

By: Representative Buck (72nd)

To: Judiciary B

HOUSE BILL NO. 780
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 93-21-5, MISSISSIPPI CODE OF 1972, TO
2 REVISE VENUE OF A DOMESTIC ABUSE PETITION; TO AMEND SECTION
3 93-21-7, MISSISSIPPI CODE OF 1972, TO CLARIFY AND REVISE
4 JURISDICTION OF DOMESTIC ABUSE PETITIONS; TO AMEND SECTION
5 93-21-13, MISSISSIPPI CODE OF 1972, TO CLARIFY AND REVISE THE USE
6 OF STANDARDIZED FORMS FOR EMERGENCY DOMESTIC ABUSE PROTECTION
7 ORDERS AND THE ENTRY OF SUCH ORDERS INTO THE PROTECTION ORDER
8 REGISTRY; TO AMEND SECTION 93-21-15, MISSISSIPPI CODE OF 1972, TO
9 CLARIFY AND REVISE THE USE OF STANDARDIZED FORMS FOR DOMESTIC
10 ABUSE PROTECTION ORDERS AND TO REVISE ENTRY OF ORDERS IN THE
11 PROTECTION ORDER REGISTRY; TO AMEND SECTION 93-21-21, MISSISSIPPI
12 CODE OF 1972, TO CLARIFY AND REVISE THE IMPOSITION OF SANCTIONS,
13 WHETHER CIVIL OR CRIMINAL, FOR A KNOWING VIOLATION OF A PROTECTION
14 ORDER; TO AMEND SECTIONS 93-21-25 AND 93-22-9, MISSISSIPPI CODE OF
15 1972, TO REVISE THE DUTY OF ENTERING INFORMATION INTO THE
16 PROTECTION ORDER REGISTRY AND THE EFFECT OF REGISTERING OR NOT
17 REGISTERING FOREIGN ORDERS; TO AMEND SECTIONS 97-3-7 AND 99-3-7,
18 MISSISSIPPI CODE OF 1972, TO CLARIFY THE RELATIONSHIPS TRIGGERING
19 DOMESTIC VIOLENCE DESIGNATION FOR SIMPLE AND AGGRAVATED ASSAULT;
20 TO AMEND SECTION 99-5-37, MISSISSIPPI CODE OF 1972, TO CLARIFY
21 WHAT ACTS OF DOMESTIC VIOLENCE REQUIRE PERSONAL APPEARANCE BEFORE
22 A JUDGE BEFORE BAIL IS SET AND TO REQUIRE THAT BOND CONDITIONS
23 IMPOSED ARE ENTERED INTO THE CORRESPONDING OFFENSE REPORT; TO
24 AMEND SECTION 99-5-11, MISSISSIPPI CODE OF 1972, TO REQUIRE JUDGES
25 TO CHECK THE ATTORNEY GENERAL'S PROTECTIVE ORDER REGISTRY BEFORE
26 GRANTING BAIL ON CERTAIN OTHER CHARGES; TO AMEND SECTION 99-15-26,
27 MISSISSIPPI CODE OF 1972, TO PROVIDE A PRETRIAL DIVERSION FOR
28 COUNSELING OPTION IN CERTAIN DOMESTIC ABUSE PROSECUTIONS; AND FOR
29 RELATED PURPOSES.

30 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

31 **SECTION 1.** Section 93-21-5, Mississippi Code of 1972, is
32 amended as follows:

33 93-21-5. (1) The municipal justice, county or chancery
34 court shall have jurisdiction over proceedings under this chapter
35 as provided in this chapter. The petitioner's right to relief
36 under this chapter shall not be affected by his leaving the
37 residence or household to avoid further abuse.



38 (2) Venue shall be proper in any county or municipality
39 where the respondent resides or in any county or municipality
40 where the alleged abusive act or acts occurred.

41 (3) If a petition for an order for protection from domestic
42 abuse is filed in a court lacking proper venue, the court, upon
43 objection of the respondent, shall transfer the action to the
44 appropriate venue pursuant to other applicable law.

45 (4) A record shall be made of any proceeding in justice or
46 municipal court that involves domestic abuse.

47 **SECTION 2.** Section 93-21-7, Mississippi Code of 1972, is
48 amended as follows:

49 93-21-7. (1) Any person may seek a domestic abuse
50 protection order for himself by filing a petition alleging abuse
51 by the respondent. Any parent, adult household member, or next
52 friend of the abused person may seek a domestic abuse protection
53 order on behalf of any minor children or any person alleged to be
54 incompetent by filing a petition with the court alleging abuse by
55 the respondent. Cases seeking relief under this chapter shall be
56 priority cases on the court's docket and the judge shall be
57 immediately notified when a case is filed in order to provide for
58 expedited proceedings.

