section, the chancery court
177 may proceed with the investigation, hearing and determination of
178 such abuse or neglect charge as a part of its hearing and
179 determination of the custody or maintenance issue as between the
180 parents, as provided in Section 43-21-151, notwithstanding the
181 other provisions of the Youth Court Law. The proceedings in
182 chancery court on the abuse or neglect charge shall be
183 confidential in the same manner as provided in youth court
184 proceedings, and the chancery court shall appoint a guardian ad
185 litem in such cases, as provided under Section 43-21-121 for youth
186 court proceedings, who shall be an attorney. In determining
187 whether any portion of a guardian ad litem's fee shall be assessed
188 against any party or parties as a cost of court for reimbursement
189 to the county, the court shall consider each party's individual
190 ability to pay. Unless the chancery court's jurisdiction has been
191 terminated, all disposition orders in such cases for placement
192 with the Department of Human Services shall be reviewed by the
193 court or designated authority at least annually to determine if
194 continued placement with the department is in the best interest of
195 the child or the public.



196 (5) Each party to a paternity or child support proceeding
197 shall notify the other within five (5) days after any change of
198 address. In addition, the noncustodial and custodial parent shall
199 file and update, with the court and with the state case registry,
200 information on that party's location and identity, including
201 social security number, residential and mailing addresses,
202 telephone numbers, photograph, driver's license number, and name,
203 address and telephone number of the party's employer. This
204 information shall be required upon entry of an order or within
205 five (5) days of a change of address.

206 (6) In any case subsequently enforced by the Department of
207 Human Services pursuant to Title IV-D of the Social Security Act,
208 the court shall have continuing jurisdiction.

209 (7) In any subsequent child support enforcement action
210 between the parties, upon sufficient showing that diligent effort
211 has been made to ascertain the location of a party, due process
212 requirements for notice and service of process shall be deemed to
213 be met with respect to the party upon delivery of written notice
214 to the most recent residential or employer address filed with the
215 state case registry.

216 (8) (a) The duty of support of a child terminates upon the
217 emancipation of the child. Unless otherwise provided for in the
218 underlying child support judgment, emancipation shall occur when
219 the child:

220 (i) Attains the age of twenty-one (21) years, or



221 (ii) Marries, or
222 (iii) Joins the military and serves on a full-time
223 basis, or
224 (iv) Is convicted of a felony and is sentenced to
225 incarceration of two (2) or more years for committing such
226 felony; * * *
227 (b) Unless otherwise provided for in the underlying
228 child support judgment, the court may determine that emancipation
229 has occurred and no other support obligation exists when the
230 child:
231 (i) Discontinues full-time enrollment in school
232 having attained the age of eighteen (18) years, unless the child
233 is disabled, or
234 (ii) Voluntarily moves from the home of the
235 custodial parent or guardian, establishes independent living
236 arrangements, obtains full-time employment and discontinues
237 educational endeavors prior to attaining the age of twenty-one
238 (21) years, or
239 (iii) Cohabits with another person without the
240 approval of the parent obligated to pay support; * * *
241 (c) The duty of support of a child who is incarcerated
242 but not emancipated shall be suspended for the period of the
243 child's incarceration.
244 (9) A determination of emancipation does not terminate any
245 obligation of the noncustodial parent to satisfy arrearage



246 existing as of the date of emancipation; the total amount of
247 periodic support due prior to the emancipation plus any periodic
248 amounts ordered paid toward the arrearage shall continue to be
249 owed until satisfaction of the arrearage in full, in addition to
250 the right of the person for whom the obligation is owed to execute
251 for collection as may be provided by law.

252 (10) Upon motion of a party requesting temporary child
253 support pending a determination of parentage, temporary support
254 shall be ordered if there is clear and convincing evidence of
255 paternity on the basis of genetic tests or other evidence, unless
256 the court makes written findings of fact on the record that the
257 award of temporary support would be unjust or inappropriate in a
258 particular case.

259 (11) Custody and visitation upon military temporary duty,
260 deployment or mobilization shall be governed by Section 93-5-34.

261 **SECTION 3.** Section 93-11-71, Mississippi Code of 1972, is
262 amended as follows:

263 93-11-71. (1) Except as otherwise provided in Section 1 of
264 this act for persons who are incarcerated or involuntarily
265 institutionalized, whenever a court orders any person to make
266 periodic payments of a sum certain for the maintenance or support
267 of a child, and whenever such payments as have become due remain
268 unpaid for a period of at least thirty (30) days, a judgment by
269 operation of law shall arise against the obligor in an amount
270 equal to all payments that are then due and owing.



271 (a) A judgment arising under this section shall have
272 the same effect and be fully enforceable as any other judgment
273 entered in this state. A judicial or administrative action to
274 enforce the judgment may be begun at any time; and

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

277 (2) Any judgment arising under the provisions of this
278 section shall operate as a lien upon all the property of the
279 judgment debtor, both real and personal, which lien shall be
280 perfected as to third parties without actual notice thereof only
281 upon enrollment on the judgment roll. The department or attorney
282 representing the party to whom support is owed shall furnish an
283 abstract of the judgment for periodic payments for the maintenance
284 and support of a child, along with sworn documentation of the
285 delinquent child support, to the circuit clerk of the county where
286 the judgment is rendered, and it shall be the duty of the circuit
287 clerk to enroll the judgment on the judgment roll. Liens arising
288 under the provisions of this section may be executed upon and
289 enforced in the same manner and to the same extent as any other
290 judgment.

