

By: Senator(s) Wiggins

To: Judiciary, Division A

SENATE BILL NO. 2619

1 AN ACT TO CREATE NEW SECTION 43-19-36, MISSISSIPPI CODE OF
2 1972, TO AID THE DEPARTMENT OF HUMAN SERVICES TO COMPLY WITH
3 FEDERAL LAW; TO PROVIDE THAT CHILD SUPPORT OBLIGATIONS SHALL BE
4 SUSPENDED BY OPERATION OF LAW FOR PERSONS ORDERED TO PAY CHILD
5 SUPPORT WHO ARE INCARCERATED OR INVOLUNTARILY INSTITUTIONALIZED
6 FOR MORE THAN 180 DAYS, WITH CERTAIN EXCEPTIONS; TO PROVIDE THAT
7 THE CHILD SUPPORT OBLIGATION WILL RESUME 60 DAYS AFTER THE
8 NONCUSTODIAL PARENT IS RELEASED FROM INCARCERATION, AND THE
9 NONCUSTODIAL PARENT'S CHILD SUPPORT ORDER AND OBLIGATION WILL
10 BECOME ENFORCEABLE ON THAT DATE; TO AUTHORIZE THE DEPARTMENT OF
11 HUMAN SERVICES WHEN ENFORCING A CHILD SUPPORT ORDER TO
12 ADMINISTRATIVELY ADJUST THE ARREARS BALANCE FOR AN ORDER FOR CHILD
13 SUPPORT THAT WAS SUSPENDED BECAUSE OF INCARCERATION OR
14 INSTITUTIONALIZATION UNDER CERTAIN CONDITIONS; TO AMEND SECTIONS
15 93-11-65, 93-11-71 AND 93-5-23, MISSISSIPPI CODE OF 1972, TO
16 CONFORM TO THE PRECEDING SECTION; AND FOR RELATED 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 provided in this subsection:

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



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

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) for the period in
34 which the person owing support is incarcerated or involuntarily
35 institutionalized, and prevents the accrual of arrears during that
36 period of incarceration.

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

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

46 (b) The person owing support was incarcerated or
47 involuntarily institutionalized for an offense constituting
48 domestic violence under Section 97-3-7, child abuse under Section
49 97-5-39, or criminal nonpayment of child support under Section
50 97-5-3.



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

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

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

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

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

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



75 department shall file a petition with the court for a
76 determination of the arrears balance.

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

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

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

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

90 93-11-65. (1) (a) In addition to the right to proceed
91 under Section 93-5-23, Mississippi Code of 1972, and in addition
92 to the remedy of habeas corpus in proper cases, and other existing
93 remedies, the chancery court of the proper county shall have
94 jurisdiction to entertain suits for the custody, care, support and
95 maintenance of minor children and to hear and determine all such
96 matters, and shall, if need be, require bond, sureties or other
97 guarantee to secure any order for periodic payments for the
98 maintenance or support of a child. In the event a legally
99 responsible parent has health insurance available to him or her



100 through an employer or organization that may extend benefits to
101 the dependents of such parent, any order of support issued against
102 such parent may require him or her to exercise the option of
103 additional coverage in favor of such children as he or she is
104 legally responsible to support. Proceedings may be brought by or
105 against a resident or nonresident of the State of Mississippi,
106 whether or not having the actual custody of minor children, for
107 the purpose of judicially determining the legal custody of a
108 child. All actions herein authorized may be brought in the county
109 where the child is actually residing, or in the county of the
110 residence of the party who has actual custody, or of the residence
111 of the defendant. Process shall be had upon the parties as
112 provided by law for process in person or by publication, if they
113 be nonresidents of the state or residents of another jurisdiction
114 or are not found therein after diligent search and inquiry or are
115 unknown after diligent search and inquiry; provided that the court
116 or chancellor in vacation may fix a date in termtime or in
117 vacation to which process may be returnable and shall have power
118 to proceed in termtime or vacation. Provided, however, that if
119 the court shall find that both parties are fit and proper persons
120 to have custody of the children, and that either party is able to
121 adequately provide for the care and maintenance of the children,
122 the chancellor may consider the preference of a child of twelve
123 (12) years of age or older as to the parent with whom the child
124 would prefer to live in determining what would be in the best



125 interest and welfare of the child. The chancellor shall place on
126 the record the reason or reasons for which the award of custody
127 was made and explain in detail why the wishes of any child were or
128 were not honored.

129 (b) An order of child support shall specify the sum to
130 be paid weekly or otherwise. In addition to providing for support
131 and education, the order shall also provide for the support of the
132 child prior to the making of the order for child support, and such
133 other expenses as the court may deem proper.

134 (c) The court may require the payment to be made to the
135 custodial parent, or to some person or corporation to be
136 designated by the court as trustee, but if the child or custodial
137 parent is receiving public assistance, the Department of Human
138 Services shall be made the trustee.

