

By: Senator(s) Dawkins, Williamson,  
Chassaniol, Hyde-Smith

To: Judiciary, Division B

SENATE BILL NO. 3036  
(As Passed the Senate)

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

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;

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

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

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

140         93-21-11. (1) Within ten (10) days of filing of a petition  
141 under the provisions of this act, or within ten (10) days of  
142 notification by the municipal, justice or county court of the  
143 granting of an order of temporary relief pursuant to Section  
144 93-21-13, the chancery court shall hold a hearing, at which time  
145 the petitioner must prove the allegation of abuse by a  
146 preponderance of the evidence. The respondent shall be given  
147 notice by service of process as otherwise provided by law. Each  
148 chancery court district shall establish procedures for handling  
149 such matters in an expedited manner.

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

163         (3) If a hearing under subsection (1) of this section is  
164 continued, the chancery court may make or extend such temporary ex  
165 parte orders under subsection (2) of this section or temporary  
166 orders issued pursuant to Section 93-21-13 as it deems  
167 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:

201           93-21-13. (1) A petition for temporary relief may be filed  
202 before the justice court judge, municipal court judge or county  
203 court judge, in an ex parte proceeding upon good cause shown, if  
204 the justice court judge, municipal court judge or county court  
205 judge deems it necessary to protect from abuse the petitioner, any  
206 minor children, or any person alleged to be incompetent.  
207 Immediate and present danger of abuse to the petitioner, any minor  
208 children, or any person alleged to be incompetent, shall  
209 constitute good cause for the purposes of this section.

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

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

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

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

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

226           \* \* \*

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

230           (3) The duration of any temporary order issued by a  
231 municipal, justice or county court \* \* \* shall not exceed thirty  
232 (30) days, with no more than one (1) thirty-day renewal, or the  
233 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.

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

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

343           93-21-17. (1) The granting of any relief authorized under  
344 this chapter shall not preclude any other relief provided by law.

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

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

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

353           93-21-25. (1) In order to provide a statewide registry for  
354 protective orders and to aid law enforcement, prosecutors and  
355 courts in handling such matters, there is created a Mississippi  
356 Protective Order Registry administered by the Office of the  
357 Attorney General. The Attorney General's Office shall collect the  
358 data transmitted to it from the courts and enter it into the  
359 Mississippi Protective Order Registry.

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

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

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

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

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

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

389 93-21-28. (1) A person who alleges that he or she or a  
390 minor child has been the victim of domestic violence may request  
391 the assistance of a local law enforcement agency. The local law  
392 enforcement agency shall respond to the request for assistance  
393 without regard to the existence of prior law enforcement  
394 involvement. The local law enforcement officer responding to the  
395 request for assistance shall take whatever steps are reasonably  
396 necessary to protect the complainant from harm and shall advise  
397 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, youth detention center  
457 personnel, any county or municipal jail officer, superintendent,  
458 principal, teacher or other instructional personnel, school  
459 attendance officer, school bus driver, or a judge of a circuit,  
460 chancery, county, justice, municipal or youth court or a judge of  
461 the Court of Appeals or a justice of the Supreme Court, district  
462 attorney, legal assistant to a district attorney, county  
463 prosecutor, municipal prosecutor, court reporter employed by a

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

481 (2) A person is guilty of aggravated assault if he (a)  
482 attempts to cause serious bodily injury to another, or causes such  
483 injury purposely, knowingly or recklessly under circumstances  
484 manifesting extreme indifference to the value of human life; or  
485 (b) attempts to cause or purposely or knowingly causes bodily  
486 injury to another with a deadly weapon or other means likely to  
487 produce death or serious bodily harm; and, upon conviction, he  
488 shall be punished by imprisonment in the county jail for not more  
489 than one (1) year or in the Penitentiary for not more than twenty  
490 (20) years. However, a person convicted of aggravated assault (a)  
491 upon a statewide elected official, law enforcement officer,  
492 fireman, emergency medical personnel, public health personnel,  
493 social worker, family protection specialist, family protection  
494 worker employed by the Department of Human Services or another  
495 agency, youth detention center personnel, any county or municipal  
496 jail officer, superintendent, principal, teacher or other

