

By: Senator(s) Wiggins

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2082

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 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 eighty
38 (180) consecutive days in which the person ordered to pay support
39 is incarcerated or involuntarily institutionalized, unless the
40 person owing support has the means to pay support in accordance
41 with the guidelines established in Sections 43-19-101 and
42 43-19-103 while incarcerated or involuntarily institutionalized.

43 (3) The child support obligation will resume the first day
44 of the month following the expiration of sixty (60) days after the
45 date the noncustodial parent is released from incarceration, and
46 the noncustodial parent's child support order and obligation will
47 become enforceable on that date. This section does not preclude a
48 person owing support from seeking a modification of the child



49 support order based on a change in circumstances or other
50 appropriate reason.

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

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

59 (ii) The department verifies that the person owing
60 support has the means to pay the support; and

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

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

68 (c) The department may perform this adjustment without
69 regard to whether it was enforcing the child support order at the
70 time the parent owing support qualified for relief under this
71 section.



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

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

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

81 93-11-65. (1) (a) In addition to the right to proceed
82 under Section 93-5-23, Mississippi Code of 1972, and in addition
83 to the remedy of habeas corpus in proper cases, and other existing
84 remedies, the chancery court of the proper county shall have
85 jurisdiction to entertain suits for the custody, care, support and
86 maintenance of minor children and to hear and determine all such
87 matters, and shall, if need be, require bond, sureties or other
88 guarantee to secure any order for periodic payments for the
89 maintenance or support of a child. In the event a legally
90 responsible parent has health insurance available to him or her
91 through an employer or organization that may extend benefits to
92 the dependents of such parent, any order of support issued against
93 such parent may require him or her to exercise the option of
94 additional coverage in favor of such children as he or she is
95 legally responsible to support. Proceedings may be brought by or
96 against a resident or nonresident of the State of Mississippi,



97 whether or not having the actual custody of minor children, for
98 the purpose of judicially determining the legal custody of a
99 child. All actions herein authorized may be brought in the county
100 where the child is actually residing, or in the county of the
101 residence of the party who has actual custody, or of the residence
102 of the defendant. Process shall be had upon the parties as
103 provided by law for process in person or by publication, if they
104 be nonresidents of the state or residents of another jurisdiction
105 or are not found therein after diligent search and inquiry or are
106 unknown after diligent search and inquiry; provided that the court
107 or chancellor in vacation may fix a date in termtime or in
108 vacation to which process may be returnable and shall have power
109 to proceed in termtime or vacation. Provided, however, that if
110 the court shall find that both parties are fit and proper persons
111 to have custody of the children, and that either party is able to
112 adequately provide for the care and maintenance of the children,
113 the chancellor may consider the preference of a child of twelve
114 (12) years of age or older as to the parent with whom the child
115 would prefer to live in determining what would be in the best
116 interest and welfare of the child. The chancellor shall place on
117 the record the reason or reasons for which the award of custody
118 was made and explain in detail why the wishes of any child were or
119 were not honored.

120 (b) An order of child support shall specify the sum to
121 be paid weekly or otherwise. In addition to providing for support



122 and education, the order shall also provide for the support of the
123 child prior to the making of the order for child support, and such
124 other expenses as the court may deem proper.

125 (c) The court may require the payment to be made to the
126 custodial parent, or to some person or corporation to be
127 designated by the court as trustee, but if the child or custodial
128 parent is receiving public assistance, the Department of Human
129 Services shall be made the trustee.

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

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

138 (3) Except as otherwise provided in Section 1 of this act
139 for persons who are incarcerated or involuntarily
140 institutionalized, whenever the court has ordered a party to make
141 periodic payments for the maintenance or support of a child, but
142 no bond, sureties or other guarantee has been required to secure
143 such payments, and whenever such payments as have become due
144 remain unpaid for a period of at least thirty (30) days, the court
145 may, upon petition of the person to whom such payments are owing,
146 or such person's legal representative, enter an order requiring



147 that bond, sureties or other security be given by the person
148 obligated to make such payments, the amount and sufficiency of
149 which shall be approved by the court. The obligor shall, as in
150 other civil actions, be served with process and shall be entitled
151 to a hearing in such case.

