

By: Representatives Watson, Scott (80th)

To: Judiciary B

HOUSE BILL NO. 868

1 AN ACT TO AMEND SECTION 99-3-7, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE DOMESTIC VIOLENCE PROVISIONS OF THE WARRANTLESS ARREST  
3 STATUTE; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 99-3-7, Mississippi Code of 1972, is  
6 amended as follows:

7 99-3-7. (1) An officer or private person may arrest any  
8 person without warrant, for an indictable offense committed, or a  
9 breach of the peace threatened or attempted in his presence; or  
10 when a person has committed a felony, though not in his presence;  
11 or when a felony has been committed, and he has reasonable ground  
12 to suspect and believe the person proposed to be arrested to have  
13 committed it; or on a charge, made upon reasonable cause, of the  
14 commission of a felony by the party proposed to be arrested. And  
15 in all cases of arrests without warrant, the person making such  
16 arrest must inform the accused of the object and cause of the  
17 arrest, except when he is in the actual commission of the offense,  
18 or is arrested on pursuit.

19 (2) Any law enforcement officer may arrest any person on a  
20 misdemeanor charge without having a warrant in his possession when  
21 a warrant is in fact outstanding for that person's arrest and the  
22 officer has knowledge through official channels that the warrant  
23 is outstanding for that person's arrest. In all such cases, the  
24 officer making the arrest must inform such person at the time of  
25 the arrest the object and cause therefor. If the person arrested  
26 so requests, the warrant shall be shown to him as soon as  
27 practicable.

28           (3) (a) Any law enforcement officer shall arrest a person  
29 with or without a warrant when he has probable cause to believe  
30 that the person has, within twenty-four (24) hours of such arrest,  
31 knowingly committed a misdemeanor which is an act of domestic  
32 violence or knowingly violated provisions of an ex parte  
33 protective order, protective order after hearing or court-approved  
34 consent agreement entered by a chancery, county, justice or  
35 municipal court pursuant to the Protection from Domestic Abuse  
36 Law, Sections 93-21-1 through 93-21-29, Mississippi Code of 1972,  
37 or a restraining order entered by a foreign court of competent  
38 jurisdiction to protect an applicant from domestic violence as  
39 defined by Section 97-3-7 that require such person to absent  
40 himself from a particular geographic area, or prohibit such person  
41 from being within a specified distance of another person or  
42 persons.

43           (b) If a law enforcement officer has probable cause to  
44 believe that two (2) or more persons committed a misdemeanor which  
45 is an act of domestic violence, or if two (2) or more persons make  
46 a complaint to the officer, the officer shall attempt to determine  
47 who was the principal aggressor. The officer shall presume that  
48 arrest is not the appropriate response for the person or persons  
49 who were not the principal aggressor. If the officer believes  
50 that all parties are equally responsible, the officer shall  
51 exercise such officer's best judgment in determining probable  
52 cause.

53           (c) To determine who is the principal aggressor, the  
54 officer shall consider the following factors, although such  
55 consideration is not limited to these factors:

56                   (i) The history of domestic abuse between the  
57 parties;

58                   (ii) The relative severity of the injuries  
59 inflicted on each person;

60 (iii) Evidence from the persons involved in the  
61 domestic abuse;

62 (iv) The likelihood of future injury to each  
63 person;

64 (v) Whether one (1) of the persons acted in  
65 self-defense; and

66 (vi) Evidence from witnesses of the domestic  
67 violence.

68 (d) A law enforcement officer shall not:

69 (i) Threaten, suggest or otherwise indicate the  
70 possible arrest of all parties to discourage future requests for  
71 intervention by law enforcement personnel; or

72 (ii) Base the decision of whether to arrest on:

73 1. The consent or request of the victim; or

74 2. The officer's perception of the

75 willingness of the victim or of a witness to the domestic abuse to  
76 testify or participate in a judicial proceeding.

77 (4) (a) Any person authorized by a court of law to  
78 supervise or monitor a convicted offender who is under an  
79 intensive supervision program may arrest the offender when the  
80 offender is in violation of the terms or conditions of the  
81 intensive supervision program, without having a warrant, provided  
82 that the person making the arrest has been trained at the Law  
83 Enforcement Officers Training Academy established under Section  
84 45-5-1 et seq. or at a course approved by the Board on Law  
85 Enforcement Officer Standards and Training.

86 (b) For the purposes of this subsection, the term  
87 "intensive supervision program" means an intensive supervision  
88 program of the Department of Corrections as described in Section  
89 47-5-1001 et seq., or any similar program authorized by a court  
90 for offenders who are not under jurisdiction of the Department of  
91 Corrections.

92           (5) As used in subsection (3) of this section, the phrase  
93 "misdemeanor which is an act of domestic violence" shall mean one  
94 or more of the following acts between family or household members  
95 who reside together or formerly resided together, current or  
96 former spouses, persons who have or have had a dating  
97 relationship, or persons who have a biological or legally adopted  
98 child together:

99           (a) Simple domestic violence within the meaning of  
100 Section 97-3-7;

101           (b) Disturbing the family or public peace within the  
102 meaning of Section 97-35-9, 97-35-11, 97-35-13 or 97-35-15; or

103           (c) Stalking within the meaning of Section 97-3-107.

104           (6) Any arrest made pursuant to subsection (3) of this  
105 section shall be designated as domestic assault or domestic  
106 violence on both the arrest docket and the incident report.

107           SECTION 2. This act shall take effect and be in force from  
108 and after July 1, 2001.