59 (2) A petition seeking a domestic abuse protection order may
60 be filed in any of the following courts: municipal, justice,
61 county or chancery. A chancery court shall not prohibit the
62 filing of a petition which does not seek emergency relief on the
63 basis that the petitioner did not first seek or obtain temporary
64 relief in another court. A petition requesting emergency relief
65 pending a hearing shall not be filed in * * * chancery court
66 unless specifically permitted by the chancellor under the
67 circumstances or as a separate pleading in an ongoing chancery
68 action between the parties. Nothing in this section shall:

69 (a) Be construed to require consideration of emergency
70 relief by a chancery court; or



71 (b) Preclude a chancery court from entering an order of
72 emergency relief.

73 (3) The petitioner in any action brought pursuant to this
74 chapter shall not bear the costs associated with its filing or the
75 costs associated with the issuance or service of any notice of a
76 hearing to the respondent, issuance or service of an order of
77 protection on the respondent, or issuance or service of a warrant
78 or witness subpoena. If the court finds that the petitioner is
79 entitled to an order protecting the petitioner from abuse, the
80 court shall be authorized to assess all costs including attorney's
81 fees of the proceedings to the respondent. The court may assess
82 costs including attorney's fees to the petitioner only if the
83 allegations of abuse are determined to be without merit and the
84 court finds that the petitioner is not a victim of abuse as
85 defined by Section 93-21-3.

86 * * *

87 **SECTION 3.** Section 93-21-13, Mississippi Code of 1972, is
88 amended as follows:

89 93-21-13. (1) (a) The * * * court in which a petition
90 seeking emergency relief pending a hearing is filed must consider
91 all such requests in an expedited manner. The court may issue an
92 emergency domestic abuse protection order without prior notice to
93 the respondent upon good cause shown by the petitioner. Immediate
94 and present danger of abuse to the petitioner, any minor children
95 or any person alleged to be incompetent shall constitute good
96 cause for issuance of an emergency domestic abuse protection
97 order. The respondent shall be provided with notice of the entry
98 of any emergency domestic abuse protection order issued by the
99 court by personal service of process.

100 (b) A court granting an emergency domestic abuse
101 protection order may grant relief as provided in Section
102 93-21-15(1) (a) .



103 (c) An emergency domestic abuse protection order shall
104 be effective for ten (10) days, or until a hearing may be held,
105 whichever occurs first. If a hearing under this subsection (1) is
106 continued, the court may grant or extend the emergency order as it
107 deems necessary for the protection of the abused person. A
108 continuance under this subsection (1)(c) shall be valid for no
109 longer than twenty (20) days.

110 (2) The Attorney General, in cooperation with the
111 Mississippi Supreme Court and the Mississippi Judicial College,
112 shall develop standardized forms for emergency domestic abuse
113 protection orders. Use of the standardized forms in protection
114 order proceedings pursuant to this chapter shall be fully
115 implemented by all courts no later than July 1, 2015. However, in
116 any criminal prosecution or contempt proceeding for a violation of
117 a domestic abuse protection order, it shall not be a defense that
118 the order was not issued on the standardized form.

119 (3) Upon issuance of any protection order by the court, the
120 order shall be entered into the Mississippi Protection Order
121 Registry by the clerk of the court pursuant to Section 93-21-25,
122 and a copy provided to the sheriff's department in the county of
123 the court of issuance.

124 (4) Any person aggrieved by the decision of a municipal or
125 justice court judge to issue an emergency domestic abuse
126 protection order or to deny issuance of an emergency domestic
127 protection order shall be entitled to request a de novo review by
128 the chancery or county court. All parties shall be advised of the
129 procedure for seeking a de novo hearing.

130 * * *

131 **SECTION 4.** Section 93-21-15, Mississippi Code of 1972, is
132 amended as follows:

133 93-21-15. (1) (a) After a hearing is held as provided in
134 Section 93-21-11 for which notice and opportunity to be heard has
135 been granted to the respondent, and upon a finding that the



136 petitioner has proved the existence of abuse by a preponderance of
137 the evidence, the municipal and justice courts shall be empowered
138 to grant a temporary domestic abuse protection order to bring
139 about a cessation of abuse of the petitioner, any minor children,
140 or any person alleged to be incompetent. The relief the court may
141 provide includes, but is not limited to, the following:

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

145 (ii) Prohibiting or limiting respondent's physical
146 proximity to the abused or other household members as designated
147 by the court, including residence and place of work;

148 (iii) Prohibiting or limiting contact by the
149 respondent with the abused or other household members designated
150 by the court, whether in person, by telephone or by other
151 electronic communication;

152 (iv) Granting possession to the petitioner of the
153 residence or household to the exclusion of the respondent by
154 evicting the respondent or restoring possession to the petitioner,
155 or both; or

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

159 (b) The duration of any temporary domestic abuse
160 protection order issued by a municipal or justice court shall not
161 exceed thirty (30) days.

162 (c) Any person aggrieved by the decision of a municipal
163 or justice court judge to issue a temporary domestic abuse
164 protection order or to deny such an order shall be entitled to
165 request a de novo review by the chancery or county court. All
166 parties shall be advised of the procedure for seeking a de novo
167 hearing.



