

By: Senator(s) Dawkins, Williamson,
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To: Judiciary, Division B

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 3036

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 93-21-13, MISSISSIPPI CODE OF
9 1972, TO REVISE TEMPORARY RELIEF IN MUNICIPAL, JUSTICE AND COUNTY
10 COURTS; TO AMEND SECTION 93-21-15, MISSISSIPPI CODE OF 1972, TO
11 REVISE PROTECTIVE ORDERS; TO AMEND SECTION 93-21-16, MISSISSIPPI
12 CODE OF 1972, TO REVISE FULL FAITH AND CREDIT; TO AMEND SECTION
13 93-21-17, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT ONLY THE COURT
14 MAY AMEND PROTECTIVE ORDERS; TO AMEND SECTION 93-21-25,
15 MISSISSIPPI CODE OF 1972, TO CREATE A PROTECTIVE ORDER REGISTRY;
16 TO AMEND SECTION 93-21-28, MISSISSIPPI CODE OF 1972, TO REVISE
17 EMERGENCY LAW ENFORCEMENT RESPONSE; TO AMEND SECTION 93-21-113,
18 MISSISSIPPI CODE OF 1972, TO INCLUDE MUNICIPAL PROSECUTORS AS A
19 PROSECUTOR REQUIRED TO FILE DOMESTIC VIOLENCE CHARGES; TO AMEND
20 SECTION 97-3-7, MISSISSIPPI CODE OF 1972, TO REVISE DOMESTIC
21 VIOLENCE PROVISIONS; TO AMEND SECTION 99-5-37, MISSISSIPPI CODE OF
22 1972, TO REVISE CONDITIONS TO BE CONSIDERED IN DOMESTIC VIOLENCE
23 CASES; TO AMEND SECTION 99-19-71, MISSISSIPPI CODE OF 1972, TO
24 CONFORM EXPUNCTION; 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 E-911 automatic number and location
34 database 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

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

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

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

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

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

(a) "Abuse" means the occurrence of one or more of the 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;

82 (v) Cyberstalking within the meaning of Section
83 97-45-15; or

84 (vi) Sexual offenses within the meaning of Section
85 97-3-65 or 97-3-95.

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

89 (c) "Court" means the chancery court, or the justice
90 court, municipal court or county court.

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

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

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

98 93-21-7. (1) Any person may seek relief under this chapter
99 for himself by filing a petition with the chancery court alleging
100 abuse by the respondent, or may petition the municipal, justice or
101 county court for immediate temporary relief. Any parent, adult
102 household member, or next friend of the abused person may seek
103 relief under this chapter on behalf of any minor children or any

104 person alleged to be incompetent by filing a petition with the
105 chancery court alleging abuse by the respondent, or may petition
106 the municipal, justice or county court for immediate temporary
107 relief.

108 (2) The petitioner in an action brought pursuant to this
109 chapter shall not bear the costs associated with its filing or the
110 costs associated with the issuance or service of any notice of a
111 hearing to the respondent, issuance or service of an order of
112 protection on the respondent, or issuance or service of a warrant
113 or witness subpoena. If the court finds that the petitioner is
114 entitled to an order protecting the petitioner from abuse, the
115 court shall be authorized to assess all costs of the proceedings
116 to the respondent. Nothing in this section shall be construed as
117 prohibiting a judge from assessing costs to the petitioner if the
118 allegations of abuse are determined to be without merit and the
119 court finds that the petitioner is not a victim of abuse as
120 defined by Section 93-21-3.

121 (3) (a) For every order of protection that is issued under
122 this chapter, the amount of One Dollar (\$1.00) shall be assessed
123 as additional costs of court to be used by the Office of the
124 Attorney General for expenses in providing forms to the courts.

125 (b) There is hereby created in the State Treasury a
126 special fund designated as the Domestic Violence Court Forms Fund.
127 The fund shall be administered by the Attorney General. Money
128 remaining in the fund at the end of a fiscal year shall not lapse
129 into the State General Fund, and any interest earned from the
130 investment of monies in the fund shall be deposited to the credit
131 of the fund. Monies appropriated to the fund shall be used by the
132 Attorney General for expenses in providing domestic violence forms
133 to the courts.

134 (c) The clerks of the various courts shall remit the
135 proceeds of the cost of court created under this subsection to the

Department of Finance and Administration as is done generally for other fees collected by the clerks.

