

By: Senator(s) Albritton

To: Judiciary, Division B

SENATE BILL NO. 2466  
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 99-43-3, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE CRIMINAL OFFENSES WHICH TRIGGER THE PROTECTIONS OFFERED  
3 TO VICTIMS UNDER THE ACT; TO AMEND SECTION 99-43-37, MISSISSIPPI  
4 CODE OF 1972, TO CLARIFY LEGISLATIVE INTENT UNDER THE CRIME  
5 VICTIMS' BILL OF RIGHTS THAT CRIME VICTIMS MAY SUBMIT BOTH A  
6 WRITTEN STATEMENT AND TESTIFY ORALLY; TO AMEND SECTIONS 99-41-3,  
7 99-41-5, 99-41-7, 99-41-9, 99-41-11, 99-41-13, 99-41-17, 99-41-27,  
8 99-41-29 AND 99-41-31, MISSISSIPPI CODE OF 1972, TO TRANSFER THE  
9 ADMINISTRATION OF THE MISSISSIPPI CRIME VICTIMS' COMPENSATION ACT  
10 FROM THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO THE ATTORNEY  
11 GENERAL'S OFFICE; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 99-43-3, Mississippi Code of 1972, is  
14 amended as follows:

15 99-43-3. As used in this chapter, the following words shall  
16 have the meanings ascribed to them unless the context clearly  
17 requires otherwise:

18 (a) "Accused" means a person who has been arrested for  
19 committing a criminal offense and who is held for an initial  
20 appearance or other proceeding before trial or who is a target of  
21 an investigation for committing a criminal offense.

22 (b) "Appellate proceeding" means an oral argument held  
23 in open court before the Mississippi Court of Appeals, the  
24 Mississippi Supreme Court, a federal court of appeals or the  
25 United States Supreme Court.

26 (c) "Arrest" means the actual custodial restraint of a  
27 person or his submission to custody.

28 (d) "Community status" means extension of the limits of  
29 the places of confinement of a prisoner through work release,  
30 intensive supervision, house arrest and initial consideration of  
31 pre-discretionary leave, passes and furloughs.

32 (e) "Court" means all state courts including juvenile  
33 courts.

34 (f) "Victim assistance coordinator" means a person who  
35 is employed or authorized by a public entity or a private entity  
36 that receives public funding primarily to provide counseling,  
37 treatment or other supportive assistance to crime victims.

38 (g) "Criminal offense" means conduct that gives a law  
39 enforcement officer or prosecutor probable cause to believe that a  
40 felony involving physical injury, the threat of physical  
41 injury, \* \* \* a sexual offense, \* \* \* any offense involving  
42 spousal abuse or domestic violence \* \* \* has been committed.

43 (h) "Criminal proceeding" means a hearing, argument or  
44 other matter scheduled by and held before a trial court but does  
45 not include a lineup, grand jury proceeding or other matter not  
46 held in the presence of the court.

47 (i) "Custodial agency" means a municipal or county  
48 jail, the Department of Corrections, juvenile detention facility,  
49 Department of Youth Services or a secure mental health facility  
50 having custody of a person who is arrested or is in custody for a  
51 criminal offense.

52 (j) "Defendant" means a person or entity that is  
53 formally charged by complaint, indictment or information of  
54 committing a criminal offense.

55 (k) "Final disposition" means the ultimate termination  
56 of the criminal prosecution of a defendant by a trial court,  
57 including dismissal, acquittal or imposition of a sentence.

58 (l) "Immediate family" means the spouse, parent, child,  
59 sibling, grandparent or guardian of the victim, unless that person  
60 is in custody for an offense or is the accused.

61 (m) "Lawful representative" means a person who is a  
62 member of the immediate family or who is designated as provided in  
63 Section 99-43-5; no person in custody for an offense or who is the  
64 accused may serve as lawful representative.

65 (n) "Post-arrest release" means the discharge of the  
66 accused from confinement on recognizance, bond or other condition.

67 (o) "Post-conviction release" means parole or discharge  
68 from confinement by an agency having custody of the prisoner.

69 (p) "Post-conviction relief proceeding" means a  
70 hearing, argument or other matter that is held in any court and  
71 that involves a request for relief from a conviction, sentence or  
72 adjudication.

