

By: Senator(s) Wiggins

To: Judiciary, Division A

SENATE BILL NO. 2082

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, 93-5-23 AND 93-11-71, 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 93-5-23, Mississippi Code of 1972, is  
249 amended as follows:

250           93-5-23. When a divorce shall be decreed from the bonds of  
251 matrimony, the court may, in its discretion, having regard to the  
252 circumstances of the parties and the nature of the case, as may  
253 seem equitable and just, make all orders touching the care,  
254 custody and maintenance of the children of the marriage, and also  
255 touching the maintenance and alimony of the wife or the husband,  
256 or any allowance to be made to her or him, and shall, if need be,  
257 require bond, sureties or other guarantee for the payment of the  
258 sum so allowed. Orders touching on the custody of the children of  
259 the marriage shall be made in accordance with the provisions of  
260 Section 93-5-24. For the purposes of orders touching the  
261 maintenance and alimony of the wife or husband, "property" and "an  
262 asset of a spouse" shall not include any interest a party may have  
263 as an heir at law of a living person or any interest under a  
264 third-party will, nor shall any such interest be considered as an  
265 economic circumstance or other factor. The court may afterwards,  
266 on petition, change the decree, and make from time to time such  
267 new decrees as the case may require. However, where proof shows  
268 that both parents have separate incomes or estates, the court may  
269 require that each parent contribute to the support and maintenance  
270 of the children of the marriage in proportion to the relative  
271 financial ability of each. In the event a legally responsible  
272 parent has health insurance available to him or her through an



273 employer or organization that may extend benefits to the  
274 dependents of such parent, any order of support issued against  
275 such parent may require him or her to exercise the option of  
276 additional coverage in favor of such children as he or she is  
277 legally responsible to support.

278 Except as otherwise provided in Section 1 of this act for  
279 persons who are incarcerated or involuntarily institutionalized,  
280 whenever the court has ordered a party to make periodic payments  
281 for the maintenance or support of a child, but no bond, sureties  
282 or other guarantee has been required to secure such payments, and  
283 whenever such payments as have become due remain unpaid for a  
284 period of at least thirty (30) days, the court may, upon petition  
285 of the person to whom such payments are owing, or such person's  
286 legal representative, enter an order requiring that bond, sureties  
287 or other security be given by the person obligated to make such  
288 payments, the amount and sufficiency of which shall be approved by  
289 the court. The obligor shall, as in other civil actions, be  
290 served with process and shall be entitled to a hearing in such  
291 case.

292 At the discretion of the court, any person found in contempt  
293 for failure to pay child support and imprisoned therefor may be  
294 referred for placement in a state, county or municipal  
295 restitution, house arrest or restorative justice center or  
296 program, provided such person meets the qualifications prescribed  
297 in Section 99-37-19.



298 Whenever in any proceeding in the chancery court concerning  
299 the custody of a child a party alleges that the child whose  
300 custody is at issue has been the victim of sexual or physical  
301 abuse by the other party, the court may, on its own motion, grant  
302 a continuance in the custody proceeding only until such allegation  
303 has been investigated by the Department of Human Services. At the  
304 time of ordering such continuance, the court may direct the party  
305 and his attorney making such allegation of child abuse to report  
306 in writing and provide all evidence touching on the allegation of  
307 abuse to the Department of Human Services. The Department of  
308 Human Services shall investigate such allegation and take such  
309 action as it deems appropriate and as provided in such cases under  
310 the Youth Court Law (being Chapter 21 of Title 43, Mississippi  
311 Code of 1972) or under the laws establishing family courts (being  
312 Chapter 23 of Title 43, Mississippi Code of 1972).

313 If after investigation by the Department of Human Services or  
314 final disposition by the youth court or family court allegations  
315 of child abuse are found to be without foundation, the chancery  
316 court shall order the alleging party to pay all court costs and  
317 reasonable attorney's fees incurred by the defending party in  
318 responding to such allegation.

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



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

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

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

335 **SECTION 4.** Section 93-11-71, Mississippi Code of 1972, is  
336 amended as follows:

337 93-11-71. (1) Except as otherwise provided in Section 1 of  
338 this act for persons who are incarcerated or involuntarily  
339 institutionalized, whenever a court orders any person to make  
340 periodic payments of a sum certain for the maintenance or support  
341 of a child, and whenever such payments as have become due remain  
342 unpaid for a period of at least thirty (30) days, a judgment by  
343 operation of law shall arise against the obligor in an amount  
344 equal to all payments that are then due and owing.

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



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

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

351 (2) Any judgment arising under the provisions of this  
352 section shall operate as a lien upon all the property of the  
353 judgment debtor, both real and personal, which lien shall be  
354 perfected as to third parties without actual notice thereof only  
355 upon enrollment on the judgment roll. The department or attorney  
356 representing the party to whom support is owed shall furnish an  
357 abstract of the judgment for periodic payments for the maintenance  
358 and support of a child, along with sworn documentation of the  
359 delinquent child support, to the circuit clerk of the county where  
360 the judgment is rendered, and it shall be the duty of the circuit  
361 clerk to enroll the judgment on the judgment roll. Liens arising  
362 under the provisions of this section may be executed upon and  
363 enforced in the same manner and to the same extent as any other  
364 judgment.

365 (3) Notwithstanding the provisions in subsection (2) of this  
366 section, any judgment arising under the provisions of this section  
367 shall subject the following assets to interception or seizure  
368 without regard to the entry of the judgment on the judgment roll  
369 of the situs district or jurisdiction and such assets shall apply  
370 to all child support owed including all arrears:



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

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

377 (c) Assets held in financial institutions;

378 (d) Settlements and awards resulting from civil  
379 actions;

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

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

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

387 (4) Notwithstanding the provisions of subsections (1) and  
388 (2) of this section, upon disestablishment of paternity granted  
389 pursuant to Section 93-9-10 and a finding of clear and convincing  
390 evidence including negative DNA testing that the obligor is not  
391 the biological father of the child or children for whom support  
392 has been ordered, the court shall disestablish paternity and may  
393 forgive any child support arrears of the obligor for the child or  
394 children determined by the court not to be the biological child or  
395 children of the obligor, if the court makes a written finding





396 that, based on the totality of the circumstances, the forgiveness  
397 of the arrears is equitable under the circumstances.

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

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

412 **SECTION 5.** This act shall take effect and be in force from  
413 and after July 1, 2023.

