

By: Representatives Coleman (29th),
Fredericks

To: Judiciary A

HOUSE BILL NO. 905

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 and the
114 court finds that the petitioner is not a victim of abuse as
115 defined by Section 93-21-3.

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

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

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

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

136 and upon issuance of a temporary ex parte order, the respondent
137 shall be served with a copy of the order and given notice of a
138 hearing to be held within ten (10) days as provided in subsection
139 (1).

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

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

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

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

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

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

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

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

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

173 (6) No temporary ex parte protective order shall be issued
174 unless supported by an independent petition requesting relief
175 pursuant to this chapter. Every order granting a temporary ex
176 parte protective order pursuant to this section shall set forth
177 the reasons for its issuance, shall contain specific findings of
178 fact regarding the existence of abuse, shall be specific in its
179 terms and shall describe in reasonable detail the act or acts to
180 be restrained.

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

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

186 93-21-15. (1) Upon petition the chancery, justice,
187 municipal or county court shall be empowered to grant any
188 protective order or approve any consent agreement to bring about a
189 cessation of abuse of the petitioner, any minor children, or any
190 person alleged to be incompetent, which relief may include:

191 (a) Directing the defendant to refrain from abusing the
192 petitioner, any minor children, or any person alleged to be
193 incompetent;

194 (b) Granting possession to the petitioner of the
195 residence or household to the exclusion of the defendant by
196 evicting the defendant and/or restoring possession to the
197 petitioner;

198 (c) When the defendant has a duty to support the
199 petitioner, any minor children, or any person alleged to be
200 incompetent living in the residence or household and the defendant

201 is the sole owner or lessee, granting possession to the petitioner
202 of the residence or household to the exclusion of the defendant by
203 evicting the defendant and/or restoring possession to the
204 petitioner, or by consent agreement allowing the defendant to
205 provide suitable, alternate housing;

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

209 (e) If the defendant is legally obligated to support
210 the petitioner, any minor children, or any person alleged to be
211 incompetent, ordering the defendant to pay temporary support for
212 the petitioner, any minor children, or any person alleged to be
213 incompetent;

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

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

225 (h) Prohibiting or limiting respondent's physical
226 proximity to the abused, including residence and place of work;
227 and

228 (i) Prohibiting or limiting contact with the abused by
229 the respondent, whether in person, by telephone or by electronic
230 communication.

231 (2) No protective order shall be issued unless supported by
232 an independent petition requesting relief pursuant to this
233 chapter. Every order granting a protective order pursuant to this

234 section shall set forth the reasons for its issuance, shall
235 contain specific findings of fact regarding the existence of
236 abuse, shall be specific in its terms and shall describe in
237 reasonable detail the act or acts to be prohibited.

238 (3) Protective orders issued by a court pursuant to the
239 provisions of this section shall be valid for a period not to
240 exceed three (3) years from the date of issuance. Every order
241 shall contain a provision specifying its duration.

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

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

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

251 93-21-16. (1) A protective order from another jurisdiction
252 issued to protect the applicant from abuse as defined in Section
253 93-21-3, or a protection order as defined in Section 93-22-3,
254 issued by a tribunal of another state shall be accorded full faith
255 and credit by the courts of this state and enforced in this state
256 as provided for in the Uniform Interstate Enforcement of Domestic
257 Violence Protection Orders Act.

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

263 (3) For purposes of judicial enforcement of a protective
264 order issued in another jurisdiction, or a protection order as
265 defined in Section 93-22-3 and issued by a tribunal of another
266 state, an order is presumed valid if it meets the requirements of

267 Section 93-22-5(4). It is an affirmative defense in any action
268 seeking enforcement of a protective order issued in another
269 jurisdiction, or a protection order as defined in Section 93-22-3
270 and issued by a tribunal of another state, that any criteria for
271 the validity of the order is absent.

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

274 93-21-17. (1) The granting of any relief authorized under
275 this chapter shall not preclude any other relief provided by law.

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

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

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

284 93-21-25. (1) In order to provide a statewide registry for
285 protective orders and to aid law enforcement, prosecutors and
286 courts in handling such matters, there is created a Mississippi
287 Protective Order Registry administered by the Office of the
288 Attorney General. The Attorney General's Office shall collect the
289 data transmitted to it from the courts and enter it into the
290 Mississippi Protective Order Registry.

291 (2) All temporary ex parte protective orders, protective
292 orders, consent agreements, orders issued in conjunction with
293 divorce proceedings, peace bonds or orders issued as a condition
294 of bail which are issued for the purpose of preventing violent or
295 threatening acts against, contact or communication with, or
296 physical proximity to, another person to prevent domestic abuse
297 will be maintained in the Mississippi Protective Order Registry.

298 (3) The clerk of the issuing court shall send a copy of the
299 order or any modification thereof to the Mississippi Protection

300 Order Registry as expeditiously as possible but no later than by
301 the end of the next business day after the order is filed with the
302 clerk of the court. Transmittal of the order may be by facsimile
303 transmission, mail or email.

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

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

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

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

333 reasonably necessary to enable the complainant and any minor
334 children who are presently in the care of the complainant to
335 remain elsewhere pending further proceedings.

336 (2) In providing the assistance authorized by subsection
337 (1), no officer may be held criminally or civilly liable on
338 account of reasonable measures taken under authority of subsection
339 (1).

340 (3) In the event it is determined that providing assistance
341 to a victim of domestic violence is not feasible, reasonable
342 efforts shall be made to ensure the safety of the victim, which
343 may include requesting assistance from the local domestic violence
344 program.