168 (2) (a) After a hearing is held as provided in Section
169 93-21-11 for which notice and opportunity to be heard has been
170 granted to the respondent, and upon a finding that the petitioner
171 has proved the existence of abuse by a preponderance of the
172 evidence, the chancery or county court shall be empowered to grant
173 a final domestic abuse protection order or approve any consent
174 agreement to bring about a cessation of abuse of the petitioner,
175 any minor children, or any person alleged to be incompetent. In
176 granting a final domestic abuse protection order, the chancery or
177 county court may provide for relief that includes, but is not
178 limited to, the following:

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

182 (ii) Granting possession to the petitioner of the
183 residence or household to the exclusion of the respondent by
184 evicting the respondent or restoring possession to the petitioner,
185 or both;

186 (iii) When the respondent has a duty to support
187 the petitioner, any minor children, or any person alleged to be
188 incompetent living in the residence or household and the
189 respondent is the sole owner or lessee, granting possession to the
190 petitioner of the residence or household to the exclusion of the
191 respondent by evicting the respondent or restoring possession to
192 the petitioner, or both, or by consent agreement allowing the
193 respondent to provide suitable, alternate housing;

194 (iv) Awarding temporary custody of or establishing
195 temporary visitation rights with regard to any minor children or
196 any person alleged to be incompetent, or both;

197 (v) If the respondent is legally obligated to
198 support the petitioner, any minor children, or any person alleged
199 to be incompetent, ordering the respondent to pay temporary



200 support for the petitioner, any minor children, or any person
201 alleged to be incompetent;

202 (vi) Ordering the respondent to pay to the abused
203 person monetary compensation for losses suffered as a direct
204 result of the abuse, including, but not limited to, medical
205 expenses resulting from such abuse, loss of earnings or support,
206 out-of-pocket losses for injuries sustained, moving expenses, a
207 reasonable attorney's fee, or any combination of the above;

208 (vii) Prohibiting the transferring, encumbering,
209 or otherwise disposing of property mutually owned or leased by the
210 parties, except when in the ordinary course of business;

211 (viii) Prohibiting or limiting respondent's
212 physical proximity to the abused or other household members
213 designated by the court, including residence, school and place of
214 work;

215 (ix) Prohibiting or limiting contact by the
216 respondent with the abused or other household members designated
217 by the court whether in person, by telephone or by electronic
218 communication; and

219 (x) Ordering counseling or professional medical
220 treatment for the respondent, including counseling or treatment
221 designed to bring about the cessation of domestic abuse.

222 (b) Except as provided below, a final domestic abuse
223 protection order issued by a chancery or county court under the
224 provisions of this chapter shall be effective for such time period
225 as the court deems appropriate. The expiration date of the order
226 shall be clearly stated in the order.

227 (c) Temporary provisions addressing temporary custody,
228 visitation or support of minor children contained in a final
229 domestic abuse protection order issued by a chancery or county
230 court shall be effective for one hundred eighty (180) days. A
231 party seeking relief beyond that period must initiate appropriate
232 proceedings in the chancery court of appropriate jurisdiction. If



233 at the end of the one-hundred-eighty-day period, neither party has
234 initiated such proceedings, the custody, visitation or support of
235 minor children will revert to the chancery court order addressing
236 such terms that was in effect at the time the domestic abuse
237 protection order was granted. The chancery court in which
238 custody, visitation or support proceedings have been initiated may
239 provide for any temporary provisions addressing custody,
240 visitation or support as the court deems appropriate.

241 (3) Every domestic abuse protection order issued pursuant to
242 this section shall set forth the reasons for its issuance, shall
243 contain specific findings of fact regarding the existence of
244 abuse, shall be specific in its terms and shall describe in
245 reasonable detail the act or acts to be prohibited. No mutual
246 protection order shall be issued unless that order is supported by
247 an independent petition by each party requesting relief pursuant
248 to this chapter, and the order contains specific findings of fact
249 regarding the existence of abuse by each party as principal
250 aggressor, and a finding that neither party acted in self-defense.

251 (4) The Attorney General, in cooperation with the
252 Mississippi Supreme Court and the Mississippi Judicial College,
253 shall develop standardized forms for temporary and final domestic
254 abuse protection orders. The use of standardized forms in
255 protection order proceedings pursuant to this chapter shall be
256 fully implemented by all courts no later than July 1, 2015.
257 However, in any criminal prosecution or contempt proceeding for a
258 violation of a domestic abuse protection order, it shall not be a
259 defense that the order was not issued on the standardized form.

260 (5) Upon issuance of any protection order by the court, the
261 order shall be entered in the Mississippi Protection Order
262 Registry by the clerk of the court pursuant to Section 93-21-25,
263 and a copy shall be provided to the sheriff's department in the
264 county of the court of issuance.



265 (6) Upon subsequent petition by either party and following a
266 hearing of which both parties have received notice and an
267 opportunity to be heard, the court may modify, amend, or dissolve
268 a domestic abuse protection order previously issued by that court.

