

By: Representatives Denny, Akins, Aldridge, Barnett, Beckett, Bentz, Chism, Davis, Ellington, Fillingane, Formby, Gunn, Hamilton (6th), Howell, Lott, Martinson, Mayhall, Moore, Reed, Reeves, Rotenberry, Snowden, Staples, Turner, Wells-Smith

To: Judiciary B

HOUSE BILL NO. 105
(As Passed the House)

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; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** The following shall be codified as Section
9 97-3-8, Mississippi Code of 1972:

10 97-3-8. A person is guilty of attempted murder if he
11 attempts to kill another human being or attempts to cause or
12 purposely or knowingly causes bodily injury to another with a
13 deadly weapon or other means likely to produce death or serious
14 bodily harm; and, upon conviction, he shall be punished by
15 imprisonment in the State Penitentiary for not less than twenty
16 (20) years or by imprisonment for life in the State Penitentiary,
17 in the discretion of the court. A person convicted of attempted
18 murder upon a law enforcement officer or fireman while such law
19 enforcement officer or fireman is acting within the scope of his
20 duty and office or a woman pregnant with child shall be punished
21 by imprisonment for life in the State Penitentiary. Any person
22 convicted of a second or subsequent offense of attempted murder
23 shall be sentenced to imprisonment for life without parole in the
24 State Penitentiary.

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

27 97-3-7. (1) A person is guilty of simple assault if he (a)
28 attempts to cause or purposely, knowingly or recklessly causes
29 bodily injury to another; or (b) negligently causes bodily injury

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

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

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

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

96 defendant or who formerly resided with the defendant, a current or
97 former spouse, a person who has a current dating relationship with
98 the defendant, or a person with whom the defendant has had a
99 biological or legally adopted child and upon conviction, the
100 defendant shall be punished as provided under subsection (1) of
101 this section; provided, that upon a third or subsequent conviction
102 of simple domestic violence, whether against the same or another
103 victim and within five (5) years, the defendant shall be guilty of
104 a felony and sentenced to a term of imprisonment not less than
105 five (5) nor more than ten (10) years. In sentencing, the court
106 shall consider as an aggravating factor whether the crime was
107 committed in the physical presence or hearing of a child under
108 sixteen (16) years of age who was, at the time of the offense,
109 living within either the residence of the victim, the residence of
110 the perpetrator, or the residence where the offense occurred.

111 (4) A person is guilty of aggravated domestic violence who
112 commits aggravated assault as described in subsection (2) of this
113 section against a family or household member who resides with the
114 defendant or who formerly resided with the defendant, or a current
115 or former spouse, a person who has a current dating relationship
116 with the defendant, or a person with whom the defendant has had a
117 biological or legally adopted child and upon conviction, the
118 defendant shall be punished as provided under subsection (2) of
119 this section; provided, that upon a third or subsequent offense of
120 aggravated domestic violence, whether against the same or another
121 victim and within five (5) years, the defendant shall be guilty of
122 a felony and sentenced to a term of imprisonment of not less than
123 five (5) nor more than twenty (20) years. In sentencing, the
124 court shall consider as an aggravating factor whether the crime
125 was committed in the physical presence or hearing of a child under
126 sixteen (16) years of age who was, at the time of the offense,
127 living within either the residence of the victim, the residence of
128 the perpetrator, or the residence where the offense occurred.

129 Reasonable discipline of a child, such as spanking, is not an
130 offense under this subsection (4).

131 (5) "Dating relationship" means a social relationship of a
132 romantic or intimate nature.

133 (6) Every conviction of domestic violence may require as a
134 condition of any suspended sentence that the defendant participate
135 in counseling or treatment to bring about the cessation of
136 domestic abuse. The defendant may be required to pay all or part
137 of the cost of the counseling or treatment, in the discretion of
138 the court.

139 (7) In any conviction of assault as described in any
140 subsection of this section which arises from an incident of
141 domestic violence, the sentencing order shall include the
142 designation "domestic violence."

143 **SECTION 3.** This act shall take effect and be in force from
144 and after July 1, 2004.