

By: Senator(s) Dawkins, Williamson

To: Judiciary, Division B

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 93-21-15, 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 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 Section
83 97-3-65 or 97-3-95.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

180 93-21-15. (1) Upon petition the chancery, justice,
181 municipal or county court shall be empowered to grant any
182 protective order or approve any consent agreement to bring about a
183 cessation of abuse of the petitioner, any minor children, or any
184 person alleged to be incompetent, which relief may include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

243 93-21-16. (1) A protective order from another jurisdiction
244 issued to protect the applicant from abuse as defined in Section
245 93-21-3, or a protection order as defined in Section 93-22-3,
246 issued by a tribunal of another state shall be accorded full faith
247 and credit by the courts of this state and enforced in this state
248 as provided for in the Uniform Interstate Enforcement of Domestic
249 Violence Protection Orders Act.

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

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

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

266 93-21-17. (1) The granting of any relief authorized under
267 this chapter shall not preclude any other relief provided by law.

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

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

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

276 93-21-25. (1) In order to provide a statewide registry for
277 protective orders and to aid law enforcement, prosecutors and
278 courts in handling such matters, there is created a Mississippi
279 Protective Order Registry administered by the Office of the
280 Attorney General. The Attorney General's Office shall collect the
281 data transmitted to it from the courts and enter it into the
282 Mississippi Protective Order Registry.

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

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

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

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

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

309 93-21-28. (1) A person who alleges that he or she or a
310 minor child has been the victim of domestic violence may request
311 the assistance of a local law enforcement agency. The local law
312 enforcement agency shall respond to the request for assistance
313 without regard to the existence of a criminal investigation. The
314 local law enforcement officer responding to the request for
315 assistance shall take whatever steps are reasonably necessary to
316 protect the complainant from harm and shall advise the complainant
317 of sources of shelter, medical care, counseling and other
318 services. Upon request by the complainant and where feasible, the
319 law enforcement officer shall transport the complainant to
320 appropriate facilities such as hospitals or public or private
321 facilities for shelter and accompany the complainant to his or her
322 residence, within the jurisdiction in which the request for
323 assistance was made, so that the complainant may remove food,
324 clothing, medication and such other personal property as is
325 reasonably necessary to enable the complainant and any minor
326 children who are presently in the care of the complainant to
327 remain elsewhere pending further proceedings.

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

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

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

339 93-21-113. Domestic violence shelters through their
340 employees and officials shall, on every occasion other than the
341 initial request for assistance, report to the district attorney,
342 the county attorney, or the appropriate law enforcement official
343 or other state agencies any occurrence or instance coming to their
344 attention which would involve the commission of a crime or the
345 failure to perform or render a service or assistance to a victim
346 of domestic violence when required by law to do so.

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

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

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

363 97-3-7. (1) A person is guilty of simple assault if he (a)
364 attempts to cause or purposely, knowingly or recklessly causes
365 bodily injury to another; or (b) negligently causes bodily injury
366 to another with a deadly weapon or other means likely to produce
367 death or serious bodily harm; or (c) attempts by physical menace
368 to put another in fear of imminent serious bodily harm; and, upon
369 conviction, he shall be punished by a fine of not more than Five
370 Hundred Dollars (\$500.00) or by imprisonment in the county jail
371 for not more than six (6) months, or both. However, a person
372 convicted of simple assault (a) upon a statewide elected official,
373 law enforcement officer, fireman, emergency medical personnel,
374 public health personnel, social worker or family protection
375 specialist or family protection worker employed by the Department
376 of Human Services or another agency, superintendent, principal,
377 teacher or other instructional personnel, school attendance
378 officer, school bus driver, or a judge of a circuit, chancery,
379 county, justice, municipal or youth court or a judge of the Court
380 of Appeals or a justice of the Supreme Court, district attorney,
381 legal assistant to a district attorney, county prosecutor,
382 municipal prosecutor, court reporter employed by a court, court
383 administrator, clerk or deputy clerk of the court, or public
384 defender, while such statewide elected official, judge or justice,
385 law enforcement officer, fireman, emergency medical personnel,
386 public health personnel, social worker, family protection
387 specialist, family protection worker, superintendent, principal,
388 teacher or other instructional personnel, school attendance
389 officer, school bus driver, district attorney, legal assistant to
390 a district attorney, county prosecutor, municipal prosecutor,
391 court reporter employed by a court, court administrator, clerk or
392 deputy clerk of the court, or public defender is acting within the
393 scope of his duty, office or employment, or (b) upon a legislator

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

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

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

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

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

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

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

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

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

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

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

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

496 99-5-37. In any arrest for a misdemeanor which is an act of
497 domestic violence, as defined in Section 99-3-7(5), no bail shall
498 be granted until the person arrested has appeared before a judge
499 of the court of competent jurisdiction. The defendant shall be
500 brought before a judge at the first reasonable opportunity, not to
501 exceed twenty-four (24) hours from the time of the arrest. In
502 calculating the twenty-four (24) hours, weekends and holidays
503 shall be included. The appearance may be by telephone. Upon
504 setting bail in any case involving a misdemeanor which is an act
505 of domestic violence, the judge shall give particular
506 consideration to the exigencies of the case, including, but not
507 limited to, (a) the potential for further violence, (b) the past
508 history, if any, of violence between the defendant and alleged
509 victim, (c) the level of violence of the instant offense, (d) any
510 threats of further violence and (e) the existence of a domestic
511 violence protection order prohibiting the defendant from engaging
512 in abusive behavior, and shall impose any specific conditions as
513 he or she may deem necessary. Specific conditions which may be
514 imposed by the judge may include the issuance of an order
515 prohibiting the defendant from contacting the alleged victim prior
516 to trial, prohibiting the defendant from abusing or threatening
517 the alleged victim, requiring defendant to refrain from drug or
518 alcohol use, or requiring the defendant to relinquish possession
519 of any firearms or other weapons to the law enforcement agency
520 making the arrest. Any bail order imposing a condition which
521 prohibits the defendant from abusing or threatening the alleged
522 victim shall be reported to the Mississippi Protective Order
523 Registry as provided by Section 93-21-25.

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

526 99-19-71. (1) Any person who has been convicted of a
527 nonviolent misdemeanor, excluding a conviction for a traffic
528 violation, and who is a first offender, may petition the justice,
529 county, circuit or municipal court, as may be applicable, for an
530 order to expunge any such conviction from all public records.
531 Upon entering such order, a nonpublic record thereof shall be
532 retained by the court and by the Mississippi Criminal Information
533 Center solely for the purpose of determining whether, in
534 subsequent proceedings, such person is a first offender. The
535 effect of such order shall be to restore such person, in the
536 contemplation of the law, to the status he occupied before such
537 arrest. No person as to whom such order has been entered shall be
538 held thereafter under any provision of law to be guilty of perjury
539 or to have otherwise given a false statement by reason of his
540 failure to recite or acknowledge such arrest or conviction in
541 response to any inquiry made of him for any purpose, except for
542 the purpose of determining in any subsequent proceedings under
543 this section, whether such person is a first offender.

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

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

551 99-37-25. (1) (a) When a person is brought into a
552 physician's office, a hospital or a medical clinic * * * by a law
553 enforcement agency as the victim of an alleged rape or sexual
554 assault having occurred in this state, or otherwise comes into a
555 physician's office, a hospital or a medical clinic * * * alleging
556 rape or sexual assault having occurred in this state, the bill for

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

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

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

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

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

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