291 (3) Notwithstanding the provisions in subsection (2) of this
292 section, any judgment arising under the provisions of this section
293 shall subject the following assets to interception or seizure
294 without regard to the entry of the judgment on the judgment roll



295 of the situs district or jurisdiction and such assets shall apply
296 to all child support owed including all arrears:

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

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

303 (c) Assets held in financial institutions;

304 (d) Settlements and awards resulting from civil
305 actions;

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

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

310 (4) Notwithstanding the provisions of subsections (1) and
311 (2) of this section, upon disestablishment of paternity granted
312 pursuant to Section 93-9-10 and a finding of clear and convincing
313 evidence including negative DNA testing that the obligor is not
314 the biological father of the child or children for whom support
315 has been ordered, the court shall disestablish paternity and may
316 forgive any child support arrears of the obligor for the child or
317 children determined by the court not to be the biological child or
318 children of the obligor, if the court makes a written finding



319 that, based on the totality of the circumstances, the forgiveness
320 of the arrears is equitable under the circumstances.

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

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

335 **SECTION 4.** Section 93-5-23, Mississippi Code of 1972, is
336 amended as follows:

337 93-5-23. When a divorce shall be decreed from the bonds of
338 matrimony, the court may, in its discretion, having regard to the
339 circumstances of the parties and the nature of the case, as may
340 seem equitable and just, make all orders touching the care,
341 custody and maintenance of the children of the marriage, and also
342 touching the maintenance and alimony of the wife or the husband,
343 or any allowance to be made to her or him, and shall, if need be,



344 require bond, sureties or other guarantee for the payment of the
345 sum so allowed. Orders touching on the custody of the children of
346 the marriage shall be made in accordance with the provisions of
347 Section 93-5-24. For the purposes of orders touching the
348 maintenance and alimony of the wife or husband, "property" and "an
349 asset of a spouse" shall not include any interest a party may have
350 as an heir at law of a living person or any interest under a
351 third-party will, nor shall any such interest be considered as an
352 economic circumstance or other factor. The court may afterwards,
353 on petition, change the decree, and make from time to time such
354 new decrees as the case may require. However, where proof shows
355 that both parents have separate incomes or estates, the court may
356 require that each parent contribute to the support and maintenance
357 of the children of the marriage in proportion to the relative
358 financial ability of each. In the event a legally responsible
359 parent has health insurance available to him or her through an
360 employer or organization that may extend benefits to the
361 dependents of such parent, any order of support issued against
362 such parent may require him or her to exercise the option of
363 additional coverage in favor of such children as he or she is
364 legally responsible to support.

365 Except as otherwise provided in Section 1 of this act for
366 persons who are incarcerated or involuntarily institutionalized,
367 whenever the court has ordered a party to make periodic payments
368 for the maintenance or support of a child, but no bond, sureties



369 or other guarantee has been required to secure such payments, and
370 whenever such payments as have become due remain unpaid for a
371 period of at least thirty (30) days, the court may, upon petition
372 of the person to whom such payments are owing, or such person's
373 legal representative, enter an order requiring that bond, sureties
374 or other security be given by the person obligated to make such
375 payments, the amount and sufficiency of which shall be approved by
376 the court. The obligor shall, as in other civil actions, be
377 served with process and shall be entitled to a hearing in such
378 case.

379 At the discretion of the court, any person found in contempt
380 for failure to pay child support and imprisoned therefor may be
381 referred for placement in a state, county or municipal
382 restitution, house arrest or restorative justice center or
383 program, provided such person meets the qualifications prescribed
384 in Section 99-37-19.

385 Whenever in any proceeding in the chancery court concerning
386 the custody of a child a party alleges that the child whose
387 custody is at issue has been the victim of sexual or physical
388 abuse by the other party, the court may, on its own motion, grant
389 a continuance in the custody proceeding only until such allegation
390 has been investigated by the Department of Human Services. At the
391 time of ordering such continuance, the court may direct the party
392 and his attorney making such allegation of child abuse to report
393 in writing and provide all evidence touching on the allegation of



394 abuse to the Department of Human Services. The Department of
395 Human Services shall investigate such allegation and take such
396 action as it deems appropriate and as provided in such cases under
397 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
398 Code of 1972) or under the laws establishing family courts (being
399 Chapter 23 of Title 43, Mississippi Code of 1972).

400 If after investigation by the Department of Human Services or
401 final disposition by the youth court or family court allegations
402 of child abuse are found to be without foundation, the chancery
403 court shall order the alleging party to pay all court costs and
404 reasonable attorney's fees incurred by the defending party in
405 responding to such allegation.

406 The court may investigate, hear and make a determination in a
407 custody action when a charge of abuse and/or neglect arises in the
408 course of a custody action as provided in Section 43-21-151, and
409 in such cases the court shall appoint a guardian ad litem for the
410 child as provided under Section 43-21-121, who shall be an
411 attorney. Unless the chancery court's jurisdiction has been
412 terminated, all disposition orders in such cases for placement
413 with the Department of Human Services shall be reviewed by the
414 court or designated authority at least annually to determine if
415 continued placement with the department is in the best interest of
416 the child or public.



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

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

422 **SECTION 5.** This act shall take effect and be in force from
423 and after July 1, 2022.