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

93-21-11. (1) Within ten (10) days of filing of a petition under the provisions of this act, or within ten (10) days of notification by the municipal, justice or county court of the granting of an order of temporary relief pursuant to Section 93-21-13, the chancery court shall hold a hearing, at which time the petitioner must prove the allegation of abuse by a preponderance of the evidence. The respondent shall be given notice by service of process as otherwise provided by law. Each chancery court district shall establish procedures for handling such matters in an expedited manner.

(2) Upon good cause shown in an ex parte proceeding, and upon specific request by the petitioner, the chancery court may, prior to the date set for the hearing, enter such temporary ex parte order as it deems necessary to protect from abuse the petitioner, any minor children, or any person alleged to be incompetent. Immediate and present danger of abuse to the petitioner, any minor children, or any person alleged to be incompetent, shall constitute good cause for issuance of a temporary ex parte order. A temporary ex parte order shall last no longer than ten (10) days and upon issuance of a temporary ex parte order, the respondent shall be served with a copy of the order and given notice of a hearing to be held within ten (10) days as provided in subsection (1).

(3) If a hearing under subsection (1) of this section is continued, the chancery court may make or extend such temporary ex parte orders under subsection (2) of this section or temporary orders issued pursuant to Section 93-21-13 as it deems necessary. * * *

168 (4) Any temporary ex parte protective order issued by the
169 chancery court to bring about a cessation of abuse of the
170 petitioner, any minor children, or any person alleged to be
171 incompetent, may include the following relief:

172 (a) Directing the respondent to refrain from abusing
173 the petitioner, any minor children, or any person alleged to be
174 incompetent;

175 (b) Granting possession to the petitioner of the
176 residence or household to the exclusion of the respondent by
177 evicting the defendant or restoring possession to the petitioner;

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

180 (d) Prohibiting or limiting contact with the abused by
181 the respondent, whether in person, by telephone or by electronic
182 communication; and

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

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

188 (6) No temporary ex parte protective order shall be issued
189 unless supported by an independent petition requesting relief
190 pursuant to this chapter. Every order granting a temporary ex
191 parte protective order pursuant to this section shall set forth
192 the reasons for its issuance, shall contain specific findings of
193 fact regarding the existence of abuse, shall be specific in its
194 terms and shall describe in reasonable detail the act or acts to
195 be restrained.

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

199 **SECTION 5.** Section 93-21-13, Mississippi Code of 1972, is
200 amended as follows:

93-21-13. (1) A petition for temporary relief may be filed before the justice court judge, municipal court judge or county court judge, in an ex parte proceeding upon good cause shown, if the justice court judge, municipal court judge or county court judge deems it necessary to protect from abuse the petitioner, any minor children, or any person alleged to be incompetent. Immediate and present danger of abuse to the petitioner, any minor children, or any person alleged to be incompetent, shall constitute good cause for the purposes of this section.

(2) The justice court, municipal court and the county court shall be empowered to grant temporary relief * * * to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent, which relief may include:

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

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

(c) Prohibiting or limiting contact with the abused by the respondent, whether in person, by telephone or by electronic communication;

(d) Granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent * * * or restoring possession to the petitioner, or both; and

* * *

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

(3) The duration of any temporary order issued by a municipal, justice or county court * * * shall not exceed thirty (30) days, with no more than one (1) thirty-day renewal, or the date of the hearing in chancery court, whichever occurs first.

234 Upon the filing of a petition for immediate temporary relief and
235 the issuance of a temporary order granting such relief, the
236 municipal, justice or county court shall immediately forward a
237 copy of the petition and order to the chancery clerk for the
238 setting of a hearing in chancery court pursuant to Section
239 93-21-11.

240 (4) The court may amend its order or agreement at any time
241 upon subsequent petition by either party.

242 * * *

243 (5) Every order granting temporary relief pursuant to this
244 section shall be based upon an independent petition for relief,
245 shall set forth the reasons for its issuance, shall contain
246 specific findings of fact regarding the existence of abuse, shall
247 be specific in its terms and shall describe in reasonable detail
248 the act or acts to be restrained. The justice, municipal and
249 county courts shall utilize the form developed by the Mississippi
250 Attorney General's Office in issuing any order for temporary
251 relief.

