

By: Representative Blackmon

To: Judiciary B

HOUSE BILL NO. 1440

1 AN ACT TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION
2 97-3-8, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE CRIMINAL
3 OFFENSE OF ATTEMPTED MURDER AND TO PROVIDE PENALTIES FOR THE
4 COMMISSION OF ATTEMPTED MURDER; TO AMEND SECTION 97-3-7,
5 MISSISSIPPI CODE OF 1972, TO REVISE THE OFFENSE OF AGGRAVATED
6 ASSAULT; TO AMEND SECTION 47-7-3, MISSISSIPPI CODE OF 1972, IN
7 CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED
8 PURPOSES.

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

10 **SECTION 1.** The following shall be codified as Section
11 97-3-8, Mississippi Code of 1972:

12 97-3-8. A person is guilty of attempted murder if he
13 attempts to kill another human being or attempts to cause or
14 purposely or knowingly causes bodily injury to another with a
15 deadly weapon or other means likely to produce death or serious
16 bodily harm; and, upon conviction, he shall be punished by
17 imprisonment in the State Penitentiary for not less than twenty
18 (20) years or by imprisonment for life in the State Penitentiary,
19 in the discretion of the court. A person convicted of attempted
20 murder upon a law enforcement officer or fireman while such law
21 enforcement officer or fireman is acting within the scope of his
22 duty and office shall be punished by imprisonment for life in the
23 State Penitentiary. Any person convicted of a second or
24 subsequent offense of attempted murder shall be sentenced to
25 imprisonment for life without parole in the State Penitentiary.

26 **SECTION 2.** Section 97-3-7, Mississippi Code of 1972, is
27 amended as follows:

28 97-3-7. (1) A person is guilty of simple assault if he (a)
29 attempts to cause or purposely, knowingly or recklessly causes
30 bodily injury to another; or (b) negligently causes bodily injury



31 to another with a deadly weapon or other means likely to produce
32 death or serious bodily harm; or (c) attempts by physical menace
33 to put another in fear of imminent serious bodily harm; and, upon
34 conviction, he shall be punished by a fine of not more than Five
35 Hundred Dollars (\$500.00) or by imprisonment in the county jail
36 for not more than six (6) months, or both. Provided, however, a
37 person convicted of simple assault (a) upon a statewide elected
38 official, law enforcement officer, fireman, emergency medical
39 personnel, public health personnel, social worker employed by the
40 Department of Human Services or another agency, superintendent,
41 principal, teacher or other instructional personnel, school
42 attendance officer, school bus driver, or a judge of a circuit,
43 chancery, county, justice or youth court or a judge of the Court
44 of Appeals or a justice of the Supreme Court, district attorney,
45 legal assistant to a district attorney, county prosecutor,
46 municipal prosecutor, court reporter employed by a court, court
47 administrator, clerk or deputy clerk of the court, or public
48 defender, while such statewide elected official, judge or justice,
49 law enforcement officer, fireman, emergency medical personnel,
50 public health personnel, social worker, superintendent, principal,
51 teacher or other instructional personnel, school attendance
52 officer, school bus driver, district attorney, legal assistant to
53 a district attorney, county prosecutor, municipal prosecutor,
54 court reporter employed by a court, court administrator, clerk or
55 deputy clerk of the court, or public defender is acting within the
56 scope of his duty, office or employment, or (b) upon a legislator
57 while the Legislature is in regular or extraordinary session or
58 while otherwise acting within the scope of his duty, office or
59 employment, shall be punished by a fine of not more than One
60 Thousand Dollars (\$1,000.00) or by imprisonment for not more than
61 five (5) years, or both.

62 (2) A person is guilty of aggravated assault if he * * *
63 attempts to cause serious bodily injury to another, or causes such



