

By: Representatives Coleman (29th),  
Fredericks

To: Judiciary A

COMMITTEE SUBSTITUTE  
FOR  
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 93-21-15, 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 REPEAL SECTION 93-21-13, MISSISSIPPI  
22 CODE OF 1972, WHICH PROVIDES FOR EX PARTE PROCEEDINGS, TEMPORARY  
23 RELIEF AND ENFORCEMENT OF ORDERS IN ABUSE CASES; AND FOR RELATED  
24 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 or defense of criminal offenses, law  
47 enforcement, fire, medical rescue or other emergency services.  
48 These recordings shall not be released to any other parties  
49 without court order or subpoena from a court of competent  
50 jurisdiction.

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

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

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

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

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

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

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

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

81 (iv) Stalking within the meaning of Section  
82 97-3-107; or

83 (v) Sexual offenses within the meaning of Sections  
84 97-3-65 or 97-3-95.

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

88 (c) "Court" means the chancery court, circuit court or  
89 county court.

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

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

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

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

105 immediately notified when a case is filed in order to provide for  
106 expedited proceedings.

107 (2) The petitioner in an action brought pursuant to this  
108 chapter shall not bear the costs associated with its filing or the  
109 costs associated with the issuance or service of any notice of a  
110 hearing to the respondent, issuance or service of an order of  
111 protection on the respondent, or issuance or service of a warrant  
112 or witness subpoena. If the court finds that the petitioner is  
113 entitled to an order protecting the petitioner from abuse, the  
114 court shall be authorized to assess all costs including attorney's  
115 fees of the proceedings to the respondent. The court may assess  
116 costs including attorney's fees to the petitioner if the  
117 allegations of abuse are determined to be without merit and the  
118 court finds that the petitioner is not a victim of abuse as  
119 defined by Section 93-21-3.

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

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

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

131 (2) Upon showing of immediate and present danger in an ex  
132 parte proceeding, and upon specific request by the petitioner, the  
133 court may, prior to the date set for the hearing, enter such  
134 temporary ex parte order as it deems necessary to protect from  
135 abuse the petitioner, any minor children, or any person alleged to  
136 be incompetent. Immediate and present danger of abuse to the  
137 petitioner, any minor children, or any person alleged to be

138 incompetent, shall constitute good cause for issuance of a  
139 temporary ex parte order. A temporary ex parte order shall last  
140 no longer than ten (10) days and upon issuance of a temporary ex  
141 parte order, the respondent shall be served with a copy of the  
142 order and given notice of a hearing to be held within ten (10)  
143 days as provided in subsection (1).

144 (3) If a hearing under subsection (1) of this section is  
145 continued, the court may make or extend such temporary ex parte  
146 orders under subsection (2) of this section as it deems necessary.  
147 A continuance under this subsection shall last no longer than  
148 twenty (20) days.

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

153 (a) Directing the defendant to refrain from abusing the  
154 petitioner, any minor children, or any person alleged to be  
155 incompetent;

156 (b) Granting possession to the petitioner of the  
157 residence or household to the exclusion of the defendant by  
158 evicting the defendant and/or restoring possession to the  
159 petitioner;

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

162 (d) Prohibiting or limiting contact with the abused by  
163 the respondent, whether in person, by telephone or by electronic  
164 communication; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

228           (2) No protective order shall be issued unless supported by  
229 an independent petition requesting relief pursuant to this  
230 chapter. Every order granting a protective order pursuant to this  
231 section shall set forth the reasons for its issuance, shall  
232 contain specific findings of fact regarding the existence of  
233 abuse, shall be specific in its terms and shall describe in  
234 reasonable detail the act or acts to be prohibited.

235       (3) 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       (4) Upon issuance of any protective order by the court, the  
239 order shall be forwarded to the sheriff for enforcement and entry  
240 into the National Criminal Information Center's Protection Order  
241 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 approval 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 orders issued pursuant to this chapter will be  
285 maintained in the Mississippi Protective Order Registry.