252 **SECTION 6.** Section 93-21-15, Mississippi Code of 1972, is
253 amended as follows:

254 93-21-15. (1) After a hearing for which notice and an
255 opportunity to be heard has been provided to the respondent, the
256 chancery court shall be empowered to grant any protective order or
257 approve any consent agreement to bring about a cessation of abuse
258 of the petitioner, any minor children, or any person alleged to be
259 incompetent, which relief may include:

260 (a) Directing the defendant to refrain from abusing the
261 petitioner, any minor children, or any person alleged to be
262 incompetent;

263 (b) Granting possession to the petitioner of the
264 residence or household to the exclusion of the defendant by
265 evicting the defendant and/or restoring possession to the
266 petitioner;

267 (c) When the defendant has a duty to support the
268 petitioner, any minor children, or any person alleged to be
269 incompetent living in the residence or household and the defendant
270 is the sole owner or lessee, granting possession to the petitioner
271 of the residence or household to the exclusion of the defendant by
272 evicting the defendant and/or restoring possession to the
273 petitioner, or by consent agreement allowing the defendant to
274 provide suitable, alternate housing;

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

278 (e) If the defendant is legally obligated to support
279 the petitioner, any minor children, or any person alleged to be
280 incompetent, ordering the defendant to pay temporary support for
281 the petitioner, any minor children, or any person alleged to be
282 incompetent;

283 (f) Ordering the defendant to pay to the abused person
284 monetary compensation for losses suffered as a direct result of
285 the abuse, including, but not limited to, medical expenses
286 resulting from such abuse, loss of earnings or support,
287 out-of-pocket losses for injuries sustained, moving expenses, a
288 reasonable attorney's fee, and/or ordering counseling or
289 professional medical treatment for the defendant and/or the abused
290 person; * * *

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

294 (h) Prohibiting or limiting respondent's physical
295 proximity to the abused, including residence and place of work;
296 and

297 (i) Prohibiting or limiting contact with the abused by
298 the respondent, whether in person, by telephone or by electronic
299 communication.

300 (2) No protective order shall be issued unless supported by
301 an independent petition requesting relief pursuant to this
302 chapter. Every order granting a protective order pursuant to this
303 section shall set forth the reasons for its issuance, shall
304 contain specific findings of fact regarding the existence of
305 abuse, shall be specific in its terms and shall describe in
306 reasonable detail the act or acts to be prohibited.

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

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

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

318 **SECTION 7.** Section 93-21-16, Mississippi Code of 1972, is
319 amended as follows:

320 93-21-16. (1) A protective order from another jurisdiction
321 issued to protect the applicant from abuse as defined in Section
322 93-21-3, or a protection order as defined in Section 93-22-3,
323 issued by a tribunal of another state shall be accorded full faith
324 and credit by the courts of this state and enforced in this state
325 as provided for in the Uniform Interstate Enforcement of Domestic
326 Violence Protection Orders Act.

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

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

SECTION 8. Section 93-21-17, Mississippi Code of 1972, is amended as follows:

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

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

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

SECTION 9. Section 93-21-25, Mississippi Code of 1972, is amended as follows:

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

(2) All temporary ex parte protective orders, protective orders, consent agreements, orders issued in conjunction with divorce proceedings, peace bonds or orders issued as a condition of bail which are issued for the purpose of preventing violent or threatening acts against, contact or communication with, or

physical proximity to, another person to prevent domestic abuse
will be maintained in the Mississippi Protective Order Registry.

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

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

(5) The contents of the Mississippi Protective Order
Registry shall be exempt from the provisions of the Mississippi
Public Records Act of 1983, Section 25-61-1 et seq. The Attorney
General's Office shall make the Mississippi Protective Order
Registry available to the Mississippi Coalition Against Domestic
Violence, victim advocates employed by a domestic violence shelter
operating in the State of Mississippi, state and local law
enforcement agencies, district attorneys, county and municipal
prosecutors and the courts.

SECTION 10. Section 93-21-28, Mississippi Code of 1972, is
amended as follows:

93-21-28. (1) A person who alleges that he or she or a
minor child has been the victim of domestic violence may request
the assistance of a local law enforcement agency. The local law
enforcement agency shall respond to the request for assistance
without regard to the existence of trial law enforcement
involvement. The local law enforcement officer responding to the
request for assistance shall take whatever steps are reasonably
necessary to protect the complainant from harm and shall advise
the complainant of sources of shelter, medical care, counseling

398 and other services. Upon request by the complainant and where
399 feasible, the law enforcement officer shall transport the
400 complainant to appropriate facilities such as hospitals or public
401 or private facilities for shelter and accompany the complainant to
402 his or her residence, within the jurisdiction in which the request
403 for assistance was made, so that the complainant may remove food,
404 clothing, medication and such other personal property as is
405 reasonably necessary to enable the complainant and any minor
406 children who are presently in the care of the complainant to
407 remain elsewhere pending further proceedings.