64 injury purposely, knowingly or recklessly under circumstances
65 manifesting extreme indifference to the value of human life; * * *
66 and, upon conviction, he shall be punished by imprisonment in the
67 county jail for not more than one (1) year or in the Penitentiary
68 for not more than twenty (20) years. Provided, however, a person
69 convicted of aggravated assault (a) upon a statewide elected
70 official, law enforcement officer, fireman, emergency medical
71 personnel, public health personnel, social worker employed by the
72 Department of Human Services or another agency, superintendent,
73 principal, teacher or other instructional personnel, school
74 attendance officer, school bus driver, or a judge of a circuit,
75 chancery, county, justice or youth court or a judge of the Court
76 of Appeals or a justice of the Supreme Court, district attorney,
77 legal assistant to a district attorney, county prosecutor,
78 municipal prosecutor, court reporter employed by a court, court
79 administrator, clerk or deputy clerk of the court, or public
80 defender, while such statewide elected official, judge or justice,
81 law enforcement officer, fireman, emergency medical personnel,
82 public health personnel, social worker, superintendent, principal,
83 teacher or other instructional personnel, school attendance
84 officer, school bus driver, district attorney, legal assistant to
85 a district attorney, county prosecutor, municipal prosecutor,
86 court reporter employed by a court, court administrator, clerk or
87 deputy clerk of the court, or public defender is acting within the
88 scope of his duty, office or employment, or (b) upon a legislator
89 while the Legislature is in regular or extraordinary session or
90 while otherwise acting within the scope of his duty, office or
91 employment, shall be punished by a fine of not more than Five
92 Thousand Dollars (\$5,000.00) or by imprisonment for not more than
93 thirty (30) years, or both.

94 (3) A person is guilty of simple domestic violence who
95 commits simple assault as described in subsection (1) of this
96 section against a family or household member who resides with the



97 defendant or who formerly resided with the defendant, a current or
98 former spouse, a person who has a current dating relationship with
99 the defendant, or a person with whom the defendant has had a
100 biological or legally adopted child and upon conviction, the
101 defendant shall be punished as provided under subsection (1) of
102 this section; provided, that upon a third or subsequent conviction
103 of simple domestic violence, whether against the same or another
104 victim and within five (5) years, the defendant shall be guilty of
105 a felony and sentenced to a term of imprisonment not less than
106 five (5) nor more than ten (10) years.

107 (4) A person is guilty of aggravated domestic violence who
108 commits aggravated assault as described in subsection (2) of this
109 section against a family or household member who resides with the
110 defendant or who formerly resided with the defendant, or a current
111 or former spouse, a person who has a current dating relationship
112 with the defendant, or a person with whom the defendant has had a
113 biological or legally adopted child and upon conviction, the
114 defendant shall be punished as provided under subsection (2) of
115 this section; provided, that upon a third or subsequent offense of
116 aggravated domestic violence, whether against the same or another
117 victim and within five (5) years, the defendant shall be guilty of
118 a felony and sentenced to a term of imprisonment of not less than
119 five (5) nor more than twenty (20) years. Reasonable discipline
120 of a child, such as spanking, is not an offense under this
121 subsection (4).

122 (5) "Dating relationship" means a social relationship of a
123 romantic or intimate nature.

124 (6) Every conviction of domestic violence may require as a
125 condition of any suspended sentence that the defendant participate
126 in counseling or treatment to bring about the cessation of
127 domestic abuse. The defendant may be required to pay all or part
128 of the cost of the counseling or treatment, in the discretion of
129 the court.



130 (7) In any conviction of assault as described in any
131 subsection of this section which arises from an incident of
132 domestic violence, the sentencing order shall include the
133 designation "domestic violence."

134 **SECTION 3.** Section 47-7-3, Mississippi Code of 1972, is
135 amended as follows:

136 47-7-3. (1) Every prisoner who has been convicted of any
137 offense against the State of Mississippi, and is confined in the
138 execution of a judgment of such conviction in the Mississippi
139 State Penitentiary for a definite term or terms of one (1) year or
140 over, or for the term of his or her natural life, whose record of
141 conduct shows that such prisoner has observed the rules of the
142 Penitentiary, and who has served not less than one-fourth (1/4) of
143 the total of such term or terms for which such prisoner was
144 sentenced, or, if sentenced to serve a term or terms of thirty
145 (30) years or more, or, if sentenced for the term of the natural
146 life of such prisoner, has served not less than ten (10) years of
147 such life sentence, may be released on parole as hereinafter
148 provided, except that:

149 (a) No prisoner convicted as a confirmed and habitual
150 criminal under the provisions of Sections 99-19-81 through
151 99-19-87 shall be eligible for parole;

152 (b) Any person who shall have been convicted of a sex
153 crime shall not be released on parole except for a person under
154 the age of nineteen (19) who has been convicted under Section
155 97-3-67;

156 (c) No one shall be eligible for parole until he shall
157 have served one (1) year of his sentence, unless such person has
158 accrued any meritorious earned time allowances, in which case he
159 shall be eligible for parole if he has served (i) nine (9) months
160 of his sentence or sentences, when his sentence or sentences is
161 two (2) years or less; (ii) ten (10) months of his sentence or
162 sentences when his sentence or sentences is more than two (2)