73 (q) "Prisoner" means a person who has been convicted or  
74 adjudicated of a criminal offense against a victim and who has  
75 been sentenced to the custody of the sheriff, the Department of  
76 Corrections, Department of Youth Services, juvenile detention  
77 facility, a municipal jail or a secure mental health facility.

78 (r) "Prosecuting attorney" means the district attorney,  
79 county prosecuting attorney, municipal prosecuting attorney, youth  
80 court prosecuting attorney, special prosecuting attorney or  
81 Attorney General.

82 (s) "Right" means any right granted to the victim by  
83 the laws of this state.

84 (t) "Victim" means a person against whom the criminal  
85 offense has been committed, or if the person is deceased or  
86 incapacitated, the lawful representative.

87 **SECTION 2.** Section 99-43-37, Mississippi Code of 1972, is  
88 amended as follows:

89 99-43-37. It is the discretion of the victim to exercise the  
90 right to be present and heard, where authorized by law, at a court  
91 proceeding. The absence of the victim at the proceeding of the  
92 court does not preclude the court from going forward with the  
93 proceeding. The right of the victim to be heard may be exercised,  
94 where authorized by law, at the discretion of the victim, through  
95 an oral statement or submission of a written statement, or both.

96 **SECTION 3.** Section 99-41-3, Mississippi Code of 1972, is  
97 amended as follows:

98           99-41-3. It is the intent of the Legislature to provide a  
99 method of compensating and assisting those persons who are  
100 innocent victims of criminal acts within the state and who suffer  
101 bodily injury or death. To this end, it is the Legislature's  
102 intention to provide compensation for injuries suffered as a  
103 direct result of the criminal acts of other persons. It is the  
104 further intent of the Legislature that all agencies, departments,  
105 boards and commissions of the state and political subdivisions of  
106 the state shall cooperate with the Attorney General's Office in  
107 carrying out the provisions of this chapter.

108           SECTION 4. Section 99-41-5, Mississippi Code of 1972, is  
109 amended as follows:

110           99-41-5. As used in this chapter, unless the context  
111 otherwise requires, the term:

112                   (a) "Allowable expense" means reasonable charges  
113 incurred for reasonably needed:

114                           (i) Products, services and accommodations,  
115 including, but not limited to, medical care, rehabilitation,  
116 rehabilitative occupational training and other remedial treatment  
117 and care, but not to exceed Ten Thousand Dollars (\$10,000.00);

118                           (ii) Mental health counseling and care not to  
119 exceed Three Thousand Five Hundred Dollars (\$3,500.00) for the  
120 victim and victim's family member; provided, however, if there is  
121 more than one (1) family member, the amount of compensation  
122 awarded shall be prorated and not to exceed Three Thousand Five  
123 Hundred Dollars (\$3,500.00); and

124                           (iii) Expenses related to funeral, cremation or  
125 burial, but not to exceed a total charge of Four Thousand Five  
126 Hundred Dollars (\$4,500.00) and transportation costs to arrange or  
127 attend services, but not to exceed Five Hundred Dollars (\$500.00);

128                   (b) "Claimant" means any of the following persons  
129 applying for compensation under this chapter:

130                           (i) A victim;

131                   (ii) A dependent of a victim who has died because  
132 of criminally injurious conduct; or

133                   (iii) A person authorized to act on behalf of any  
134 of the persons enumerated in subparagraphs (i) and (ii) of this  
135 paragraph; however, "claimant" shall not include any of the  
136 following: provider or creditor of victim; assignee of provider  
137 or creditor, including a collection agency; or another person or  
138 entity other than those enumerated in this paragraph;

139                   (c) "Collateral source" means a source of benefits or  
140 advantages for economic loss for which the claimant would  
141 otherwise be eligible to receive compensation under this chapter  
142 which the claimant has received, or which is readily available to  
143 the claimant, from any one or more of the following:

144                   (i) The offender;

145                   (ii) The government of the United States or any  
146 agency thereof, a state or any of its political subdivisions or an  
147 instrumentality of two (2) or more states;

148                   (iii) Social security, Medicare and Medicaid;

149                   (iv) Workers' compensation;

150                   (v) Wage continuation programs of any employer;