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

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

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

366 No municipal prosecutor, county attorney or district attorney
367 shall grant such right in plea bargaining to the same offender
368 more than once.

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

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

399 court reporter employed by a court, court administrator, clerk or
400 deputy clerk of the court, or public defender is acting within the
401 scope of his duty, office or employment, or (b) upon a legislator
402 while the Legislature is in regular or extraordinary session or
403 while otherwise acting within the scope of his duty, office or
404 employment, shall be punished by a fine of not more than One
405 Thousand Dollars (\$1,000.00) or by imprisonment for not more than
406 five (5) years, or both.

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

432 superintendent, principal, teacher or other instructional
433 personnel, school attendance officer, school bus driver, district
434 attorney, legal assistant to a district attorney, county
435 prosecutor, municipal prosecutor, court reporter employed by a
436 court, court administrator, clerk or deputy clerk of the court, or
437 public defender is acting within the scope of his duty, office or
438 employment, or (b) upon a legislator while the Legislature is in
439 regular or extraordinary session or while otherwise acting within
440 the scope of his duty, office or employment, shall be punished by
441 a fine of not more than Five Thousand Dollars (\$5,000.00) or by
442 imprisonment for not more than thirty (30) years, or both.

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

461 (4) A person is guilty of aggravated domestic violence who
462 commits aggravated assault as described in subsection (2) of this
463 section against a family or household member who resides with the
464 defendant or who formerly resided with the defendant, or a current

465 or former spouse, a person who has a current dating relationship
466 with the defendant, or a person with whom the defendant has had a
467 biological or legally adopted child and upon conviction, the
468 defendant shall be punished as provided under subsection (2) of
469 this section; however, upon a third or subsequent offense of
470 aggravated domestic violence, whether against the same or another
471 victim and within five (5) years, the defendant shall be guilty of
472 a felony and sentenced to a term of imprisonment of not less than
473 five (5) nor more than twenty (20) years. In sentencing, the
474 court shall consider as an aggravating factor whether the crime
475 was committed in the physical presence or hearing of a child under
476 sixteen (16) years of age who was, at the time of the offense,
477 living within either the residence of the victim, the residence of
478 the perpetrator, or the residence where the offense occurred.
479 Reasonable discipline of a child, such as spanking, is not an
480 offense under this subsection (4).

481 (5) "Dating relationship" means a social relationship of a
482 romantic or intimate nature.

483 (6) Every conviction of domestic violence may require as a
484 condition of any suspended sentence that the defendant participate
485 in counseling or treatment to bring about the cessation of
486 domestic abuse. The defendant may be required to pay all or part
487 of the cost of the counseling or treatment, in the discretion of
488 the court.

489 (7) When investigating allegations of a violation of
490 subsections (3) or (4) of this section, law enforcement officers
491 shall utilize the form prescribed by the Office of the Attorney
492 General for such purposes. In cases in which the investigation
493 results in an arrest, a copy of the offense report shall be
494 provided to the Office of the Attorney General in consultation
495 with the Sheriff's and Police Chief's Associations.

496 (8) In any conviction of assault as described in any
497 subsection of this section which arises from an incident of

498 domestic violence, the sentencing order shall include the
499 designation "domestic violence." The court shall forward a copy
500 of each sentencing order bearing the designation "domestic
501 violence" to the Office of the Attorney General.

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

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

530 victim shall be reported to the Mississippi Protective Order
531 Registry as provided by Section 93-21-25.

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

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

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

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

559 99-37-25. (1) (a) When a person is brought into a
560 physician's office, a hospital or a medical clinic * * * by a law
561 enforcement agency as the victim of an alleged rape or sexual
562 assault having occurred in this state, or otherwise comes into a

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

583 (b) Upon application submitted by the district
584 attorney, provided the proper warrant or court order has been
585 issued, the county in which an offense of sexual assault or of
586 felonious abuse or battery of a child as described in Section
587 97-5-39, touching or handling a child for lustful purposes as
588 described in Section 97-5-23, exploitation of children as
589 described in Section 97-5-33 or sexual battery as described in
590 Section 97-3-95, or statutory rape as defined in Section 97-3-65
591 or an attempt to commit such offense has occurred shall pay for a
592 medical forensic examination of the person arrested, charged or
593 convicted of such offense to determine if the person so arrested,
594 charged or convicted has any sexually transmitted disease and for
595 the collection of evidence. Such payment shall be made by the

596 county directly to the health care provider or other service
597 performing the collection of evidence and tests. At the victim's
598 request, the district attorney shall make application that a test
599 for immunodeficiency (HIV) be administered to the
600 defendant/accused not later than forty-eight (48) hours after the
601 arrest or charge, and the defendant/accused shall be subjected to
602 follow-up testing for HIV, upon a determination that such
603 follow-up testing is medically necessary and reasonable. The
604 results of any such test shall be made available to the victim or,
605 if the victim is a child, to the guardian of the victim.

606 (2) Any defendant who is convicted of, or pleads guilty or
607 nolo contendere to, any offense * * *, or an attempt to commit any
608 such offense specified in subsection (1)(b), shall be ordered by
609 the court to make restitution to the Division of Victim
610 Compensation in an amount equal to the compensation paid by the
611 Division of Victim Compensation to the victim or medical provider
612 for the medical forensic examination and to the county for tests
613 for sexually transmitted diseases and HIV. Such restitution shall
614 be in addition to any restitution which the court orders the
615 defendant to pay the victim under the provisions of Chapter 37 of
616 Title 99, (Sections 99-37-1 through 99-37-21), Mississippi Code of
617 1972.

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

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