

By: Representatives Coleman (29th),
Fredericks

To: Judiciary A

HOUSE BILL NO. 889

1 AN ACT TO REVISE VARIOUS PROVISIONS OF THE LAW DEALING WITH
2 DOMESTIC VIOLENCE; TO AMEND SECTION 19-5-319, MISSISSIPPI CODE OF
3 1972, TO ALLOW RECORDINGS OF EMERGENCY CALLS TO BE USED TO
4 PROSECUTE CRIMINAL OFFENSES; TO AMEND SECTION 93-21-3, MISSISSIPPI
5 CODE OF 1972, TO REVISE DEFINITIONS; TO AMEND SECTION 93-21-7,
6 MISSISSIPPI CODE OF 1972, TO REVISE PETITION PROVISIONS; TO AMEND
7 SECTION 93-21-11, MISSISSIPPI CODE OF 1972, TO REVISE NOTICE AND
8 TEMPORARY ORDERS; TO AMEND SECTION 93-21-5, MISSISSIPPI CODE OF
9 1972, TO REVISE PROTECTIVE ORDERS; TO AMEND SECTION 93-21-16,
10 MISSISSIPPI CODE OF 1972, TO REVISE FULL FAITH AND CREDIT; TO
11 AMEND SECTION 93-21-17, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT
12 ONLY THE COURT MAY AMEND PROTECTIVE ORDERS; TO AMEND SECTION
13 93-21-25, MISSISSIPPI CODE OF 1972, TO CREATE A PROTECTIVE ORDER
14 REGISTRY; TO AMEND SECTION 93-21-28, MISSISSIPPI CODE OF 1972, TO
15 REVISE EMERGENCY LAW ENFORCEMENT RESPONSE; TO AMEND SECTION
16 93-21-113, MISSISSIPPI CODE OF 1972, TO INCLUDE MUNICIPAL
17 PROSECUTORS AS A PROSECUTOR REQUIRED TO FILE DOMESTIC VIOLENCE
18 CHARGES; TO AMEND SECTION 97-3-7, MISSISSIPPI CODE OF 1972, TO
19 REVISE DOMESTIC VIOLENCE PROVISIONS; TO AMEND SECTION 99-5-37,
20 MISSISSIPPI CODE OF 1972, TO REVISE CONDITIONS TO BE CONSIDERED IN
21 DOMESTIC VIOLENCE CASES; TO AMEND SECTION 99-19-71, MISSISSIPPI
22 CODE OF 1972, TO CONFORM EXPUNCTION; TO AMEND SECTION 99-37-25,
23 MISSISSIPPI CODE OF 1972, TO REVISE MEDICAL TESTING REQUIREMENTS;
24 AND FOR RELATED PURPOSES.

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

26 **SECTION 1.** Section 19-5-319, Mississippi Code of 1972, is
27 amended as follows:

28 19-5-319. (1) Automatic number identification (ANI),
29 automatic location identification (ALI) and geographic automatic
30 location identification (GeoALI) information that consist of the
31 name, address and telephone number of telephone or wireless
32 subscribers shall be confidential, and the dissemination of the
33 information contained in the 911 automatic number and location
34 data base is prohibited except for the following purpose: the
35 information will be provided to the Public Safety Answering Point
36 (PSAP) on a call-by-call basis only for the purpose of handling
37 emergency calls or for training, and any permanent record of the
38 information shall be secured by the Public Safety Answering Point

39 (PSAP) and disposed of in a manner which will retain that
40 security, except upon court order or subpoena from a court of
41 competent jurisdiction or as otherwise provided by law.

42 (2) All emergency telephone calls and telephone call
43 transmissions received pursuant to Section 19-5-301 et seq., and
44 all recordings of the emergency telephone calls, shall remain
45 confidential and shall be used only for the purposes as may be
46 needed for the prosecution of criminal offenses, law enforcement,
47 fire, medical rescue or other emergency services. These
48 recordings shall not be released to any other parties without
49 court order or subpoena from a court of competent jurisdiction.