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

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

297 (5) The Mississippi Protective Order Registry shall be a  
298 public record and the Attorney General's Office shall make such  
299 registry available to the public.

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

302           93-21-28. (1) A person who alleges that he or she or a  
303 minor child has been the victim of domestic violence may request  
304 the assistance of a local law enforcement agency. The local law  
305 enforcement agency shall respond to the request for assistance  
306 with all deliberate speed. The local law enforcement officer  
307 responding to the request for assistance shall take whatever steps  
308 are reasonably necessary to protect the complainant from harm and  
309 shall advise the complainant of sources of shelter, medical care,  
310 counseling and other services. Upon request by the complainant  
311 and where feasible, the law enforcement officer shall transport  
312 the complainant to appropriate facilities such as hospitals or  
313 public or private facilities for shelter and accompany the  
314 complainant to his or her residence, within the jurisdiction in  
315 which the request for assistance was made, so that the complainant  
316 may remove food, clothing, medication and such other personal  
317 property as is reasonably necessary to enable the complainant and  
318 any minor children who are presently in the care of the  
319 complainant to remain elsewhere pending further proceedings.

320           (2) In providing the assistance authorized by subsection  
321 (1), no officer may be held criminally or civilly liable on  
322 account of reasonable measures taken under authority of subsection  
323 (1).

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

326           93-21-113. Domestic violence shelters through their  
327 employees and officials shall, on every occasion other than the  
328 initial request for assistance, report to the district attorney,  
329 the county attorney, or the appropriate law enforcement official  
330 or other state agencies any occurrence or instance coming to their  
331 attention which would involve the commission of a crime or the

332 failure to perform or render a service or assistance to a victim  
333 of domestic violence when required by law to do so.

334 Every municipal prosecutor, county attorney, district  
335 attorney or other appropriate law enforcement official who, having  
336 had reported to him a case of domestic violence, if the facts  
337 submitted be sufficient, shall immediately file charges against  
338 the offender on the behalf of the victim. Such prosecutor may in  
339 plea bargaining with the offender enter into an agreement whereby  
340 the offender shall receive counseling in lieu of further  
341 prosecution, and if the offender shall successfully attend  
342 counseling as agreed upon for the period of time agreed upon, the  
343 municipal prosecutor, county attorney or district attorney, as the  
344 case may be, shall pass such case to the file.

345 No municipal prosecutor, county attorney or district attorney  
346 shall grant such right in plea bargaining to the same offender  
347 more than once.

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

350 97-3-7. (1) A person is guilty of simple assault if he (a)  
351 attempts to cause or purposely, knowingly or recklessly causes  
352 bodily injury to another; or (b) negligently causes bodily injury  
353 to another with a deadly weapon or other means likely to produce  
354 death or serious bodily harm; or (c) attempts by physical menace  
355 to put another in fear of imminent serious bodily harm; and, upon  
356 conviction, he shall be punished by a fine of not more than Five  
357 Hundred Dollars (\$500.00) or by imprisonment in the county jail  
358 for not more than six (6) months, or both. However, a person  
359 convicted of simple assault (a) upon a statewide elected official,  
360 law enforcement officer, fireman, emergency medical personnel,  
361 public health personnel, social worker or family protection  
362 specialist or family protection worker employed by the Department  
363 of Human Services or another agency, superintendent, principal,  
364 teacher or other instructional personnel, school attendance