408 (2) In providing the assistance authorized by subsection
409 (1), no officer may be held criminally or civilly liable on
410 account of reasonable measures taken under authority of subsection
411 (1).

412 (3) In the event it is determined that providing assistance
413 to a victim of domestic violence is not feasible, reasonable
414 efforts shall be made to ensure the safety of the victim, which
415 may include requesting assistance from the local domestic violence
416 program.

417 **SECTION 11.** Section 93-21-113, Mississippi Code of 1972, is
418 amended as follows:

419 93-21-113. Domestic violence shelters through their
420 employees and officials shall, on every occasion other than the
421 initial request for assistance, report to the district attorney,
422 the county attorney, or the appropriate law enforcement official
423 or other state agencies any occurrence or instance coming to their
424 attention which would involve the commission of a crime or the
425 failure to perform or render a service or assistance to a victim
426 of domestic violence when required by law to do so.

427 Every municipal prosecutor, county attorney, district
428 attorney or other appropriate law enforcement official who, having
429 had reported to him a case of domestic violence, if the facts
430 submitted be sufficient, shall immediately file charges against

431 the offender on the behalf of the victim. Such prosecutor may in
432 plea bargaining with the offender enter into an agreement whereby
433 the offender shall receive counseling in lieu of further
434 prosecution, and if the offender shall successfully attend
435 counseling as agreed upon for the period of time agreed upon, the
436 municipal prosecutor, county attorney or district attorney, as the
437 case may be, shall pass such case to the file.

438 No municipal prosecutor, county attorney or district attorney
439 shall grant such right in plea bargaining to the same offender
440 more than once.

441 **SECTION 12.** Section 97-3-7, Mississippi Code of 1972, is
442 amended as follows:

443 97-3-7. (1) A person is guilty of simple assault if he (a)
444 attempts to cause or purposely, knowingly or recklessly causes
445 bodily injury to another; or (b) negligently causes bodily injury
446 to another with a deadly weapon or other means likely to produce
447 death or serious bodily harm; or (c) attempts by physical menace
448 to put another in fear of imminent serious bodily harm; and, upon
449 conviction, he shall be punished by a fine of not more than Five
450 Hundred Dollars (\$500.00) or by imprisonment in the county jail
451 for not more than six (6) months, or both. However, a person
452 convicted of simple assault (a) upon a statewide elected official,
453 law enforcement officer, fireman, emergency medical personnel,
454 public health personnel, social worker or family protection
455 specialist or family protection worker employed by the Department
456 of Human Services or another agency, superintendent, principal,
457 teacher or other instructional personnel, school attendance
458 officer, school bus driver, or a judge of a circuit, chancery,
459 county, justice, municipal or youth court or a judge of the Court
460 of Appeals or a justice of the Supreme Court, district attorney,
461 legal assistant to a district attorney, county prosecutor,
462 municipal prosecutor, court reporter employed by a court, court
463 administrator, clerk or deputy clerk of the court, or public

defender, while such statewide elected official, judge or justice,
law enforcement officer, fireman, emergency medical personnel,
public health personnel, social worker, family protection
specialist, family protection worker, superintendent, principal,
teacher or other instructional personnel, school attendance
officer, school bus driver, district attorney, legal assistant to
a district attorney, county prosecutor, municipal prosecutor,
court reporter employed by a court, court administrator, clerk or
deputy clerk of the court, or public defender is acting within the
scope of his duty, office or employment, or (b) upon a legislator
while the Legislature is in regular or extraordinary session or
while otherwise acting within the scope of his duty, office or
employment, shall be punished by a fine of not more than One
Thousand Dollars (\$1,000.00) or by imprisonment for not more than
five (5) years, or both.