50 (3) PSAP and emergency response entities shall maintain and,
51 upon request, release a record of the date of call, time of call,
52 the time the emergency response entity was notified, and the
53 identity of the emergency response entity. The emergency response
54 entity shall maintain and, upon request, release a record of the
55 date and time the call was received by the emergency response
56 entity and the time the emergency response entity arrived on the
57 scene. Requests for release of records must be made in writing
58 and must specify the information desired. Requestors shall pay
59 the cost of providing the information requested in accordance with
60 the Mississippi Public Records Act of 1983, Section 25-61-1 et
61 seq. The identity of any caller or person or persons who are the
62 subject of any call, or the address, phone number or other
63 identifying information about any such person, shall not be
64 released except as provided in subsection (2) of this section.

65 **SECTION 2.** Section 93-21-3, Mississippi Code of 1972, is
66 amended as follows:

67 93-21-3. As used in this chapter, unless the context
68 otherwise requires:

69 (a) "Abuse" means the occurrence of one or more of the
70 following acts between family or household members who reside

71 together or who formerly resided together or between individuals
72 who have a current dating relationship:

73 (i) Attempting to cause or intentionally,
74 knowingly or recklessly causing bodily injury or serious bodily
75 injury with or without a deadly weapon;

76 (ii) Placing, by physical menace or threat,
77 another in fear of imminent serious bodily injury; * * *

78 (iii) Criminal sexual conduct committed against a
79 minor within the meaning of Section 97-5-23;

80 (iv) Stalking within the meaning of Section
81 97-3-107; or

82 (v) Sexual offenses within the meaning of Sections
83 97-3-65 or 97-3-95.

84 (b) "Adult" means any person eighteen (18) years of age
85 or older, or any person under eighteen (18) years of age who has
86 been emancipated by marriage.

87 (c) "Court" means the chancery court, or the justice
88 court, municipal court or county court.

89 (d) "Dating relationship" means a social relationship
90 of a romantic or intimate nature.

91 (e) "Family or household member" means spouses, former
92 spouses, persons living as spouses, parents and children, or other
93 persons related by consanguinity or affinity.

94 **SECTION 3.** Section 93-21-7, Mississippi Code of 1972, is
95 amended as follows:

96 93-21-7. (1) Any person may seek relief under this chapter
97 for himself by filing a petition with the court alleging abuse by
98 the respondent. Any parent, adult household member, or next
99 friend of the abused person may seek relief under this chapter on
100 behalf of any minor children or any person alleged to be
101 incompetent by filing a petition with the court alleging abuse by
102 the respondent.

103 (2) The petitioner in an action brought pursuant to this
104 chapter shall not bear the costs associated with its filing or the
105 costs associated with the issuance or service of any notice of a
106 hearing to the respondent, issuance or service of an order of
107 protection on the respondent, or issuance or service of a warrant
108 or witness subpoena. If the court finds that the petitioner is
109 entitled to an order protecting the petitioner from abuse, the
110 court shall be authorized to assess all costs of the proceedings
111 to the respondent. Nothing in this section shall be construed as
112 prohibiting a judge from assessing costs to the petitioner if the
113 allegations of abuse are determined to be without merit.

114 (3) Costs assessed pursuant to this chapter shall include a
115 One Dollar (\$1.00) fee on every order of protection that is
116 issued, which shall be collected by the court and payable to the
117 Attorney General for expenses in providing forms to the courts.

118 **SECTION 4.** Section 93-21-11, Mississippi Code of 1972, is
119 amended as follows:

120 93-21-11. (1) Within ten (10) days of filing of a petition
121 under the provisions of this act, the court shall hold a hearing,
122 at which time the petitioner must prove the allegation of abuse by
123 a preponderance of the evidence. The respondent shall be given
124 notice by service of process as otherwise provided by law.

125 (2) Upon good cause shown in an ex parte proceeding, and
126 upon specific request by the petitioner, the court may, prior to
127 the date set for the hearing, enter such temporary ex parte order
128 as it deems necessary to protect from abuse the petitioner, any
129 minor children, or any person alleged to be incompetent.
130 Immediate and present danger of abuse to the petitioner, any minor
131 children, or any person alleged to be incompetent, shall
132 constitute good cause for issuance of a temporary ex parte order.
133 A temporary ex parte order shall last no longer than ten (10) days
134 and upon issuance of a temporary ex parte order, the respondent
135 shall be served with a copy of the order and given notice of a

136 hearing to be held within ten (10) days as provided in subsection
137 (1).

