

By: Representatives Ward, Cummings, Hudson,
Miles, Montgomery

To: Judiciary A

HOUSE BILL NO. 644

1 AN ACT TO AMEND SECTIONS 93-5-23, 93-11-65 AND 93-11-71,
2 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE USE OF HOUSE ARREST FOR
3 PARTIES DELINQUENT IN CHILD SUPPORT PAYMENTS; AND FOR RELATED
4 PURPOSES.

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

6 **SECTION 1.** Section 93-5-23, Mississippi Code of 1972, is
7 amended as follows:

8 93-5-23. When a divorce shall be decreed from the bonds of
9 matrimony, the court may, in its discretion, having regard to the
10 circumstances of the parties and the nature of the case, as may
11 seem equitable and just, make all orders touching the care,
12 custody and maintenance of the children of the marriage, and also
13 touching the maintenance and alimony of the wife or the husband,
14 or any allowance to be made to her or him, and shall, if need be,
15 require bond, sureties or other guarantee for the payment of the
16 sum so allowed. Orders touching on the custody of the children of
17 the marriage shall be made in accordance with the provisions of
18 Section 93-5-24. The court may afterwards, on petition, change
19 the decree, and make from time to time such new decrees as the
20 case may require. However, where proof shows that both parents
21 have separate incomes or estates, the court may require that each
22 parent contribute to the support and maintenance of the children
23 of the marriage in proportion to the relative financial ability of
24 each. In the event a legally responsible parent has health
25 insurance available to him or her through an employer or
26 organization that may extend benefits to the dependents of such
27 parent, any order of support issued against such parent may
28 require him or her to exercise the option of additional coverage

29 in favor of such children as he or she is legally responsible to
30 support.

31 Whenever the court has ordered a party to make periodic
32 payments for the maintenance or support of a child, but no bond,
33 sureties or other guarantee has been required to secure such
34 payments, and whenever such payments as have become due remain
35 unpaid for a period of at least thirty (30) days, the court may,
36 upon petition of the person to whom such payments are owing, or
37 such person's legal representative, enter an order requiring that
38 bond, sureties or other security be given by the person obligated
39 to make such payments, the amount and sufficiency of which shall
40 be approved by the court. The obligor shall, as in other civil
41 actions, be served with process and shall be entitled to a hearing
42 in such case.

43 The court is authorized to place a delinquent party on house
44 arrest if the court determines that such action would enable the
45 delinquent party to be able to make any unpaid support payments.

46 Whenever in any proceeding in the chancery court concerning
47 the custody of a child a party alleges that the child whose
48 custody is at issue has been the victim of sexual or physical
49 abuse by the other party, the court may, on its own motion, grant
50 a continuance in the custody proceeding only until such allegation
51 has been investigated by the Department of Human Services. At the
52 time of ordering such continuance, the court may direct the party
53 and his attorney making such allegation of child abuse to report
54 in writing and provide all evidence touching on the allegation of
55 abuse to the Department of Human Services. The Department of
56 Human Services shall investigate such allegation and take such
57 action as it deems appropriate and as provided in such cases under
58 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
59 Code of 1972) or under the laws establishing family courts (being
60 Chapter 23 of Title 43, Mississippi Code of 1972).

61 If after investigation by the Department of Human Services or
62 final disposition by the youth court or family court allegations
63 of child abuse are found to be without foundation, the chancery
64 court shall order the alleging party to pay all court costs and
65 reasonable attorney's fees incurred by the defending party in
66 responding to such allegation.

67 The court may investigate, hear and make a determination in a
68 custody action when a charge of abuse and/or neglect arises in the
69 course of a custody action as provided in Section 43-21-151, and
70 in such cases the court shall appoint a guardian ad litem for the
71 child as provided under Section 43-21-121, who shall be an
72 attorney. Unless the chancery court's jurisdiction has been
73 terminated, all disposition orders in such cases for placement
74 with the Department of Human Services shall be reviewed by the
75 court or designated authority at least annually to determine if
76 continued placement with the department is in the best interest of
77 the child or public.

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

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

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

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

122 (b) An order of child support shall specify the sum to
123 be paid weekly or otherwise. In addition to providing for support
124 and education, the order shall also provide for the support of the
125 child prior to the making of the order for child support, and such
126 other expenses as the court may deem proper.

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

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

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

140 (3) (a) 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 (b) The court is authorized to place a delinquent party
153 on house arrest if the court determines that such action would
154 enable the delinquent party to be able to make any unpaid support
155 payments.