365 officer, school bus driver, or a judge of a circuit, chancery,  
366 county, justice, municipal or youth court or a judge of the Court  
367 of Appeals or a justice of the Supreme Court, district attorney,  
368 legal assistant to a district attorney, county prosecutor,  
369 municipal prosecutor, court reporter employed by a court, court  
370 administrator, clerk or deputy clerk of the court, or public  
371 defender, while such statewide elected official, judge or justice,  
372 law enforcement officer, fireman, emergency medical personnel,  
373 public health personnel, social worker, family protection  
374 specialist, family protection worker, superintendent, principal,  
375 teacher or other instructional personnel, school attendance  
376 officer, school bus driver, district attorney, legal assistant to  
377 a district attorney, county prosecutor, municipal prosecutor,  
378 court reporter employed by a court, court administrator, clerk or  
379 deputy clerk of the court, or public defender is acting within the  
380 scope of his duty, office or employment, or (b) upon a legislator  
381 while the Legislature is in regular or extraordinary session or  
382 while otherwise acting within the scope of his duty, office or  
383 employment, shall be punished by a fine of not more than One  
384 Thousand Dollars (\$1,000.00) or by imprisonment for not more than  
385 five (5) years, or both.

386 (2) A person is guilty of aggravated assault if he (a)  
387 attempts to cause serious bodily injury to another, or causes such  
388 injury purposely, knowingly or recklessly under circumstances  
389 manifesting extreme indifference to the value of human life; or  
390 (b) attempts to cause or purposely or knowingly causes bodily  
391 injury to another with a deadly weapon or other means likely to  
392 produce death or serious bodily harm; and, upon conviction, he  
393 shall be punished by imprisonment in the county jail for not more  
394 than one (1) year or in the Penitentiary for not more than twenty  
395 (20) years. However, a person convicted of aggravated assault (a)  
396 upon a statewide elected official, law enforcement officer,  
397 fireman, emergency medical personnel, public health personnel,

398 social worker, family protection specialist, family protection  
399 worker employed by the Department of Human Services or another  
400 agency, superintendent, principal, teacher or other instructional  
401 personnel, school attendance officer, school bus driver, or a  
402 judge of a circuit, chancery, county, justice, municipal or youth  
403 court or a judge of the Court of Appeals or a justice of the  
404 Supreme Court, district attorney, legal assistant to a district  
405 attorney, county prosecutor, municipal prosecutor, court reporter  
406 employed by a court, court administrator, clerk or deputy clerk of  
407 the court, or public defender, while such statewide elected  
408 official, judge or justice, law enforcement officer, fireman,  
409 emergency medical personnel, public health personnel, social  
410 worker, family protection specialist, family protection worker,  
411 superintendent, principal, teacher or other instructional  
412 personnel, school attendance officer, school bus driver, district  
413 attorney, legal assistant to a district attorney, county  
414 prosecutor, municipal prosecutor, court reporter employed by a  
415 court, court administrator, clerk or deputy clerk of the court, or  
416 public defender is acting within the scope of his duty, office or  
417 employment, or (b) upon a legislator while the Legislature is in  
418 regular or extraordinary session or while otherwise acting within  
419 the scope of his duty, office or employment, shall be punished by  
420 a fine of not more than Five Thousand Dollars (\$5,000.00) or by  
421 imprisonment for not more than thirty (30) years, or both.

422 (3) A person is guilty of simple domestic violence who  
423 commits simple assault as described in subsection (1) of this  
424 section against a family or household member who resides with the  
425 defendant or who formerly resided with the defendant, a current or  
426 former spouse, a person who has a current dating relationship with  
427 the defendant, or a person with whom the defendant has had a  
428 biological or legally adopted child and upon conviction, the  
429 defendant shall be punished as provided under subsection (1) of  
430 this section; however, upon a third or subsequent conviction of

431 simple domestic violence, whether against the same or another  
432 victim and within five (5) years, the defendant shall be guilty of  
433 a felony and sentenced to a term of imprisonment not less than  
434 five (5) nor more than ten (10) years. In sentencing, the court  
435 shall consider as an aggravating factor whether the crime was  
436 committed in the physical presence or hearing of a child under  
437 sixteen (16) years of age who was, at the time of the offense,  
438 living within either the residence of the victim, the residence of  
439 the perpetrator, or the residence where the offense occurred.