152 (4) When a charge of abuse or neglect of a child first
153 arises in the course of a custody or maintenance action pending in
154 the chancery court pursuant to this section, the chancery court
155 may proceed with the investigation, hearing and determination of
156 such abuse or neglect charge as a part of its hearing and
157 determination of the custody or maintenance issue as between the
158 parents, as provided in Section 43-21-151, notwithstanding the
159 other provisions of the Youth Court Law. The proceedings in
160 chancery court on the abuse or neglect charge shall be
161 confidential in the same manner as provided in youth court
162 proceedings, and the chancery court shall appoint a guardian ad
163 litem in such cases, as provided under Section 43-21-121 for youth
164 court proceedings, who shall be an attorney. In determining
165 whether any portion of a guardian ad litem's fee shall be assessed
166 against any party or parties as a cost of court for reimbursement
167 to the county, the court shall consider each party's individual
168 ability to pay. Unless the chancery court's jurisdiction has been
169 terminated, all disposition orders in such cases for placement
170 with the Department of Human Services shall be reviewed by the
171 court or designated authority at least annually to determine if



172 continued placement with the department is in the best interest of
173 the child or the public.

174 (5) Each party to a paternity or child support proceeding
175 shall notify the other within five (5) days after any change of
176 address. In addition, the noncustodial and custodial parent shall
177 file and update, with the court and with the state case registry,
178 information on that party's location and identity, including
179 social security number, residential and mailing addresses,
180 telephone numbers, photograph, driver's license number, and name,
181 address and telephone number of the party's employer. This
182 information shall be required upon entry of an order or within
183 five (5) days of a change of address.

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

187 (7) In any subsequent child support enforcement action
188 between the parties, upon sufficient showing that diligent effort
189 has been made to ascertain the location of a party, due process
190 requirements for notice and service of process shall be deemed to
191 be met with respect to the party upon delivery of written notice
192 to the most recent residential or employer address filed with the
193 state case registry.

194 (8) (a) The duty of support of a child terminates upon the
195 emancipation of the child. Unless otherwise provided for in the



196 underlying child support judgment, emancipation shall occur when
197 the child:

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

199 (ii) Marries, or

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

202 (iv) Is convicted of a felony and is sentenced to
203 incarceration of two (2) or more years for committing such
204 felony; * * *

205 (b) Unless otherwise provided for in the underlying
206 child support judgment, the court may determine that emancipation
207 has occurred and no other support obligation exists when the
208 child:

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

212 (ii) Voluntarily moves from the home of the
213 custodial parent or guardian, establishes independent living
214 arrangements, obtains full-time employment and discontinues
215 educational endeavors prior to attaining the age of twenty-one
216 (21) years, or

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



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

222 (9) A determination of emancipation does not terminate any
223 obligation of the noncustodial parent to satisfy arrearage
224 existing as of the date of emancipation; the total amount of
225 periodic support due prior to the emancipation plus any periodic
226 amounts ordered paid toward the arrearage shall continue to be
227 owed until satisfaction of the arrearage in full, in addition to
228 the right of the person for whom the obligation is owed to execute
229 for collection as may be provided by law.

230 (10) Upon motion of a party requesting temporary child
231 support pending a determination of parentage, temporary support
232 shall be ordered if there is clear and convincing evidence of
233 paternity on the basis of genetic tests or other evidence, unless
234 the court makes written findings of fact on the record that the
235 award of temporary support would be unjust or inappropriate in a
236 particular case.

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

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

241 93-11-71. (1) Except as otherwise provided in Section 1 of
242 this act for persons who are incarcerated or involuntarily
243 institutionalized, whenever a court orders any person to make



244 periodic payments of a sum certain for the maintenance or support
245 of a child, and whenever such payments as have become due remain
246 unpaid for a period of at least thirty (30) days, a judgment by
247 operation of law shall arise against the obligor in an amount
248 equal to all payments that are then due and owing.

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

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

255 (2) Any judgment arising under the provisions of this
256 section shall operate as a lien upon all the property of the
257 judgment debtor, both real and personal, which lien shall be
258 perfected as to third parties without actual notice thereof only
259 upon enrollment on the judgment roll. The department or attorney
260 representing the party to whom support is owed shall furnish an
261 abstract of the judgment for periodic payments for the maintenance
262 and support of a child, along with sworn documentation of the
263 delinquent child support, to the circuit clerk of the county where
264 the judgment is rendered, and it shall be the duty of the circuit
265 clerk to enroll the judgment on the judgment roll. Liens arising
266 under the provisions of this section may be executed upon and
267 enforced in the same manner and to the same extent as any other
268 judgment.