151                   (vi) Proceeds of a contract of insurance payable  
152 to the claimant for loss which the victim sustained because of the  
153 criminally injurious conduct;

154                   (vii) A contract providing prepaid hospital and  
155 other health care services or benefits for disability; or

156                   (viii) Any temporary nonoccupational disability  
157 insurance;

158                   (d) "Criminally injurious conduct" means an act  
159 occurring or attempted within the geographical boundaries of this  
160 state, or to a resident of Mississippi while that resident is  
161 within any other state of the United States or any foreign  
162 country, which state or foreign country does not provide  
163 compensation for those injuries caused by an act for which

164 compensation would be available had the act occurred in  
165 Mississippi, and which act results in personal injury or death to  
166 a victim for which punishment by fine, imprisonment or death may  
167 be imposed. The term shall also apply to federal offenses  
168 committed within the state and delinquent acts as defined in  
169 Section 43-21-105 which meet this definition;

170 \* \* \*

171 (e) "Dependent" means a natural person wholly or  
172 partially dependent upon the victim for care or support, and  
173 includes a child of the victim born after the death of the victim  
174 where the death occurred as a result of criminally injurious  
175 conduct;

176 (f) "Economic loss of a dependent" means loss, after  
177 death of the victim, of contributions or things of economic value  
178 to the dependent, not including services which would have been  
179 received from the victim if he or she had not suffered the fatal  
180 injury, less expenses of the dependent avoided by reason of death  
181 of the victim;

182 (g) "Economic loss" means monetary detriment consisting  
183 only of allowable expense, work loss and, if injury causes death,  
184 economic loss of a dependent, but shall not include noneconomic  
185 loss or noneconomic detriment;

186 (h) "Family member" means the victim's spouse, parent,  
187 grandparent, stepparent, child, stepchild, grandchild, brother,  
188 sister, half brother, half sister or spouse's parent;

189 (i) "Noneconomic loss or detriment" means pain,  
190 suffering, inconvenience, physical impairment and nonpecuniary  
191 damage;

192 (j) "Work loss" means loss of income from work the  
193 victim or claimant would have performed if the victim had not been  
194 injured, but reduced by any income from substitute work actually  
195 performed by the victim or claimant or by income the victim or  
196 claimant would have earned in available appropriate substitute

197 work that he or she was capable of performing, but unreasonably  
198 failed to undertake; and

199 (k) "Victim" means a person who suffers personal injury  
200 or death as a result of criminally injurious conduct.

201 **SECTION 5.** Section 99-41-7, Mississippi Code of 1972, is  
202 amended as follows:

203 99-41-7. There is hereby created in the Attorney General's  
204 Office the Division of Victim Compensation \* \* \*, hereafter  
205 referred to as "division." In the Division of Victim Compensation  
206 there is hereby created the position of Director of Victim  
207 Compensation, hereafter referred to as "director." The duties of  
208 the director shall include receipt, investigation, verification  
209 and adjudication of a claim for compensation under the provisions  
210 of this chapter. The director shall be appointed by the Attorney  
211 General.

212 **SECTION 6.** Section 99-41-9, Mississippi Code of 1972, is  
213 amended as follows:

214 99-41-9. In addition to any other powers and duties  
215 specified elsewhere in this chapter, the division is hereby  
216 authorized to:

217 (a) Except as otherwise provided by this chapter,  
218 regulate the procedures for the director to expedite his functions  
219 and adopt rules and regulations for the position of director;

220 (b) Define any term not defined in this chapter in a  
221 manner not inconsistent with this chapter;

222 (c) Prescribe forms necessary to carry out the purposes  
223 of this chapter and make such forms available for use in making  
224 applications for compensation;

225 (d) Authorize the director to take judicial notice of  
226 general, technical and scientific facts within the director's  
227 specialized knowledge;

228 (e) Publicize the availability of compensation and  
229 information regarding the filing of claims and ask that public

230 officials and law enforcement agencies take reasonable care that  
231 victims be informed about the availability of compensation and the  
232 procedure for applying for compensation;

233 (f) Apply for funds from and to submit all necessary  
234 forms to any federal agency participating in a cooperative program  
235 to compensate victims of crimes, and to apply for and accept any  
236 gifts, bequests, grants, donations or funds from other sources,  
237 public or private, for carrying out the provisions of this  
238 chapter; and

239 (g) Adopt such rules and regulations as shall be  
240 necessary for carrying out the provisions of this chapter.