269 **SECTION 5.** Section 93-21-21, Mississippi Code of 1972, is
270 amended as follows:

271 93-21-21. (1) Upon a knowing violation of (a) a protection
272 order or court-approved consent agreement issued pursuant to this
273 chapter, (b) a similar order issued by a foreign court of
274 competent jurisdiction for the purpose of protecting a person from
275 domestic abuse, or (c) a bond condition imposed pursuant to
276 Section 99-5-37, the person violating the order or condition
277 commits a misdemeanor punishable by imprisonment in the county
278 jail for not more than six (6) months or a fine of not more than
279 One Thousand Dollars (\$1,000.00), or both.

280 (2) Alternatively, upon a knowing violation of a protection
281 order or court-approved consent agreement issued pursuant to this
282 chapter or a bond condition issued pursuant to Section 99-5-37,
283 the issuing court may hold the person violating the order or bond
284 condition in contempt, the contempt to be punishable as otherwise
285 provided by applicable law. A person shall not be both convicted
286 of a misdemeanor and held in contempt for the same violation of an
287 order or bond condition. * * *

288 (3) When investigating allegations of a violation under
289 subsection (1) of this section, law enforcement officers shall
290 utilize the uniform offense report prescribed for this purpose by
291 the Office of the Attorney General in consultation with the
292 sheriff's and police chief's associations. However, failure of
293 law enforcement to utilize the uniform offense report shall not be
294 a defense to a crime charged under subsection (1) of this section.

295 (4) In any conviction for a violation of a domestic abuse
296 protection order as described in subsection (1) of this section,



297 the court shall enter the disposition of the matter into the
298 corresponding uniform offense report.

299 (5) Nothing in this section shall be construed to interfere
300 with the court's authority, if any, to address bond condition
301 violations in a more restrictive manner.

302 **SECTION 6.** Section 93-21-25, Mississippi Code of 1972, is
303 amended as follows:

304 93-21-25. (1) In order to provide a statewide registry for
305 protection orders and to aid law enforcement, prosecutors and
306 courts in handling such matters, the Attorney General is
307 authorized to create and administer a Mississippi Protection Order
308 Registry. The Attorney General's office shall implement policies
309 and procedures governing access to the registry by authorized
310 users, which shall include provisions addressing the
311 confidentiality of any information which may tend to reveal the
312 location or identity of a victim of domestic abuse.

313 (2) All orders issued pursuant to this chapter will be
314 maintained in the Mississippi Protection Order Registry. It shall
315 be the duty of the clerk of the issuing court to enter all
316 domestic abuse protection orders, including any modifications,
317 amendments or dismissals of such orders, into the Mississippi
318 Protection Order Registry within twenty-four (24) hours of
319 issuance with no exceptions for weekends or holidays. A separate
320 copy of any order shall be provided to the sheriff's department of
321 the county of the issuing court. The copy may be provided in
322 electronic format. Each qualifying protection order submitted to
323 the Mississippi Protection Order Registry shall be automatically
324 transmitted to the National Criminal Information Center Protection
325 Order File. Failure of the clerk to enter the order into the
326 registry or to provide a copy of the order to law enforcement
327 shall have no effect on the validity or enforcement of an
328 otherwise valid protection order.

329 * * *



330 * * * Any information regarding the registration of a
331 domestic violence protection order, the filing of a petition for a
332 domestic violence protection order, or the issuance of a domestic
333 violence protection order which is maintained in the Mississippi
334 Protection Order Registry which would tend to reveal the identity
335 or location of the protected person(s) shall not constitute a
336 public record and shall be exempt from disclosure pursuant to the
337 Mississippi Public Records Act of 1983. This information may be
338 disclosed to appropriate law enforcement, prosecutors or courts
339 for protection order enforcement purposes.

340 **SECTION 7.** Section 93-22-9, Mississippi Code of 1972, is
341 amended as follows:

342 93-22-9. (1) It is not required that any foreign protection
343 order be registered in Mississippi; however, any individual may
344 register a foreign protection order in this state on behalf of the
345 individual or any protected person. To register a foreign
346 protection order, an individual shall * * * present a certified
347 copy of the order to the chancery clerk's office of any county in
348 this state. * * *

349 * * *

350 (2) Upon presentation of a protection order, the chancery
351 clerk shall enter the order into the Mississippi Domestic Abuse
352 Protection Order Registry as provided in Section 93-21-25. * * *

353 * * *

354 (3) At the time of registration, an individual registering a
355 foreign protection order shall file an affidavit by the protected
356 individual that, to the best of the individual's knowledge, the
357 order is in effect at the time of the registration.

358 * * *

359 (4) The failure to register a foreign protection order
360 pursuant to the provisions of this section shall have no effect on
361 the validity or enforceability of the order by Mississippi law
362 enforcement or courts.



363 **SECTION 8.** Section 97-3-7, Mississippi Code of 1972, is
364 amended as follows:

365 97-3-7. (1) (a) A person is guilty of simple assault if he
366 (i) attempts to cause or purposely, knowingly or recklessly causes
367 bodily injury to another; (ii) negligently causes bodily injury to
368 another with a deadly weapon or other means likely to produce
369 death or serious bodily harm; or (iii) attempts by physical menace
370 to put another in fear of imminent serious bodily harm; and, upon
371 conviction, he shall be punished by a fine of not more than Five
372 Hundred Dollars (\$500.00) or by imprisonment in the county jail
373 for not more than six (6) months, or both.