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

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

147 (3) Except as otherwise provided in Section 1 of this act
148 for persons who are incarcerated or involuntarily
149 institutionalized, whenever the court has ordered a party to make



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

161 (4) When a charge of abuse or neglect of a child first
162 arises in the course of a custody or maintenance action pending in
163 the chancery court pursuant to this section, the chancery court
164 may proceed with the investigation, hearing and determination of
165 such abuse or neglect charge as a part of its hearing and
166 determination of the custody or maintenance issue as between the
167 parents, as provided in Section 43-21-151, notwithstanding the
168 other provisions of the Youth Court Law. The proceedings in
169 chancery court on the abuse or neglect charge shall be
170 confidential in the same manner as provided in youth court
171 proceedings, and the chancery court shall appoint a guardian ad
172 litem in such cases, as provided under Section 43-21-121 for youth
173 court proceedings, who shall be an attorney. In determining
174 whether any portion of a guardian ad litem's fee shall be assessed



175 against any party or parties as a cost of court for reimbursement
176 to the county, the court shall consider each party's individual
177 ability to pay. Unless the chancery court's jurisdiction has been
178 terminated, all disposition orders in such cases for placement
179 with the Department of Human Services shall be reviewed by the
180 court or designated authority at least annually to determine if
181 continued placement with the department is in the best interest of
182 the child or the public.

183 (5) Each party to a paternity or child support proceeding
184 shall notify the other within five (5) days after any change of
185 address. In addition, the noncustodial and custodial parent shall
186 file and update, with the court and with the state case registry,
187 information on that party's location and identity, including
188 social security number, residential and mailing addresses,
189 telephone numbers, photograph, driver's license number, and name,
190 address and telephone number of the party's employer. This
191 information shall be required upon entry of an order or within
192 five (5) days of a change of address.

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

196 (7) In any subsequent child support enforcement action
197 between the parties, upon sufficient showing that diligent effort
198 has been made to ascertain the location of a party, due process
199 requirements for notice and service of process shall be deemed to



200 be met with respect to the party upon delivery of written notice
201 to the most recent residential or employer address filed with the
202 state case registry.

203 (8) (a) The duty of support of a child terminates upon the
204 emancipation of the child. Unless otherwise provided for in the
205 underlying child support judgment, emancipation shall occur when
206 the child:

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

208 (ii) Marries, or

209 (iii) Joins the military and serves on a full-time
210 basis, or

211 (iv) Is convicted of a felony and is sentenced to
212 incarceration of two (2) or more years for committing such
213 felony; * * *

214 (b) Unless otherwise provided for in the underlying
215 child support judgment, the court may determine that emancipation
216 has occurred and no other support obligation exists when the
217 child:

218 (i) Discontinues full-time enrollment in school
219 having attained the age of eighteen (18) years, unless the child
220 is disabled, or

221 (ii) Voluntarily moves from the home of the
222 custodial parent or guardian, establishes independent living
223 arrangements, obtains full-time employment and discontinues



224 educational endeavors prior to attaining the age of twenty-one
225 (21) years, or

226 (iii) Cohabits with another person without the
227 approval of the parent obligated to pay support; * * *

228 (c) The duty of support of a child who is incarcerated
229 but not emancipated shall be suspended for the period of the
230 child's incarceration.

231 (9) A determination of emancipation does not terminate any
232 obligation of the noncustodial parent to satisfy arrearage
233 existing as of the date of emancipation; the total amount of
234 periodic support due prior to the emancipation plus any periodic
235 amounts ordered paid toward the arrearage shall continue to be
236 owed until satisfaction of the arrearage in full, in addition to
237 the right of the person for whom the obligation is owed to execute
238 for collection as may be provided by law.

239 (10) Upon motion of a party requesting temporary child
240 support pending a determination of parentage, temporary support
241 shall be ordered if there is clear and convincing evidence of
242 paternity on the basis of genetic tests or other evidence, unless
243 the court makes written findings of fact on the record that the
244 award of temporary support would be unjust or inappropriate in a
245 particular case.

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



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

250 93-11-71. (1) Except as otherwise provided in Section 1 of
251 this act for persons who are incarcerated or involuntarily
252 institutionalized, whenever a court orders any person to make
253 periodic payments of a sum certain for the maintenance or support
254 of a child, and whenever such payments as have become due remain
255 unpaid for a period of at least thirty (30) days, a judgment by
256 operation of law shall arise against the obligor in an amount
257 equal to all payments that are then due and owing.

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

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

264 (2) Any judgment arising under the provisions of this
265 section shall operate as a lien upon all the property of the
266 judgment debtor, both real and personal, which lien shall be
267 perfected as to third parties without actual notice thereof only
268 upon enrollment on the judgment roll. The department or attorney
269 representing the party to whom support is owed shall furnish an
270 abstract of the judgment for periodic payments for the maintenance
271 and support of a child, along with sworn documentation of the
272 delinquent child support, to the circuit clerk of the county where



273 the judgment is rendered, and it shall be the duty of the circuit
274 clerk to enroll the judgment on the judgment roll. Liens arising
275 under the provisions of this section may be executed upon and
276 enforced in the same manner and to the same extent as any other
277 judgment.