269 (3) Notwithstanding the provisions in subsection (2) of this
270 section, any judgment arising under the provisions of this section
271 shall subject the following assets to interception or seizure
272 without regard to the entry of the judgment on the judgment roll
273 of the situs district or jurisdiction and such assets shall apply
274 to all child support owed including all arrears:

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

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

281 (c) Assets held in financial institutions;

282 (d) Settlements and awards resulting from civil
283 actions;

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

287 (f) Lump-sum payments as defined in Section 93-11-101;
288 and

289 (g) Unclaimed property as described in Section 89-12-1
290 et seq.

291 (4) Notwithstanding the provisions of subsections (1) and
292 (2) of this section, upon disestablishment of paternity granted
293 pursuant to Section 93-9-10 and a finding of clear and convincing



294 evidence, including negative DNA testing that the obligor is not
295 the biological father of the child or children for whom support
296 has been ordered, the court shall disestablish paternity and may
297 forgive any child support arrears of the obligor for the child or
298 children determined by the court not to be the biological child or
299 children of the obligor, if the court makes a written finding
300 that, based on the totality of the circumstances, the forgiveness
301 of the arrears is equitable under the circumstances.

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

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

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



318 93-5-23. When a divorce shall be decreed from the bonds of
319 matrimony, the court may, in its discretion, having regard to the
320 circumstances of the parties and the nature of the case, as may
321 seem equitable and just, make all orders touching the care,
322 custody and maintenance of the children of the marriage, and also
323 touching the maintenance and alimony of the wife or the husband,
324 or any allowance to be made to her or him, and shall, if need be,
325 require bond, sureties or other guarantee for the payment of the
326 sum so allowed. Orders touching on the custody of the children of
327 the marriage shall be made in accordance with the provisions of
328 Section 93-5-24. For the purposes of orders touching the
329 maintenance and alimony of the wife or husband, "property" and "an
330 asset of a spouse" shall not include any interest a party may have
331 as an heir at law of a living person or any interest under a
332 third-party will, nor shall any such interest be considered as an
333 economic circumstance or other factor. The court may afterwards,
334 on petition, change the decree, and make from time to time such
335 new decrees as the case may require. However, where proof shows
336 that both parents have separate incomes or estates, the court may
337 require that each parent contribute to the support and maintenance
338 of the children of the marriage in proportion to the relative
339 financial ability of each. In the event a legally responsible
340 parent has health insurance available to him or her through an
341 employer or organization that may extend benefits to the
342 dependents of such parent, any order of support issued against



343 such parent may require him or her to exercise the option of
344 additional coverage in favor of such children as he or she is
345 legally responsible to support.

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

360 At the discretion of the court, any person found in contempt
361 for failure to pay child support and imprisoned therefor may be
362 referred for placement in a state, county or municipal
363 restitution, house arrest or restorative justice center or
364 program, provided such person meets the qualifications prescribed
365 in Section 99-37-19.

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



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

381 If after investigation by the Department of Human Services or
382 final disposition by the youth court or family court allegations
383 of child abuse are found to be without foundation, the chancery
384 court shall order the alleging party to pay all court costs and
385 reasonable attorney's fees incurred by the defending party in
386 responding to such allegation.

387 The court may investigate, hear and make a determination in a
388 custody action when a charge of abuse and/or neglect arises in the
389 course of a custody action as provided in Section 43-21-151, and
390 in such cases the court shall appoint a guardian ad litem for the
391 child as provided under Section 43-21-121, who shall be an
392 attorney. Unless the chancery court's jurisdiction has been



393 terminated, all disposition orders in such cases for placement
394 with the Department of Human Services shall be reviewed by the
395 court or designated authority at least annually to determine if
396 continued placement with the department is in the best interest of
397 the child or public.

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

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

403 **SECTION 5.** This act shall take effect and be in force from
404 and after July 1, 2023, and shall stand repealed on June 30, 2023.