138 (3) If a hearing under subsection (1) of this section is
139 continued, the court may make or extend such temporary ex parte
140 orders under subsection (2) of this section as it deems
141 necessary. * * *

142 (4) Any temporary ex parte protective order to bring about a
143 cessation of abuse of the petitioner, any minor children, or any
144 person alleged to be incompetent, may include the following
145 relief:

146 (a) Directing the defendant to refrain from abusing the
147 petitioner, any minor children, or any person alleged to be
148 incompetent;

149 (b) Granting possession to the petitioner of the
150 residence or household to the exclusion of the defendant by
151 evicting the defendant and/or restoring possession to the
152 petitioner;

153 (c) Prohibiting or limiting respondent's physical
154 proximity to the abused, including residence and place of work;

155 (d) Prohibiting or limiting contact with the abused by
156 the respondent, whether in person, by telephone or by electronic
157 communication;

158 (e) When the defendant has a duty to support the
159 petitioner, any minor children, or any person alleged to be
160 incompetent living in the residence or household and the defendant
161 is the sole owner or lessee, granting possession to the petitioner
162 of the residence or household to the exclusion of the defendant by
163 evicting the defendant and/or restoring possession to the
164 petitioner, or by consent agreement allowing the defendant to
165 provide suitable, alternate housing; and

166 (f) Prohibiting the transferring, encumbering or
167 otherwise disposing of property mutually owned or leased by the
168 parties, except when in the ordinary course of business.

169 (5) The court may amend its order or agreement at any time
170 upon subsequent petition by either party.

171 (6) Every order granting a temporary ex parte protective
172 order pursuant to this section shall set forth the reasons for its
173 issuance, shall contain specific findings of fact regarding the
174 existence of abuse, shall be specific in its terms and shall
175 describe in reasonable detail the act or acts to be restrained.

176 (7) In issuing temporary ex parte protective orders pursuant
177 to this section, the court shall utilize the uniform form
178 developed, approved and distributed by the Attorney General.

179 **SECTION 5.** Section 93-21-15, Mississippi Code of 1972, is
180 amended as follows:

181 93-21-15. (1) Upon petition the chancery, justice,
182 municipal or county court shall be empowered to grant any
183 protective order or approve any consent agreement to bring about a
184 cessation of abuse of the petitioner, any minor children, or any
185 person alleged to be incompetent, which relief may include:

186 (a) Directing the defendant to refrain from abusing the
187 petitioner, any minor children, or any person alleged to be
188 incompetent;

189 (b) Granting possession to the petitioner of the
190 residence or household to the exclusion of the defendant by
191 evicting the defendant and/or restoring possession to the
192 petitioner;

193 (c) When the defendant has a duty to support the
194 petitioner, any minor children, or any person alleged to be
195 incompetent living in the residence or household and the defendant
196 is the sole owner or lessee, granting possession to the petitioner
197 of the residence or household to the exclusion of the defendant by
198 evicting the defendant and/or restoring possession to the
199 petitioner, or by consent agreement allowing the defendant to
200 provide suitable, alternate housing;

201 (d) Awarding temporary custody of and/or establishing
202 temporary visitation rights with regard to any minor children or
203 any person alleged to be incompetent;

204 (e) If the defendant is legally obligated to support
205 the petitioner, any minor children, or any person alleged to be
206 incompetent, ordering the defendant to pay temporary support for
207 the petitioner, any minor children, or any person alleged to be
208 incompetent;

209 (f) Ordering the defendant to pay to the abused person
210 monetary compensation for losses suffered as a direct result of
211 the abuse, including, but not limited to, medical expenses
212 resulting from such abuse, loss of earnings or support,
213 out-of-pocket losses for injuries sustained, moving expenses, a
214 reasonable attorney's fee, and/or ordering counseling or
215 professional medical treatment for the defendant and/or the abused
216 person; * * *

217 (g) Prohibiting the transferring, encumbering, or
218 otherwise disposing of property mutually owned or leased by the
219 parties, except when in the ordinary course of business;

220 (h) Prohibiting or limiting respondent's physical
221 proximity to the abused, including residence and place of work;
222 and

223 (i) Prohibiting or limiting contact with the abused by
224 the respondent, whether in person, by telephone or by electronic
225 communication.