440 (4) A person is guilty of aggravated domestic violence who  
441 commits aggravated assault as described in subsection (2) of this  
442 section against a family or household member who resides with the  
443 defendant or who formerly resided with the defendant, or a current  
444 or former spouse, a person who has a current dating relationship  
445 with the defendant, or a person with whom the defendant has had a  
446 biological or legally adopted child and upon conviction, the  
447 defendant shall be punished as provided under subsection (2) of  
448 this section; however, upon a third or subsequent offense of  
449 aggravated domestic violence, whether against the same or another  
450 victim and within five (5) years, the defendant shall be guilty of  
451 a felony and sentenced to a term of imprisonment of not less than  
452 five (5) nor more than twenty (20) years. In sentencing, the  
453 court shall consider as an aggravating factor whether the crime  
454 was committed in the physical presence or hearing of a child under  
455 sixteen (16) years of age who was, at the time of the offense,  
456 living within either the residence of the victim, the residence of  
457 the perpetrator, or the residence where the offense occurred.  
458 Reasonable discipline of a child, such as spanking, is not an  
459 offense under this subsection (4).

460 (5) "Dating relationship" means a social relationship of a  
461 romantic or intimate nature.

462 (6) Every conviction of domestic violence may require as a  
463 condition of any suspended sentence that the defendant participate

464 in counseling or treatment to bring about the cessation of  
465 domestic abuse. The defendant may be required to pay all or part  
466 of the cost of the counseling or treatment, in the discretion of  
467 the court.

468 (7) When investigating allegations of a violation of  
469 subsections (3) and (4) of this section, law enforcement officers  
470 shall utilize the form prescribed by the Office of the Attorney  
471 General in consultation with the Sheriff's and Police Chief's  
472 Associations for such purposes. In cases in which the  
473 investigation results in an arrest, a copy of the offense report  
474 shall be provided to the Office of the Attorney General.

475 (8) In any conviction of assault as described in any  
476 subsection of this section which arises from an incident of  
477 domestic violence, the sentencing order shall include the  
478 designation "domestic violence." The court shall forward a copy  
479 of each sentencing order bearing the designation "domestic  
480 violence" to the Office of the Attorney General.

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

483 99-5-37. In any arrest for a misdemeanor which is an act of  
484 domestic violence, as defined in Section 99-3-7(5), no bail shall  
485 be granted until the person arrested has appeared before a judge  
486 of the court of competent jurisdiction. The defendant shall be  
487 brought before a judge at the first reasonable opportunity, not to  
488 exceed twenty-four (24) hours from the time of the arrest. In  
489 calculating the twenty-four (24) hours, weekends and holidays  
490 shall be included. The appearance may be by telephone. Upon  
491 setting bail in any case involving a misdemeanor which is an act  
492 of domestic violence, the judge shall give particular  
493 consideration to the exigencies of the case, including, but not  
494 limited to, (a) the potential for further violence, (b) the past  
495 history, if any, of violence between the defendant and alleged  
496 victim, (c) the level of violence of the instant offense, (d) any

497 threats of further violence and (e) the existence of a domestic  
498 violence protection order prohibiting the defendant from engaging  
499 in abusive behavior, and shall impose any specific conditions as  
500 he or she may deem necessary. Specific conditions which may be  
501 imposed by the judge may include the issuance of an order  
502 prohibiting the defendant from contacting the alleged victim prior  
503 to trial, prohibiting the defendant from abusing or threatening  
504 the alleged victim, requiring defendant to refrain from drug or  
505 alcohol use, or requiring the defendant to relinquish possession  
506 of any firearms or other weapons to the law enforcement agency  
507 making the arrest. All such orders shall be reduced to writing  
508 using the form developed by the Attorney General or a form  
509 substantially similar to the form developed by the Attorney  
510 General.

511       **SECTION 13.** Section 93-21-13, Mississippi Code of 1972,  
512 which provides for ex parte proceedings, temporary relief and  
513 enforcement of orders in abuse cases, is repealed.

514       **SECTION 14.** This act shall take effect and be in force from  
515 and after July 1, 2007.