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

520 (3) A person is guilty of simple domestic violence who  
521 commits simple assault as described in subsection (1) of this  
522 section against a family or household member who resides with the  
523 defendant or who formerly resided with the defendant, a current or  
524 former spouse, a person who has a current dating relationship with  
525 the defendant, or a person with whom the defendant has had a  
526 biological or legally adopted child and upon conviction, the  
527 defendant shall be punished as provided under subsection (1) of  
528 this section; however, upon a third or subsequent conviction of  
529 simple domestic violence, whether against the same or another



530 victim and within five (5) years, the defendant shall be guilty of  
531 a felony and sentenced to a term of imprisonment not less than  
532 five (5) nor more than ten (10) years. In sentencing, the court  
533 shall consider as an aggravating factor whether the crime was  
534 committed in the physical presence or hearing of a child under  
535 sixteen (16) years of age who was, at the time of the offense,  
536 living within either the residence of the victim, the residence of  
537 the perpetrator, or the residence where the offense occurred.

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

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

560 (6) Every conviction of domestic violence may require as a  
561 condition of any suspended sentence that the defendant participate  
562 in counseling or treatment to bring about the cessation of

563 domestic abuse. The defendant may be required to pay all or part  
564 of the cost of the counseling or treatment, in the discretion of  
565 the court.

566 (7) When investigating allegations of a violation of  
567 subsection (3) or (4) of this section, law enforcement officers  
568 shall utilize the form prescribed for such purposes by the Office  
569 of the Attorney General in consultation with the Sheriff's and  
570 Police Chief's Associations. In cases in which the investigation  
571 results in an arrest, a copy of the offense report shall be  
572 provided to the Office of the Attorney General.

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

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

581 99-5-37. In any arrest for a misdemeanor which is an act of  
582 domestic violence, as defined in Section 99-3-7(5), no bail shall  
583 be granted until the person arrested has appeared before a judge  
584 of the court of competent jurisdiction. The defendant shall be  
585 brought before a judge at the first reasonable opportunity, not to  
586 exceed twenty-four (24) hours from the time of the arrest. In  
587 calculating the twenty-four (24) hours, weekends and holidays  
588 shall be included. The appearance may be by telephone. Upon  
589 setting bail in any case involving a misdemeanor which is an act  
590 of domestic violence, the judge shall give particular  
591 consideration to the exigencies of the case, including, but not  
592 limited to, (a) the potential for further violence, (b) the past  
593 history, if any, of violence between the defendant and alleged  
594 victim, (c) the level of violence of the instant offense, (d) any  
595 threats of further violence and (e) the existence of a domestic

596 violence protection order prohibiting the defendant from engaging  
597 in abusive behavior, and shall impose any specific conditions as  
598 he or she may deem necessary. Specific conditions which may be  
599 imposed by the judge may include the issuance of an order  
600 prohibiting the defendant from contacting the alleged victim prior  
601 to trial, prohibiting the defendant from abusing or threatening  
602 the alleged victim, requiring defendant to refrain from drug or  
603 alcohol use, or requiring the defendant to relinquish possession  
604 of any firearms or other weapons to the law enforcement agency  
605 making the arrest. Any bail order imposing a condition which  
606 prohibits the defendant from abusing or threatening the alleged  
607 victim shall be reported to the Mississippi Protective Order  
608 Registry as provided by Section 93-21-25.

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

611       99-19-71. (1) Any person who has been convicted of a  
612 nonviolent misdemeanor, excluding a conviction for a traffic  
613 violation, and who is a first offender, may petition the justice,  
614 county, circuit or municipal court, as may be applicable, for an  
615 order to expunge any such conviction from all public records.  
616 Upon entering such order, a nonpublic record thereof shall be  
617 retained by the court and by the Mississippi Criminal Information  
618 Center solely for the purpose of determining whether, in  
619 subsequent proceedings, such person is a first offender. The  
620 effect of such order shall be to restore such person, in the  
621 contemplation of the law, to the status he occupied before such  
622 arrest. No person as to whom such order has been entered shall be  
623 held thereafter under any provision of law to be guilty of perjury  
624 or to have otherwise given a false statement by reason of his  
625 failure to recite or acknowledge such arrest or conviction in  
626 response to any inquiry made of him for any purpose, except for  
627 the purpose of determining in any subsequent proceedings under  
628 this section, whether such person is a first offender.

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

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