163 years but no more than five (5) years; and (iii) one (1) year of
164 his sentence or sentences when his sentence or sentences is more
165 than five (5) years;

166 (d) (i) No person shall be eligible for parole who
167 shall, on or after January 1, 1977, be convicted of robbery or
168 attempted robbery through the display of a firearm until he shall
169 have served ten (10) years if sentenced to a term or terms of more
170 than ten (10) years or if sentenced for the term of the natural
171 life of such person. If such person is sentenced to a term or
172 terms of ten (10) years or less, then such person shall not be
173 eligible for parole. The provisions of this paragraph (d) shall
174 also apply to any person who shall commit robbery or attempted
175 robbery on or after July 1, 1982, through the display of a deadly
176 weapon. This subparagraph (d)(i) shall not apply to persons
177 convicted after September 30, 1994;

178 (ii) No person shall be eligible for parole who
179 shall, on or after October 1, 1994, be convicted of robbery,
180 attempted robbery or carjacking as provided in Section 97-3-115 et
181 seq., through the display of a firearm or drive-by shooting as
182 provided in Section 97-3-109. The provisions of this subparagraph
183 (d)(ii) shall also apply to any person who shall commit robbery,
184 attempted robbery, carjacking or a drive-by shooting on or after
185 October 1, 1994, through the display of a deadly weapon;

186 (e) No person shall be eligible for parole who, on or
187 after July 1, 1994, is charged, tried, convicted and sentenced to
188 life imprisonment without eligibility for parole under the
189 provisions of Section 99-19-101;

190 (f) No person shall be eligible for parole who is
191 charged, tried, convicted and sentenced to life imprisonment under
192 the provisions of Section 99-19-101;

193 (g) No person shall be eligible for parole who is
194 convicted or whose suspended sentence is revoked after June 30,
195 1995, except as provided in paragraph (i);



196 (h) An offender may be eligible for medical release
197 under Section 47-7-4;

198 (i) A first offender convicted of a nonviolent crime
199 after January 1, 2000, may be eligible for parole if the offender
200 meets the requirements in subsection (1) and this paragraph. In
201 addition to other requirements, if a first offender is convicted
202 of a drug or driving under the influence felony, the offender must
203 complete a drug and alcohol rehabilitation program prior to parole
204 or the offender may be required to complete a post-release drug
205 and alcohol program as a condition of parole. For purposes of
206 this paragraph, "nonviolent crime" means a felony other than
207 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
208 occupied dwelling, aggravated assault, kidnapping, felonious abuse
209 of vulnerable adults, felonies with enhanced penalties, and the
210 sale or manufacture of a controlled substance under the Uniform
211 Controlled Substances Law;

212 (j) No person shall be eligible for parole, who shall
213 be convicted of a second or subsequent offense of attempted murder
214 under Section 97-3-8.

215 (2) Notwithstanding any other provision of law, an inmate
216 shall not be eligible to receive earned time, good time or any
217 other administrative reduction of time which shall reduce the time
218 necessary to be served for parole eligibility as provided in
219 subsection (1) of this section; however, this subsection shall not
220 apply to the advancement of parole eligibility dates pursuant to
221 the Prison Overcrowding Emergency Powers Act. Moreover,
222 meritorious earned time allowances may be used to reduce the time
223 necessary to be served for parole eligibility as provided in
224 paragraph (c) of subsection (1) of this section.

225 (3) The State Parole Board shall by rules and regulations
226 establish a method of determining a tentative parole hearing date
227 for each eligible offender taken into the custody of the
228 Department of Corrections. The tentative parole hearing date



229 shall be determined within ninety (90) days after the department
230 has assumed custody of the offender. Such tentative parole
231 hearing date shall be calculated by a formula taking into account
232 the offender's age upon first commitment, number of prior
233 incarcerations, prior probation or parole failures, the severity
234 and the violence of the offense committed, employment history and
235 other criteria which in the opinion of the board tend to validly
236 and reliably predict the length of incarceration necessary before
237 the offender can be successfully paroled.

238 (4) Any inmate within twenty-four (24) months of his parole
239 eligibility date and who meets the criteria established by the
240 classification board shall receive priority for placement in any
241 educational development and job training programs. Any inmate
242 refusing to participate in an educational development or job
243 training program may be ineligible for parole.

244 **SECTION 4.** This act shall take effect and be in force from
245 and after July 1, 2002.