278 (3) Notwithstanding the provisions in subsection (2) of this
279 section, any judgment arising under the provisions of this section
280 shall subject the following assets to interception or seizure
281 without regard to the entry of the judgment on the judgment roll
282 of the situs district or jurisdiction and such assets shall apply
283 to all child support owed including all arrears:

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

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

290 (c) Assets held in financial institutions;

291 (d) Settlements and awards resulting from civil
292 actions;

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

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



297 (4) Notwithstanding the provisions of subsections (1) and
298 (2) of this section, upon disestablishment of paternity granted
299 pursuant to Section 93-9-10 and a finding of clear and convincing
300 evidence including negative DNA testing that the obligor is not
301 the biological father of the child or children for whom support
302 has been ordered, the court shall disestablish paternity and may
303 forgive any child support arrears of the obligor for the child or
304 children determined by the court not to be the biological child or
305 children of the obligor, if the court makes a written finding
306 that, based on the totality of the circumstances, the forgiveness
307 of the arrears is equitable under the circumstances.

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

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



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

324 93-5-23. When a divorce shall be decreed from the bonds of
325 matrimony, the court may, in its discretion, having regard to the
326 circumstances of the parties and the nature of the case, as may
327 seem equitable and just, make all orders touching the care,
328 custody and maintenance of the children of the marriage, and also
329 touching the maintenance and alimony of the wife or the husband,
330 or any allowance to be made to her or him, and shall, if need be,
331 require bond, sureties or other guarantee for the payment of the
332 sum so allowed. Orders touching on the custody of the children of
333 the marriage shall be made in accordance with the provisions of
334 Section 93-5-24. For the purposes of orders touching the
335 maintenance and alimony of the wife or husband, "property" and "an
336 asset of a spouse" shall not include any interest a party may have
337 as an heir at law of a living person or any interest under a
338 third-party will, nor shall any such interest be considered as an
339 economic circumstance or other factor. The court may afterwards,
340 on petition, change the decree, and make from time to time such
341 new decrees as the case may require. However, where proof shows
342 that both parents have separate incomes or estates, the court may
343 require that each parent contribute to the support and maintenance
344 of the children of the marriage in proportion to the relative
345 financial ability of each. In the event a legally responsible
346 parent has health insurance available to him or her through an



347 employer or organization that may extend benefits to the
348 dependents of such parent, any order of support issued against
349 such parent may require him or her to exercise the option of
350 additional coverage in favor of such children as he or she is
351 legally responsible to support.

352 Except as otherwise provided in Section 1 of this act for
353 persons who are incarcerated or involuntarily institutionalized,
354 whenever the court has ordered a party to make periodic payments
355 for the maintenance or support of a child, but no bond, sureties
356 or other guarantee has been required to secure such payments, and
357 whenever such payments as have become due remain unpaid for a
358 period of at least thirty (30) days, the court may, upon petition
359 of the person to whom such payments are owing, or such person's
360 legal representative, enter an order requiring that bond, sureties
361 or other security be given by the person obligated to make such
362 payments, the amount and sufficiency of which shall be approved by
363 the court. The obligor shall, as in other civil actions, be
364 served with process and shall be entitled to a hearing in such
365 case.

366 At the discretion of the court, any person found in contempt
367 for failure to pay child support and imprisoned therefor may be
368 referred for placement in a state, county or municipal
369 restitution, house arrest or restorative justice center or
370 program, provided such person meets the qualifications prescribed
371 in Section 99-37-19.



372 Whenever in any proceeding in the chancery court concerning
373 the custody of a child a party alleges that the child whose
374 custody is at issue has been the victim of sexual or physical
375 abuse by the other party, the court may, on its own motion, grant
376 a continuance in the custody proceeding only until such allegation
377 has been investigated by the Department of Human Services. At the
378 time of ordering such continuance, the court may direct the party
379 and his attorney making such allegation of child abuse to report
380 in writing and provide all evidence touching on the allegation of
381 abuse to the Department of Human Services. The Department of
382 Human Services shall investigate such allegation and take such
383 action as it deems appropriate and as provided in such cases under
384 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
385 Code of 1972) or under the laws establishing family courts (being
386 Chapter 23 of Title 43, Mississippi Code of 1972).

387 If after investigation by the Department of Human Services or
388 final disposition by the youth court or family court allegations
389 of child abuse are found to be without foundation, the chancery
390 court shall order the alleging party to pay all court costs and
391 reasonable attorney's fees incurred by the defending party in
392 responding to such allegation.

393 The court may investigate, hear and make a determination in a
394 custody action when a charge of abuse and/or neglect arises in the
395 course of a custody action as provided in Section 43-21-151, and
396 in such cases the court shall appoint a guardian ad litem for the



397 child as provided under Section 43-21-121, who shall be an
398 attorney. Unless the chancery court's jurisdiction has been
399 terminated, all disposition orders in such cases for placement
400 with the Department of Human Services shall be reviewed by the
401 court or designated authority at least annually to determine if
402 continued placement with the department is in the best interest of
403 the child or public.

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

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

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