226 (2) Every order granting a protective order pursuant to this
227 section shall set forth the reasons for its issuance, shall
228 contain specific findings of fact regarding the existence of
229 abuse, shall be specific in its terms and shall describe in
230 reasonable detail the act or acts to be prohibited.

231 (3) Protective orders issued by a court pursuant to the
232 provisions of this section shall be valid for a period not to

233 exceed three (3) years from the date of issuance. Every order
234 shall contain a provision specifying its duration.

235 (4) In issuing protective orders pursuant to this section,
236 the court shall utilize the uniform form developed, approved and
237 distributed by the Attorney General.

238 (5) Upon issuance of any protective order by the court, the
239 order shall be forwarded to the local law enforcement agency for
240 enforcement and entry into the National Criminal Information
241 Center's Protection Order File.

242 **SECTION 6.** Section 93-21-16, Mississippi Code of 1972, is
243 amended as follows:

244 93-21-16. (1) A protective order from another jurisdiction
245 issued to protect the applicant from abuse as defined in Section
246 93-21-3, or a protection order as defined in Section 93-22-3,
247 issued by a tribunal of another state shall be accorded full faith
248 and credit by the courts of this state and enforced in this state
249 as provided for in the Uniform Interstate Enforcement of Domestic
250 Violence Protection Orders Act.

251 (2) For purposes of enforcement by Mississippi law
252 enforcement officers, a protective order from another
253 jurisdiction, or a protection order as defined in Section 93-22-3
254 and issued by a tribunal of another state, is presumed to be valid
255 if it meets the requirements of Section 93-22-7.

256 (3) For purposes of judicial enforcement of a protective
257 order issued in another jurisdiction, or a protection order as
258 defined in Section 93-22-3 and issued by a tribunal of another
259 state, an order is presumed valid if it meets the requirements of
260 Section 93-22-5(4). It is an affirmative defense in any action
261 seeking enforcement of a protective order issued in another
262 jurisdiction, or a protection order as defined in Section 93-22-3
263 and issued by a tribunal of another state, that any criteria for
264 the validity of the order is absent.

265 **SECTION 7.** Section 93-21-17, Mississippi Code of 1972, is
266 amended as follows:

267 93-21-17. (1) The granting of any relief authorized under
268 this chapter shall not preclude any other relief provided by law.

269 (2) * * * The court may amend its order or agreement at any
270 time upon subsequent petition filed by either party. Protective
271 orders issued under the provisions of this chapter may only be
272 amended by action of the court.

273 (3) No order or agreement under this chapter shall in any
274 manner affect title to any real property.

275 **SECTION 8.** Section 93-21-25, Mississippi Code of 1972, is
276 amended as follows:

277 93-21-25. (1) In order to provide a statewide registry for
278 protective orders and to aid law enforcement, prosecutors and
279 courts in handling such matters, there is created a Mississippi
280 Protective Order Registry administered by the Office of the
281 Attorney General. The Attorney General's Office shall collect the
282 data transmitted to it from the courts and enter it into the
283 Mississippi Protective Order Registry.

284 (2) All temporary ex parte protective orders, protective
285 orders, consent agreements, orders issued in conjunction with
286 divorce proceedings, peace bonds or orders issued as a condition
287 of bail which are issued for the purpose of preventing violent or
288 threatening acts against, contact or communication with, or
289 physical proximity to, another person to prevent domestic abuse
290 will be maintained in the Mississippi Protective Order Registry.

291 (3) The clerk of the issuing court shall send a copy of the
292 order or any modification thereof to the Mississippi Protection
293 Order Registry as expeditiously as possible but no later than by
294 the end of the next business day after the order is filed with the
295 clerk of the court. Transmittal of the order may be by facsimile
296 transmission, mail or email.

297 (4) Upon formation, the registry shall immediately implement
298 a daily process for the entry of newly issued protective orders
299 and removal of records and names of the parties in all cases in
300 which a protective order expires by its own terms or is modified
301 or rescinded by the court.