374 (b) However, a person convicted of simple assault (i)
375 upon a statewide elected official, law enforcement officer,
376 fireman, emergency medical personnel, public health personnel,
377 social worker or family protection specialist or family protection
378 worker employed by the Department of Human Services or another
379 agency, youth detention center personnel, training school juvenile
380 care worker, any county or municipal jail officer, superintendent,
381 principal, teacher or other instructional personnel, school
382 attendance officer, school bus driver, or a judge of a circuit,
383 chancery, county, justice, municipal or youth court or a judge of
384 the Court of Appeals or a justice of the Supreme Court, district
385 attorney, legal assistant to a district attorney, county
386 prosecutor, municipal prosecutor, court reporter employed by a
387 court, court administrator, clerk or deputy clerk of the court, or
388 public defender, while such statewide elected official, judge or
389 justice, law enforcement officer, fireman, emergency medical
390 personnel, public health personnel, social worker, family
391 protection specialist, family protection worker, youth detention
392 center personnel, training school juvenile care worker, any county
393 or municipal jail officer, superintendent, principal, teacher or
394 other instructional personnel, school attendance officer, school
395 bus driver, district attorney, legal assistant to a district



396 attorney, county prosecutor, municipal prosecutor, court reporter
397 employed by a court, court administrator, clerk or deputy clerk of
398 the court, or public defender is acting within the scope of his
399 duty, office or employment; (ii) upon a legislator while the
400 Legislature is in regular or extraordinary session or while
401 otherwise acting within the scope of his duty, office or
402 employment; or (iii) upon a person who is sixty-five (65) years of
403 age or older or a person who is a vulnerable adult, as defined in
404 Section 43-47-5, shall be punished by a fine of not more than One
405 Thousand Dollars (\$1,000.00) or by imprisonment for not more than
406 five (5) years, or both.

407 (2) (a) A person is guilty of aggravated assault if he (i)
408 attempts to cause serious bodily injury to another, or causes such
409 injury purposely, knowingly or recklessly under circumstances
410 manifesting extreme indifference to the value of human life; (ii)
411 attempts to cause or purposely or knowingly causes bodily injury
412 to another with a deadly weapon or other means likely to produce
413 death or serious bodily harm; or (iii) causes any injury to a
414 child who is in the process of boarding or exiting a school bus in
415 the course of a violation of Section 63-3-615; and, upon
416 conviction, he shall be punished by imprisonment in the county
417 jail for not more than one (1) year or in the Penitentiary for not
418 more than twenty (20) years.

419 (b) However, a person convicted of aggravated assault
420 (i) upon a statewide elected official, law enforcement officer,
421 fireman, emergency medical personnel, public health personnel,
422 social worker, family protection specialist, family protection
423 worker employed by the Department of Human Services or another
424 agency, youth detention center personnel, training school juvenile
425 care worker, any county or municipal jail officer, superintendent,
426 principal, teacher or other instructional personnel, school
427 attendance officer, school bus driver, or a judge of a circuit,
428 chancery, county, justice, municipal or youth court or a judge of



429 the Court of Appeals or a justice of the Supreme Court, district
430 attorney, legal assistant to a district attorney, county
431 prosecutor, municipal prosecutor, court reporter employed by a
432 court, court administrator, clerk or deputy clerk of the court, or
433 public defender, while such statewide elected official, judge or
434 justice, law enforcement officer, fireman, emergency medical
435 personnel, public health personnel, social worker, family
436 protection specialist, family protection worker, youth detention
437 center personnel, training school juvenile care worker, any county
438 or municipal jail officer, superintendent, principal, teacher or
439 other instructional personnel, school attendance officer, school
440 bus driver, district attorney, legal assistant to a district
441 attorney, county prosecutor, municipal prosecutor, court reporter
442 employed by a court, court administrator, clerk or deputy clerk of
443 the court, or public defender is acting within the scope of his
444 duty, office or employment; (ii) upon a legislator while the
445 Legislature is in regular or extraordinary session or while
446 otherwise acting within the scope of his duty, office or
447 employment; or (iii) upon a person who is sixty-five (65) years of
448 age or older or a person who is a vulnerable adult, as defined in
449 Section 43-47-5, shall be punished by a fine of not more than Five
450 Thousand Dollars (\$5,000.00) or by imprisonment for not more than
451 thirty (30) years, or both.