241 **SECTION 7.** Section 99-41-11, Mississippi Code of 1972, is  
242 amended as follows:

243 99-41-11. (1) The director shall award compensation for  
244 economic loss arising from criminally injurious conduct if  
245 satisfied by a preponderance of the evidence that the requirements  
246 for compensation have been met.

247 (2) The director shall make such investigations, administer  
248 such oaths or affirmations and receive such evidence as he deems  
249 relevant and necessary to make a determination on any application  
250 received. The director shall have the power to subpoena  
251 witnesses, compel their attendance and require the production of  
252 records and other evidence. Application to a court for aid in  
253 enforcing a subpoena may be made in the name of the director. To  
254 the extent that funds are appropriated or otherwise available, the  
255 Attorney General may employ such personnel, including expert  
256 witnesses, as may be required in connection with particular  
257 applications before the director, and the director may take  
258 judicial notice of general, technical and scientific facts within  
259 his specialized knowledge.

260 (3) The director may settle a claim by stipulation, agreed  
261 settlement, consent order or default.



262           (4) The director may request access to and obtain from  
263 prosecuting attorneys or law enforcement officers, as well as  
264 state and local agencies, any reports of investigations or other  
265 data necessary to assist the director in making a determination of  
266 eligibility for compensation under the provisions of this chapter.

267           (5) Notwithstanding any other provision of law, every law  
268 enforcement agency and prosecuting attorney in the state shall  
269 provide to the director, upon request, a complete copy of the  
270 report regarding the incident and any supplemental reports  
271 involving the crime or incident giving rise to a claim filed  
272 pursuant to this chapter within thirty (30) days of such request.

273           (6) Any statute providing for the confidentiality of a  
274 claimant or victim's court record shall not be applicable under  
275 this chapter, notwithstanding the provisions of any other law to  
276 the contrary; provided, however, any such record or report which  
277 is otherwise protected from public disclosure by the provisions of  
278 any other law shall otherwise remain subject to the provisions of  
279 such law.

280           (7) The director may require that the claimant submit with  
281 the application material substantiating the facts stated in the  
282 application.

283           (8) After processing an application for compensation filed  
284 under rules and regulations promulgated by the Attorney General,  
285 the director shall enter an order stating:

286                   (a) Findings of fact;

287                   (b) The decision as to whether or not compensation  
288 shall be awarded;

289                   (c) The amount of compensation, if any, due under this  
290 chapter;

291                   (d) The person or persons to whom any compensation  
292 should be paid;

293           (e) The percentage share of the total of any  
294 compensation award and the dollar amount each person shall  
295 receive; and

296           (f) Whether disbursement of any compensation awarded  
297 shall be made in a lump sum or in periodic payments.

298           (9) The director on his own motion or on request of the  
299 claimant may reconsider a decision granting or denying an award or  
300 determining its amount. An order on reconsideration of an award  
301 shall not require a refund of amounts previously paid unless the  
302 award was obtained by fraud.

303           (10) If a claimant disagrees with the decision of the  
304 director, he may contest such decision to the Attorney General  
305 within fifteen (15) days after notification of issuance of the  
306 decision. There shall be no appeal of a decision of the director  
307 except as set forth in this subsection.

308           (11) In a contested case, all parties shall be afforded an  
309 opportunity for a hearing after reasonable notice pursuant to  
310 regulations promulgated pursuant to this chapter and may offer  
311 evidence and argument on any issue relevant to the claim and may  
312 examine witnesses and offer evidence in reply to any matter of an  
313 evidentiary nature relevant to the claim. The Attorney General  
314 shall have the power to subpoena witnesses, compel their  
315 attendance and require the production of records and other  
316 evidence. The decision of the Attorney General becomes the final  
317 decision \* \* \*. A record of the hearing in a contested case shall  
318 be made and shall be transcribed upon request of any party who  
319 shall pay transcription costs unless otherwise ordered by the  
320 Attorney General.