302 (5) The Attorney General's Office shall make the Mississippi
303 Protective Order Registry available to the Mississippi Coalition
304 Against Domestic Violence, victim advocates employed by a domestic
305 violence shelter operating in the State of Mississippi, state and
306 local law enforcement agencies, district attorneys, county and
307 municipal prosecutors and the courts.

308 **SECTION 9.** Section 93-21-28, Mississippi Code of 1972, is
309 amended as follows:

310 93-21-28. (1) A person who alleges that he or she or a
311 minor child has been the victim of domestic violence may request
312 the assistance of a local law enforcement agency. The local law
313 enforcement agency shall respond to the request for assistance
314 without regard to the existence of a criminal investigation. The
315 local law enforcement officer responding to the request for
316 assistance shall take whatever steps are reasonably necessary to
317 protect the complainant from harm and shall advise the complainant
318 of sources of shelter, medical care, counseling and other
319 services. Upon request by the complainant and where feasible, the
320 law enforcement officer shall transport the complainant to
321 appropriate facilities such as hospitals or public or private
322 facilities for shelter and accompany the complainant to his or her
323 residence, within the jurisdiction in which the request for
324 assistance was made, so that the complainant may remove food,
325 clothing, medication and such other personal property as is
326 reasonably necessary to enable the complainant and any minor
327 children who are presently in the care of the complainant to
328 remain elsewhere pending further proceedings.

329 (2) In providing the assistance authorized by subsection
330 (1), no officer may be held criminally or civilly liable on
331 account of reasonable measures taken under authority of subsection
332 (1).

333 (3) In the event it is determined that providing assistance
334 to a victim of domestic violence is not feasible, reasonable
335 efforts shall be made to ensure the safety of the victim, which
336 may include requesting assistance from the local domestic violence
337 program.

338 **SECTION 10.** Section 93-21-113, Mississippi Code of 1972, is
339 amended as follows:

340 93-21-113. Domestic violence shelters through their
341 employees and officials shall, on every occasion other than the
342 initial request for assistance, report to the district attorney,
343 the county attorney, or the appropriate law enforcement official
344 or other state agencies any occurrence or instance coming to their
345 attention which would involve the commission of a crime or the
346 failure to perform or render a service or assistance to a victim
347 of domestic violence when required by law to do so.

348 Every municipal prosecutor, county attorney, district
349 attorney or other appropriate law enforcement official who, having
350 had reported to him a case of domestic violence, if the facts
351 submitted be sufficient, shall immediately file charges against
352 the offender on the behalf of the victim. Such prosecutor may in
353 plea bargaining with the offender enter into an agreement whereby
354 the offender shall receive counseling in lieu of further
355 prosecution, and if the offender shall successfully attend
356 counseling as agreed upon for the period of time agreed upon, the
357 municipal prosecutor, county attorney or district attorney, as the
358 case may be, shall pass such case to the file.

359 No municipal prosecutor, county attorney or district attorney
360 shall grant such right in plea bargaining to the same offender
361 more than once.

362 **SECTION 11.** Section 97-3-7, Mississippi Code of 1972, is
363 amended as follows:

364 97-3-7. (1) A person is guilty of simple assault if he (a)
365 attempts to cause or purposely, knowingly or recklessly causes
366 bodily injury to another; or (b) negligently causes bodily injury
367 to another with a deadly weapon or other means likely to produce
368 death or serious bodily harm; or (c) attempts by physical menace
369 to put another in fear of imminent serious bodily harm; and, upon
370 conviction, he shall be punished by a fine of not more than Five
371 Hundred Dollars (\$500.00) or by imprisonment in the county jail
372 for not more than six (6) months, or both. However, a person
373 convicted of simple assault (a) upon a statewide elected official,
374 law enforcement officer, fireman, emergency medical personnel,
375 public health personnel, social worker or family protection
376 specialist or family protection worker employed by the Department
377 of Human Services or another agency, superintendent, principal,
378 teacher or other instructional personnel, school attendance
379 officer, school bus driver, or a judge of a circuit, chancery,
380 county, justice, municipal or youth court or a judge of the Court
381 of Appeals or a justice of the Supreme Court, district attorney,
382 legal assistant to a district attorney, county prosecutor,
383 municipal prosecutor, court reporter employed by a court, court
384 administrator, clerk or deputy clerk of the court, or public
385 defender, while such statewide elected official, judge or justice,
386 law enforcement officer, fireman, emergency medical personnel,
387 public health personnel, social worker, family protection
388 specialist, family protection worker, superintendent, principal,
389 teacher or other instructional personnel, school attendance
390 officer, school bus driver, district attorney, legal assistant to
391 a district attorney, county prosecutor, municipal prosecutor,
392 court reporter employed by a court, court administrator, clerk or
393 deputy clerk of the court, or public defender is acting within the
394 scope of his duty, office or employment, or (b) upon a legislator