452 (3) A person is guilty of simple domestic violence who
453 commits simple assault as described in subsection (1) of this
454 section against a current or former spouse of the defendant or a
455 child of that person, a person living as a spouse or who formerly
456 lived as a spouse with the defendant or a child of that person, a
457 parent, grandparent, child, grandchild or someone similarly
458 situated to the defendant, a person who has a current or former
459 dating relationship with the defendant, or a person with whom the
460 defendant has had a biological or legally adopted child and, upon
461 conviction, the defendant shall be punished as provided under



462 subsection (1) of this section; however, upon a third or
463 subsequent conviction of simple domestic violence, whether against
464 the same or another victim and within five (5) years, the
465 defendant shall be guilty of a felony and sentenced to a term of
466 imprisonment not less than five (5) nor more than ten (10) years.
467 In sentencing, the court shall consider as an aggravating factor
468 whether the crime was committed in the physical presence or
469 hearing of a child under sixteen (16) years of age who was, at the
470 time of the offense, living within either the residence of the
471 victim, the residence of the perpetrator, or the residence where
472 the offense occurred.

473 (4) A person is guilty of aggravated domestic violence who
474 commits aggravated assault as described in subsection (2) of this
475 section against, or who strangles, or attempts to strangle, a
476 current or former spouse of the defendant or a child of that
477 person, a person living as a spouse or who formerly lived as a
478 spouse with the defendant or a child of that person, a parent,
479 grandparent, child, grandchild or someone similarly situated to
480 the defendant, a person who has a current or former dating
481 relationship with the defendant, or a person with whom the
482 defendant has had a biological or legally adopted child. Upon
483 conviction, the defendant shall be punished by imprisonment in the
484 custody of the Department of Corrections for not less than two (2)
485 years nor more than twenty (20) years; however, upon a third or
486 subsequent conviction of aggravated domestic violence, whether
487 against the same or another victim and within five (5) years, the
488 defendant shall be guilty of a felony and sentenced to a term of
489 imprisonment of not less than ten (10) nor more than twenty (20)
490 years. In sentencing, the court shall consider as an aggravating
491 factor whether the crime was committed in the physical presence or
492 hearing of a child under sixteen (16) years of age who was, at the
493 time of the offense, living within either the residence of the
494 victim, the residence of the perpetrator, or the residence where



495 the offense occurred. Reasonable discipline of a child, such as
496 spanking, is not an offense under this subsection (4). A person
497 convicted of aggravated domestic violence shall not be eligible
498 for parole under the provisions of Section 47-7-3(1)(c) until he
499 shall have served one (1) year of his sentence.

500 For the purposes of this section, "strangle" means to
501 restrict the flow of oxygen or blood by intentionally applying
502 pressure on the neck or throat of another person by any means or
503 to intentionally block the nose or mouth of another person by any
504 means.

505 (5) "Dating relationship" means a social relationship as
506 defined in Section 93-21-3.

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

513 (7) When investigating allegations of a violation of
514 subsection (3) or (4) of this section, law enforcement officers
515 shall utilize the form prescribed for such purposes by the Office
516 of the Attorney General in consultation with the sheriff's and
517 police chief's associations. However, failure of law enforcement
518 to utilize the uniform offense report shall not be a defense to a
519 crime charged under subsection (3) or (4) of this section.

520 (8) In any conviction of assault as described in any
521 subsection of this section which arises from an incident of
522 domestic violence, the sentencing order shall include the
523 designation "domestic violence." The court clerk shall enter the
524 disposition of the matter into the corresponding uniform offense
525 report.

526 **SECTION 9.** Section 99-3-7, Mississippi Code of 1972, is
527 amended as follows:



528 99-3-7. (1) An officer or private person may arrest any
529 person without warrant, for an indictable offense committed, or a
530 breach of the peace threatened or attempted in his presence; or
531 when a person has committed a felony, though not in his presence;
532 or when a felony has been committed, and he has reasonable ground
533 to suspect and believe the person proposed to be arrested to have
534 committed it; or on a charge, made upon reasonable cause, of the
535 commission of a felony by the party proposed to be arrested. And
536 in all cases of arrests without warrant, the person making such
537 arrest must inform the accused of the object and cause of the
538 arrest, except when he is in the actual commission of the offense,
539 or is arrested on pursuit.

540 (2) Any law enforcement officer may arrest any person on a
541 misdemeanor charge without having a warrant in his possession when
542 a warrant is in fact outstanding for that person's arrest and the
543 officer has knowledge through official channels that the warrant
544 is outstanding for that person's arrest. In all such cases, the
545 officer making the arrest must inform such person at the time of
546 the arrest the object and cause therefor. If the person arrested
547 so requests, the warrant shall be shown to him as soon as
548 practicable.

549 (3) (a) Any law enforcement officer shall arrest a person
550 with or without a warrant when he has probable cause to believe
551 that the person has, within twenty-four (24) hours of such arrest,
552 knowingly committed a misdemeanor which is an act of domestic
553 violence or knowingly violated provisions of an ex parte
554 protective order, protective order after hearing or court-approved
555 consent agreement entered by a chancery, circuit, county, justice
556 or municipal court pursuant to the Protection from Domestic Abuse
557 Law, Sections 93-21-1 through 93-21-29, Mississippi Code of 1972,
558 or a restraining order entered by a foreign court of competent
559 jurisdiction to protect an applicant from domestic violence * * *.