321           **SECTION 8.** Section 99-41-13, Mississippi Code of 1972, is  
322 amended as follows:

323           99-41-13. Any claimant aggrieved by a final decision of the  
324 Attorney General shall be entitled to judicial review thereof in  
325 the manner provided in this section.

326 (a) An appeal may be taken by such claimant to the  
327 circuit court of the claimant's residence or the Circuit Court of  
328 the First Judicial District of Hinds County by filing a petition  
329 with the clerk of the court and executing and filing bond payable  
330 to the State of Mississippi with sufficient sureties to be  
331 approved by the clerk of the court, conditioned upon the payment  
332 of all costs of appeal, including the cost of preparing the  
333 transcript of the hearing before the Attorney General. The  
334 petition and bond shall be filed within thirty (30) days of the  
335 receipt of the final decision of the Attorney General. Upon  
336 approval of the bond, the clerk of the court shall notify the  
337 Office of the Attorney General, which shall prepare its record in  
338 the matter and transmit it to the circuit court.

339 (b) The scope of review of the circuit court in such  
340 cases shall be limited to a review of the record made before the  
341 Attorney General to determine if the action of the Attorney  
342 General is unlawful for the reason that it was:

343 (i) Not supported by a preponderance of the  
344 evidence;

345 (ii) Arbitrary and capricious; or

346 (iii) In violation of a statutory right of  
347 claimant.

348 (c) No relief shall be granted based upon the court's  
349 finding of harmless error.

350 (d) Any party aggrieved by action of the circuit court  
351 may appeal to the Supreme Court in the manner provided by law.

352 **SECTION 9.** Section 99-41-17, Mississippi Code of 1972, is  
353 amended as follows:

354 99-41-17. (1) Compensation shall not be awarded under this  
355 chapter:

356 (a) Unless the criminally injurious conduct occurred  
357 after July 1, 1991;

358           (b) Unless the claim has been filed with the director  
359 within twenty-four (24) months after the crime occurred, or in  
360 cases of child sexual abuse, within twenty-four (24) months after  
361 the crime was reported to law enforcement or the Department of  
362 Human Services, but in no event later than the child's  
363 twenty-first birthday;

364           (c) To a claimant or victim who was the offender or an  
365 accomplice to the offender, or, except in cases of children under  
366 the age of consent as specified in Section 97-3-65, 97-3-97 or  
367 97-5-23, Mississippi Code of 1972, who encouraged or in any way  
368 knowingly participated in criminally injurious conduct;

369           (d) To another person, if the award would unjustly  
370 benefit the offender or accomplice;

371           (e) Unless the criminally injurious conduct resulting  
372 in injury or death was reported to a law enforcement officer  
373 within seventy-two (72) hours after its occurrence or unless it is  
374 found that there was good cause for the failure to report within  
375 such time;

376           (f) To any claimant or victim when the injury or death  
377 occurred while the victim was confined in any federal, state,  
378 county or city jail or correctional facility;

379           (g) If the victim was injured as a result of the  
380 operation of a motor vehicle, boat or airplane, unless the vehicle  
381 was used by the offender (i) while under the influence of alcohol  
382 or drugs, or (ii) as a weapon in the deliberate attempt to injure  
383 or cause the death of the victim;

384           (h) If, following the filing of an application, the  
385 claimant failed to take further steps as required by the division  
386 to support the application within forty-five (45) days of such  
387 request made by the director or failed to otherwise cooperate with  
388 requests of the director to determine eligibility, unless failure  
389 to provide information was beyond the control of the claimant;

390 (i) To a claimant or victim who, subsequent to the  
391 injury for which application is made, is convicted of any felony  
392 which is a violation of the Controlled Substances Act, or in which  
393 a weapon was used or possessed or in which any personal injury was  
394 committed or attempted, and the conviction becomes known to the  
395 director.

396 (2) Compensation otherwise payable to a claimant shall be  
397 diminished to the extent:

398 (a) That the economic loss is recouped from other  
399 sources, including collateral sources; and

400 (b) Of the degree of responsibility for the cause of  
401 injury or death attributable to the victim or claimant.

402 (3) Upon a finding that the claimant or victim has not fully  
403 cooperated with appropriate law enforcement agencies and  
404 prosecuting attorneys, an award of compensation may be denied,  
405 withdrawn or reduced.