395 while the Legislature is in regular or extraordinary session or
396 while otherwise acting within the scope of his duty, office or
397 employment, shall be punished by a fine of not more than One
398 Thousand Dollars (\$1,000.00) or by imprisonment for not more than
399 five (5) years, or both.

400 (2) A person is guilty of aggravated assault if he (a)
401 attempts to cause serious bodily injury to another, or causes such
402 injury purposely, knowingly or recklessly under circumstances
403 manifesting extreme indifference to the value of human life; or
404 (b) attempts to cause or purposely or knowingly causes bodily
405 injury to another with a deadly weapon or other means likely to
406 produce death or serious bodily harm; and, upon conviction, he
407 shall be punished by imprisonment in the county jail for not more
408 than one (1) year or in the Penitentiary for not more than twenty
409 (20) years. However, a person convicted of aggravated assault (a)
410 upon a statewide elected official, law enforcement officer,
411 fireman, emergency medical personnel, public health personnel,
412 social worker, family protection specialist, family protection
413 worker employed by the Department of Human Services or another
414 agency, superintendent, principal, teacher or other instructional
415 personnel, school attendance officer, school bus driver, or a
416 judge of a circuit, chancery, county, justice, municipal or youth
417 court or a judge of the Court of Appeals or a justice of the
418 Supreme Court, district attorney, legal assistant to a district
419 attorney, county prosecutor, municipal prosecutor, court reporter
420 employed by a court, court administrator, clerk or deputy clerk of
421 the court, or public defender, while such statewide elected
422 official, judge or justice, law enforcement officer, fireman,
423 emergency medical personnel, public health personnel, social
424 worker, family protection specialist, family protection worker,
425 superintendent, principal, teacher or other instructional
426 personnel, school attendance officer, school bus driver, district
427 attorney, legal assistant to a district attorney, county

428 prosecutor, municipal prosecutor, court reporter employed by a
429 court, court administrator, clerk or deputy clerk of the court, or
430 public defender is acting within the scope of his duty, office or
431 employment, or (b) upon a legislator while the Legislature is in
432 regular or extraordinary session or while otherwise acting within
433 the scope of his duty, office or employment, shall be punished by
434 a fine of not more than Five Thousand Dollars (\$5,000.00) or by
435 imprisonment for not more than thirty (30) years, or both.

436 (3) A person is guilty of simple domestic violence who
437 commits simple assault as described in subsection (1) of this
438 section against a family or household member who resides with the
439 defendant or who formerly resided with the defendant, a current or
440 former spouse, a person who has a current dating relationship with
441 the defendant, or a person with whom the defendant has had a
442 biological or legally adopted child and upon conviction, the
443 defendant shall be punished as provided under subsection (1) of
444 this section; however, upon a third or subsequent conviction of
445 simple domestic violence, whether against the same or another
446 victim and within five (5) years, the defendant shall be guilty of
447 a felony and sentenced to a term of imprisonment not less than
448 five (5) nor more than ten (10) years. In sentencing, the court
449 shall consider as an aggravating factor whether the crime was
450 committed in the physical presence or hearing of a child under
451 sixteen (16) years of age who was, at the time of the offense,
452 living within either the residence of the victim, the residence of
453 the perpetrator, or the residence where the offense occurred.