(2) A person is guilty of aggravated assault if he (a)
attempts to cause serious bodily injury to another, or causes such
injury purposely, knowingly or recklessly under circumstances
manifesting extreme indifference to the value of human life; or
(b) attempts to cause or purposely or knowingly causes bodily
injury to another with a deadly weapon or other means likely to
produce death or serious bodily harm; and, upon conviction, he
shall be punished by imprisonment in the county jail for not more
than one (1) year or in the Penitentiary for not more than twenty
(20) years. However, a person convicted of aggravated assault (a)
upon a statewide elected official, law enforcement officer,
fireman, emergency medical personnel, public health personnel,
social worker, family protection specialist, family protection
worker employed by the Department of Human Services or another
agency, superintendent, principal, teacher or other instructional
personnel, school attendance officer, school bus driver, or a
judge of a circuit, chancery, county, justice, municipal or youth
court or a judge of the Court of Appeals or a justice of the

497 Supreme Court, district attorney, legal assistant to a district
498 attorney, county prosecutor, municipal prosecutor, court reporter
499 employed by a court, court administrator, clerk or deputy clerk of
500 the court, or public defender, while such statewide elected
501 official, judge or justice, law enforcement officer, fireman,
502 emergency medical personnel, public health personnel, social
503 worker, family protection specialist, family protection worker,
504 superintendent, principal, teacher or other instructional
505 personnel, school attendance officer, school bus driver, district
506 attorney, legal assistant to a district attorney, county
507 prosecutor, municipal prosecutor, court reporter employed by a
508 court, court administrator, clerk or deputy clerk of the court, or
509 public defender is acting within the scope of his duty, office or
510 employment, or (b) upon a legislator while the Legislature is in
511 regular or extraordinary session or while otherwise acting within
512 the scope of his duty, office or employment, shall be punished by
513 a fine of not more than Five Thousand Dollars (\$5,000.00) or by
514 imprisonment for not more than thirty (30) years, or both.

515 (3) A person is guilty of simple domestic violence who
516 commits simple assault as described in subsection (1) of this
517 section against a family or household member who resides with the
518 defendant or who formerly resided with the defendant, a current or
519 former spouse, a person who has a current dating relationship with
520 the defendant, or a person with whom the defendant has had a
521 biological or legally adopted child and upon conviction, the
522 defendant shall be punished as provided under subsection (1) of
523 this section; however, upon a third or subsequent conviction of
524 simple domestic violence, whether against the same or another
525 victim and within five (5) years, the defendant shall be guilty of
526 a felony and sentenced to a term of imprisonment not less than
527 five (5) nor more than ten (10) years. In sentencing, the court
528 shall consider as an aggravating factor whether the crime was
529 committed in the physical presence or hearing of a child under

sixteen (16) years of age who was, at the time of the offense,
living within either the residence of the victim, the residence of
the perpetrator, or the residence where the offense occurred.

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

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

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

(7) When investigating allegations of a violation of
subsection (3) or (4) of this section, law enforcement officers

shall utilize the form prescribed for such purposes by the Office of the Attorney General in consultation with the Sheriff's and Police Chief's Associations. In cases in which the investigation results in an arrest, a copy of the offense report shall be provided to the Office of the Attorney General.

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

SECTION 13. Section 99-5-37, Mississippi Code of 1972, is amended as follows:

99-5-37. In any arrest for a misdemeanor which is an act of domestic violence, as defined in Section 99-3-7(5), no bail shall be granted until the person arrested has appeared before a judge of the court of competent jurisdiction. The defendant shall be brought before a judge at the first reasonable opportunity, not to exceed twenty-four (24) hours from the time of the arrest. In calculating the twenty-four (24) hours, weekends and holidays shall be included. The appearance may be by telephone. Upon setting bail in any case involving a misdemeanor which is an act of domestic violence, the judge shall give particular consideration to the exigencies of the case, including, but not limited to, (a) the potential for further violence, (b) the past history, if any, of violence between the defendant and alleged victim, (c) the level of violence of the instant offense, (d) any threats of further violence and (e) the existence of a domestic violence protection order prohibiting the defendant from engaging in abusive behavior, and shall impose any specific conditions as he or she may deem necessary. Specific conditions which may be imposed by the judge may include the issuance of an order prohibiting the defendant from contacting the alleged victim prior

to trial, prohibiting the defendant from abusing or threatening the alleged victim, requiring defendant to refrain from drug or alcohol use, or requiring the defendant to relinquish possession of any firearms or other weapons to the law enforcement agency making the arrest. Any bail order imposing a condition which prohibits the defendant from abusing or threatening the alleged victim shall be reported to the Mississippi Protective Order Registry as provided by Section 93-21-25.

SECTION 14. Section 99-19-71, Mississippi Code of 1972, is amended as follows:

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

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

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