406 **SECTION 10.** Section 99-41-27, Mississippi Code of 1972, is  
407 amended as follows:

408 99-41-27. (1) Claims shall be made under oath. The filing  
409 of a false claim for compensation pursuant to this chapter shall  
410 constitute a misdemeanor and shall be punishable by a fine of not  
411 to exceed One Thousand Dollars (\$1,000.00), or by imprisonment in  
412 the county jail for a term not to exceed one (1) year, or by both  
413 such fine and imprisonment, and the person convicted shall, as  
414 part of the sentence in either case, be required to repay to the  
415 Crime Victims' Compensation Fund the amount received pursuant to  
416 the false claim.

417 (2) Any person who shall knowingly furnish any false  
418 information or knowingly fails or omits to disclose a material  
419 fact or circumstance with the intent to defraud the division for  
420 compensation pursuant to this chapter shall be guilty of a  
421 misdemeanor and shall be punished by a fine not to exceed One  
422 Thousand Dollars (\$1,000.00), or by imprisonment in the county

423 jail for a term not to exceed one (1) year, or both, and the  
424 person convicted shall, as part of the sentence in either case, be  
425 required to repay to the Crime Victims' Compensation Fund the  
426 total amount received pursuant to the false claim.

427 (3) If a payment or overpayment of compensation is made  
428 because of clerical error, mistaken identity, innocent  
429 misrepresentation by or on behalf of the recipient of the  
430 compensation award or other circumstances of a similar nature not  
431 induced by fraud by or on behalf of the recipient, the recipient  
432 is liable for repayment of the compensation. The division may  
433 waive, decrease or adjust the amount of the repayment of the  
434 compensation.

435 **SECTION 11.** Section 99-41-29, Mississippi Code of 1972, is  
436 amended as follows:

437 99-41-29. (1) From and after July 1, 1990, there is hereby  
438 created in the State Treasury a special interest-bearing fund to  
439 be known as the Crime Victims' Compensation Fund. The purpose of  
440 the fund shall be to provide for the payment of awards of  
441 compensation pursuant to this chapter and the payment of all  
442 necessary and proper expenses incurred by the division in the  
443 administration of this chapter. Expenditures from the fund shall  
444 be paid by the State Treasurer upon warrants issued by the  
445 Department of Finance and Administration, and upon requisitions  
446 signed by the Attorney General or his duly designated  
447 representative in the manner provided by law. The fund shall be a  
448 continuing fund, not subject to fiscal-year limitations, and shall  
449 consist of: (a) monies appropriated by the Legislature for the  
450 purposes of compensating the victims of crime and other claimants  
451 under this chapter; (b) the interest accruing to the fund; (c)  
452 monies recovered by the director under the provisions of Section  
453 99-41-21; (d) monies received from the federal government; and (e)  
454 monies received from such other sources as may be provided by law.

455 (2) No compensation payments shall be made which exceed the  
456 amount of money in the fund. The state shall not be liable for a  
457 written order to pay compensation, except to the extent that  
458 monies are available in the fund on the date the award is ordered.  
459 The Attorney General shall establish such rules and regulations as  
460 shall be necessary to adjust awards and payments so that the total  
461 amount awarded does not exceed the amount of money on deposit in  
462 the fund. Such rules and regulations may include, but shall not  
463 be limited to, the authority to provide for suspension of payments  
464 and proportioned reduction of benefits to all claimants; provided,  
465 however, no such reductions as provided for shall entitle  
466 claimants to future retroactive reimbursements in future years.

467 **SECTION 12.** Section 99-41-31, Mississippi Code of 1972, is  
468 amended as follows:

469 99-41-31. It is unlawful, except for purposes directly  
470 connected with the administration of the division, for any person  
471 to solicit, disclose, receive or make use of or authorize,  
472 knowingly permit, participate in or acquiesce in the use of any  
473 list, or names of, or information concerning persons applying for  
474 or receiving awards under this chapter without the written consent  
475 of the claimant or recipient. The records, papers, files and  
476 communications of the division, director, staff and agents must be  
477 regarded as confidential information and privileged and not  
478 subject to disclosure under any condition including the  
479 Mississippi Public Records Act of 1983.

480 **SECTION 13.** This act shall take effect and be in force from  
481 and after its passage.