454 (4) A person is guilty of aggravated domestic violence who
455 commits aggravated assault as described in subsection (2) of this
456 section against a family or household member who resides with the
457 defendant or who formerly resided with the defendant, or a current
458 or former spouse, a person who has a current dating relationship
459 with the defendant, or a person with whom the defendant has had a
460 biological or legally adopted child and upon conviction, the

461 defendant shall be punished as provided under subsection (2) of
462 this section; however, upon a third or subsequent offense of
463 aggravated domestic violence, whether against the same or another
464 victim and within five (5) years, the defendant shall be guilty of
465 a felony and sentenced to a term of imprisonment of not less than
466 five (5) nor more than twenty (20) years. In sentencing, the
467 court shall consider as an aggravating factor whether the crime
468 was committed in the physical presence or hearing of a child under
469 sixteen (16) years of age who was, at the time of the offense,
470 living within either the residence of the victim, the residence of
471 the perpetrator, or the residence where the offense occurred.
472 Reasonable discipline of a child, such as spanking, is not an
473 offense under this subsection (4).

474 (5) "Dating relationship" means a social relationship of a
475 romantic or intimate nature.

476 (6) Every conviction of domestic violence may require as a
477 condition of any suspended sentence that the defendant participate
478 in counseling or treatment to bring about the cessation of
479 domestic abuse. The defendant may be required to pay all or part
480 of the cost of the counseling or treatment, in the discretion of
481 the court.

482 (7) When investigating allegations of a violation of
483 subsections (3) or (4) of this section, law enforcement officers
484 shall utilize the form prescribed by the Office of the Attorney
485 General for such purposes. In cases in which the investigation
486 results in an arrest, a copy of the offense report shall be
487 provided to the Office of the Attorney General in consultation
488 with the Sheriff's and Police Chief's Associations.

489 (8) In any conviction of assault as described in any
490 subsection of this section which arises from an incident of
491 domestic violence, the sentencing order shall include the
492 designation "domestic violence." The court shall forward a copy

493 of each sentencing order bearing the designation "domestic
494 violence" to the Office of the Attorney General.

495 **SECTION 12.** Section 99-5-37, Mississippi Code of 1972, is
496 amended as follows:

497 99-5-37. In any arrest for a misdemeanor which is an act of
498 domestic violence, as defined in Section 99-3-7(5), no bail shall
499 be granted until the person arrested has appeared before a judge
500 of the court of competent jurisdiction. The defendant shall be
501 brought before a judge at the first reasonable opportunity, not to
502 exceed twenty-four (24) hours from the time of the arrest. In
503 calculating the twenty-four (24) hours, weekends and holidays
504 shall be included. The appearance may be by telephone. Upon
505 setting bail in any case involving a misdemeanor which is an act
506 of domestic violence, the judge shall give particular
507 consideration to the exigencies of the case, including, but not
508 limited to, (a) the potential for further violence, (b) the past
509 history, if any, of violence between the defendant and alleged
510 victim, (c) the level of violence of the instant offense, (d) any
511 threats of further violence and (e) the existence of a domestic
512 violence protection order prohibiting the defendant from engaging
513 in abusive behavior, and shall impose any specific conditions as
514 he or she may deem necessary. Specific conditions which may be
515 imposed by the judge may include the issuance of an order
516 prohibiting the defendant from contacting the alleged victim prior
517 to trial, prohibiting the defendant from abusing or threatening
518 the alleged victim, requiring defendant to refrain from drug or
519 alcohol use, or requiring the defendant to relinquish possession
520 of any firearms or other weapons to the law enforcement agency
521 making the arrest. Any bail order imposing a condition which
522 prohibits the defendant from abusing or threatening the alleged
523 victim shall be reported to the Mississippi Protective Order
524 Registry as provided by Section 93-21-25.

525 **SECTION 13.** Section 99-19-71, Mississippi Code of 1972, is
526 amended as follows:

527 99-19-71. (1) Any person who has been convicted of a
528 nonviolent misdemeanor, excluding a conviction for a traffic
529 violation, and who is a first offender, may petition the justice,
530 county, circuit or municipal court, as may be applicable, for an
531 order to expunge any such conviction from all public records.
532 Upon entering such order, a nonpublic record thereof shall be
533 retained by the court and by the Mississippi Criminal Information
534 Center solely for the purpose of determining whether, in
535 subsequent proceedings, such person is a first offender. The
536 effect of such order shall be to restore such person, in the
537 contemplation of the law, to the status he occupied before such
538 arrest. No person as to whom such order has been entered shall be
539 held thereafter under any provision of law to be guilty of perjury
540 or to have otherwise given a false statement by reason of his
541 failure to recite or acknowledge such arrest or conviction in
542 response to any inquiry made of him for any purpose, except for
543 the purpose of determining in any subsequent proceedings under
544 this section, whether such person is a first offender.