156 (4) When a charge of abuse or neglect of a child first
157 arises in the course of a custody or maintenance action pending in
158 the chancery court pursuant to this section, the chancery court
159 may proceed with the investigation, hearing and determination of

160 such abuse or neglect charge as a part of its hearing and
161 determination of the custody or maintenance issue as between the
162 parents, as provided in Section 43-21-151, notwithstanding the
163 other provisions of the Youth Court Law. The proceedings in
164 chancery court on the abuse or neglect charge shall be
165 confidential in the same manner as provided in youth court
166 proceedings, and the chancery court shall appoint a guardian ad
167 litem in such cases, as provided under Section 43-21-121 for youth
168 court proceedings, who shall be an attorney. In determining
169 whether any portion of a guardian ad litem's fee shall be assessed
170 against any party or parties as a cost of court for reimbursement
171 to the county, the court shall consider each party's individual
172 ability to pay. Unless the chancery court's jurisdiction has been
173 terminated, all disposition orders in such cases for placement
174 with the Department of Human Services shall be reviewed by the
175 court or designated authority at least annually to determine if
176 continued placement with the department is in the best interest of
177 the child or the public.

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

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

191 (7) In any subsequent child support enforcement action
192 between the parties, upon sufficient showing that diligent effort

193 has been made to ascertain the location of a party, due process
194 requirements for notice and service of process shall be deemed to
195 be met with respect to the party upon delivery of written notice
196 to the most recent residential or employer address filed with the
197 state case registry.

198 (8) The duty of support of a child terminates upon the
199 emancipation of the child. The court may determine that
200 emancipation has occurred and no other support obligation exists
201 when the child:

202 (a) Attains the age of twenty-one (21) years, or

203 (b) Marries, or

204 (c) Discontinues full-time enrollment in school having
205 attained the age of eighteen (18) years, unless the child is
206 disabled, or

207 (d) Voluntarily moves from the home of the custodial
208 parent or guardian, establishes independent living arrangements,
209 obtains full-time employment and discontinues educational
210 endeavors prior to attaining the age of twenty-one (21) years, or

211 (e) Joins the military and serves on a full-time basis,
212 or

213 (f) Is convicted of a felony and is incarcerated for
214 committing such felony, or

215 (g) Cohabits with another person without the approval
216 of the parent obligated to pay support.

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

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

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

234 93-11-71. (1) Whenever a court orders any person to make
235 periodic payments of a sum certain for the maintenance or support
236 of a child, and whenever such payments as have become due remain
237 unpaid for a period of at least thirty (30) days, a judgment by
238 operation of law shall arise against the obligor in an amount
239 equal to all payments which are then due and owing.

240 (a) A judgment arising under this section shall have
241 the same effect and be fully enforceable as any other judgment
242 entered in this state. A judicial or administrative action to
243 enforce said judgment may be commenced at any time; and

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

246 (2) Any judgment arising under the provisions of this
247 section shall operate as a lien upon all the property of the
248 judgment debtor, both real and personal, which lien shall be
249 perfected as to third parties without actual notice thereof only
250 upon enrollment on the judgment roll. The department or attorney
251 representing the party to whom support is owed shall furnish an
252 abstract of the judgment for periodic payments for the maintenance
253 and support of a child, along with sworn documentation of the
254 delinquent child support, to the circuit clerk of the county where
255 the judgment is rendered, and it shall be the duty of the circuit
256 clerk to enroll the judgment on the judgment roll. Liens arising
257 under the provisions of this section may be executed upon and

258 enforced in the same manner and to the same extent as any other
259 judgment.

260 (3) Notwithstanding the provisions in subsection (2), any
261 judgment arising under the provisions of this section shall
262 subject the following assets to interception or seizure without
263 regard to the entry of the judgment on the judgment roll of the
264 situs district or jurisdiction:

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

268 (b) Winnings from lotteries and gaming winnings which
269 are received in periodic payments made over a period in excess of
270 thirty (30) days;

271 (c) Assets held in financial institutions;

272 (d) Settlements and awards resulting from civil
273 actions; and

274 (e) Public and private retirement funds, only to the
275 extent that the obligor is qualified to receive and receives a
276 lump sum or periodic distribution from the funds.

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

282 (5) The court is authorized to place a delinquent party on
283 house arrest if the court determines that such action would enable
284 the delinquent party to make any unpaid support payments.

285 **SECTION 4.** This act shall take effect and be in force from
286 and after July 1, 2007.