560 (b) If a law enforcement officer has probable cause to
561 believe that two (2) or more persons committed a misdemeanor which
562 is an act of domestic violence as defined herein, or if two (2) or
563 more persons make complaints to the officer, the officer shall
564 attempt to determine who was the principal aggressor. The term
565 principal aggressor is defined as the party who poses the most
566 serious ongoing threat, or who is the most significant, rather
567 than the first, aggressor. The officer shall presume that arrest
568 is not the appropriate response for the person or persons who were
569 not the principal aggressor. If the officer affirmatively finds
570 more than one (1) principal aggressor was involved, the officer
571 shall document those findings.

572 (c) To determine who is the principal aggressor, the
573 officer shall consider the following factors, although such
574 consideration is not limited to these factors:

575 (i) Evidence from the persons involved in the
576 domestic abuse;

577 (ii) The history of domestic abuse between the
578 parties, the likelihood of future injury to each person, and the
579 intent of the law to protect victims of domestic violence from
580 continuing abuse;

581 (iii) Whether one (1) of the persons acted in
582 self-defense; and

583 (iv) Evidence from witnesses of the domestic
584 violence.

585 (d) A law enforcement officer shall not base the
586 decision of whether to arrest on the consent or request of the
587 victim.

588 (e) A law enforcement officer's determination regarding
589 the existence of probable cause or the lack of probable cause
590 shall not adversely affect the right of any party to independently
591 seek appropriate remedies.



592 (4) (a) Any person authorized by a court of law to
593 supervise or monitor a convicted offender who is under an
594 intensive supervision program may arrest the offender when the
595 offender is in violation of the terms or conditions of the
596 intensive supervision program, without having a warrant, provided
597 that the person making the arrest has been trained at the Law
598 Enforcement Officers Training Academy established under Section
599 45-5-1 et seq., or at a course approved by the Board on Law
600 Enforcement Officer Standards and Training.

601 (b) For the purposes of this subsection, the term
602 "intensive supervision program" means an intensive supervision
603 program of the Department of Corrections as described in Section
604 47-5-1001 et seq., or any similar program authorized by a court
605 for offenders who are not under jurisdiction of the Department of
606 Corrections.

607 (5) As used in subsection (3) of this section, the phrase
608 "misdemeanor which is an act of domestic violence" shall mean one
609 or more of the following acts between current or former spouses or
610 a child of current or former spouses, persons living as spouses or
611 who formerly lived as spouses or a child of persons living as
612 spouses or who formerly lived as spouses, a parent, grandparent,
613 child, grandchild or someone similarly situated to the defendant,
614 persons who have a current or former dating relationship, or
615 persons who have a biological or legally adopted child together:

616 (a) Simple domestic violence within the meaning of
617 Section 97-3-7;

618 (b) Disturbing the family or public peace within the
619 meaning of Section 97-35-9, 97-35-11, 97-35-13 or 97-35-15; or

620 (c) Stalking within the meaning of Section 97-3-107.

621 (6) Any arrest made pursuant to subsection (3) of this
622 section shall be designated as domestic assault or domestic
623 violence on both the arrest docket and the incident report. Any
624 officer investigating a complaint of a misdemeanor crime of



625 domestic violence who finds probable cause that such an offense
626 has occurred within the past twenty-four (24) hours shall file an
627 affidavit on behalf of the victim(s) of the crime, regardless of
628 whether an arrest is made within that time period. If the crime
629 is reported or investigated outside of that twenty-four-hour
630 period, the officer may file the affidavit on behalf of the
631 victim. In the event the officer does not file an affidavit on
632 behalf of the victim, the officer shall instruct the victim of the
633 procedure for filing on his or her own behalf.

634 (7) A law enforcement officer shall not be held liable in
635 any civil action for an arrest based on probable cause and in good
636 faith pursuant to subsection (3) of this section, or failure, in
637 good faith, to make an arrest pursuant to subsection (3) of this
638 section.

639 **SECTION 10.** Section 99-5-37, Mississippi Code of 1972, is
640 amended as follows:

641 99-5-37. (1) In any arrest for (a) a misdemeanor that is an
642 act of domestic violence as defined in Section 99-3-7(5); (b)
643 aggravated domestic violence as defined in Section 97-3-7(4); (c)
644 aggravated stalking as defined in Section 97-3-107(2); (d) a
645 knowing violation of a condition of bond imposed pursuant to this
646 section; or (e) a knowing violation of a domestic abuse protection
647 order issued pursuant to Section 93-21-1 et seq., or a similar
648 order issued by a foreign court of competent jurisdiction for the
649 purpose of protecting a person from domestic abuse, no bail shall
650 be granted until the person arrested has appeared before a judge
651 of the court of competent jurisdiction. * * * The appearance may
652 be by telephone. Nothing in this section shall be construed to
653 interfere with the defendant's right to an initial appearance or
654 preliminary hearing.

655 (2) Upon setting bail * * *, the judge may impose on the
656 arrested person a holding period not to exceed twenty-four (24)
657 hours from the time of the initial appearance or setting of bail.