545 (2) Upon petition therefor, a justice, county, circuit or
546 municipal court shall expunge the record of any case in which an
547 arrest was made, the person arrested was released and the case was
548 dismissed or the charges were dropped or there was no disposition
549 of such case.

550 **SECTION 14.** Section 99-37-25, Mississippi Code of 1972, is
551 amended as follows:

552 99-37-25. (1) (a) When a person is brought into a
553 physician's office, a hospital or a medical clinic * * * by a law
554 enforcement agency as the victim of an alleged rape or sexual
555 assault having occurred in this state, or otherwise comes into a
556 physician's office, a hospital or a medical clinic * * * alleging
557 rape or sexual assault having occurred in this state, the bill for

558 the medical forensic examination and the preparation of the sexual
559 assault evidence collection kit will be sent to the Division of
560 Victim Compensation, Office of the Attorney General. The Division
561 of Victim Compensation shall pay for the medical examination
562 conducted for the procurement of evidence to aid in the
563 investigation and prosecution of the alleged offense. Such
564 payment shall be limited to the customary and usual hospital and
565 physician charges for such services in the area. Such payment
566 shall be made by the Division of Victim Compensation directly to
567 the health care provider. No bill for the examination will be
568 submitted to the victim, nor shall the medical facility hold the
569 victim responsible for payment. * * * The victim may be billed
570 for any further medical services not required for the
571 investigation and prosecution of the alleged offense. In cases
572 where the damage caused by the alleged sexual assault requires
573 medical treatment or diagnosis in addition to the examination, the
574 patient will be given information about the availability of victim
575 compensation and the procedure for applying for such compensation.

576 (b) Upon application submitted by the district
577 attorney, provided the proper warrant or court order has been
578 issued, the county in which an offense of sexual assault or of
579 felonious abuse or battery of a child as described in Section
580 97-5-39, touching or handling a child for lustful purposes as
581 described in Section 97-5-23, exploitation of children as
582 described in Section 97-5-33 or sexual battery as described in
583 Section 97-3-95, or statutory rape as defined in Section 97-3-65
584 or an attempt to commit such offense has occurred shall pay for a
585 medical forensic examination of the person arrested, charged or
586 convicted of such offense to determine if the person so arrested,
587 charged or convicted has any sexually transmitted disease and for
588 the collection of evidence. Such payment shall be made by the
589 county directly to the health care provider or other service
590 performing the collection of evidence and tests. At the victim's

591 request, the district attorney shall make application that a test
592 for immunodeficiency (HIV) be administered to the
593 defendant/accused not later than forty-eight (48) hours after the
594 arrest or charge, and the defendant/accused shall be subjected to
595 follow-up testing for HIV, upon a determination that such
596 follow-up testing is medically necessary and reasonable. The
597 results of any such test shall be made available to the victim or,
598 if the victim is a child, to the guardian of the victim.

599 (2) Any defendant who is convicted of, or pleads guilty or
600 nolo contendere to, any offense * * *, or an attempt to commit any
601 such offense specified in subsection (1)(b), shall be ordered by
602 the court to make restitution to the Division of Victim
603 Compensation in an amount equal to the compensation paid by the
604 Division of Victim Compensation to the victim or medical provider
605 for the medical forensic examination and to the county for tests
606 for sexually transmitted diseases and HIV. Such restitution shall
607 be in addition to any restitution which the court orders the
608 defendant to pay the victim under the provisions of Chapter 37 of
609 Title 99, (Sections 99-37-1 through 99-37-21), Mississippi Code of
610 1972.

611 (3) The Division of Victim Compensation is hereby
612 authorized, in its discretion, to make application for and comply
613 with such requirements as may be necessary to qualify for any
614 federal funds as may be available as a result of services rendered
615 to crime victims under the provisions of this section.

616 **SECTION 15.** This act shall take effect and be in force from
617 and after July 1, 2007.