658 The judge also shall give particular consideration to the
659 exigencies of the case, including, but not limited to, (a) the
660 potential for further violence; (b) the past history, if any, of
661 violence between the defendant and alleged victim; (c) the level
662 of violence of the instant offense; (d) any threats of further
663 violence; and (e) the existence of a domestic violence protection
664 order prohibiting the defendant from engaging in abusive behavior,
665 and shall impose any specific conditions on the bond as he or she
666 may deem necessary. Specific conditions which may be imposed by
667 the judge may include, but are not limited to, the issuance of an
668 order prohibiting the defendant from contacting the alleged victim
669 prior to trial, prohibiting the defendant from abusing or
670 threatening the alleged victim or requiring defendant to refrain
671 from drug or alcohol use.

672 (3) All bond conditions imposed by the court shall be
673 entered into the corresponding Uniform Offense Report and written
674 notice of the conditions shall be provided at no cost to the
675 arrested person upon his or her release, to the appropriate law
676 enforcement agency, and to the clerk of the court. Upon request,
677 a copy of the written notice of conditions shall be provided at no
678 cost to the victim. In any prosecution for violation of a bond
679 condition imposed pursuant to this section, it shall not be a
680 defense that the bond conditions were not entered into the
681 corresponding Uniform Offense Report.

682 (4) Within twenty-four (24) hours of a violation of any bond
683 conditions imposed pursuant to this section, any law enforcement
684 officer having probable cause to believe that the violation
685 occurred may make a warrantless arrest of the violator.

686 (5) Nothing in this section shall be construed to interfere
687 with the judges' authority, if any, to deny bail or to otherwise
688 lawfully detain a particular defendant.

689 **SECTION 11.** Section 99-5-11, Mississippi Code of 1972, is
690 amended as follows:



691 99-5-11. (1) All justice court judges and all other
692 conservators of the peace are authorized, whenever a person is
693 brought before them charged with any offense not capital for which
694 bail is allowed by law, to take the recognizance or bond of the
695 person, with sufficient sureties, in such penalty as the justice
696 court judge or conservator of the peace may require, for his
697 appearance before the justice court judge or conservator of the
698 peace for an examination of his case at some future day. And if
699 the person thus recognized or thus giving bond fails to appear at
700 the appointed time, it shall be the duty of the justice court
701 judge or conservator of the peace to return the recognizance or
702 bond, with his certificate of default, to the court having
703 jurisdiction of the case, and a recovery may be had therein by
704 scire facias, as in other cases of forfeiture. The justice court
705 judge or other conservator of the peace shall also issue an alias
706 warrant for the defaulter.

707 (2) In circumstances involving an offense against any of the
708 following: (a) a current or former spouse of the accused or child
709 of that person; (b) a person living as a spouse or who formerly
710 lived as a spouse with the accused or a child of that person; (c)
711 a parent, grandparent, child, grandchild or someone similarly
712 situated to the accused; (d) a person who has a current or former
713 dating relationship with the accused; or (e) a person with whom
714 the accused has had a biological or legally adopted child, the
715 justice court judge or other conservator of the peace shall check,
716 or cause to be made a check, of the status of the person for whom
717 recognizance or bond is taken before ordering bail in the
718 Mississippi Protective Order Registry authorized under Section
719 93-21-25, and the existence of a domestic abuse protection order
720 against the accused shall be considered when determining
721 appropriate bail.

722 **SECTION 12.** Section 99-15-26, Mississippi Code of 1972, is
723 amended as follows:



724 99-15-26. (1) (a) In all criminal cases, felony and
725 misdemeanor, other than crimes against the person or a violation
726 of Section 97-11-31, the circuit or county court shall be
727 empowered, upon the entry of a plea of guilty by a criminal
728 defendant, to withhold acceptance of the plea and sentence thereon
729 pending successful completion of such conditions as may be imposed
730 by the court pursuant to subsection (2) of this section.

731 (b) In all misdemeanor criminal cases, other than
732 crimes against the person, the justice or municipal court shall be
733 empowered, upon the entry of a plea of guilty by a criminal
734 defendant, to withhold acceptance of the plea and sentence thereon
735 pending successful completion of such conditions as may be imposed
736 by the court pursuant to subsection (2) of this section.

737 (c) In all criminal cases charging a misdemeanor of
738 domestic violence as defined in Section 99-3-7(5) or aggravated
739 domestic violence as defined in Section 97-3-7(4), a circuit,
740 county, justice or municipal court shall be empowered, upon the
741 entry of a plea of guilty by the criminal defendant, to withhold
742 acceptance of the plea and sentence thereon pending successful
743 completion of such conditions as may be imposed by the court
744 pursuant to subsection (2) of this section.

745 (d) No person having previously qualified under the
746 provisions of this section or having ever been convicted of a
747 felony shall be eligible to qualify for release in accordance with
748 this section. A person shall not be eligible to qualify for
749 release in accordance with this section if such person has been
750 charged (i) with an offense pertaining to the sale, barter,
751 transfer, manufacture, distribution or dispensing of a controlled
752 substance, or the possession with intent to sell, barter,
753 transfer, manufacture, distribute or dispense a controlled
754 substance, as provided in Section 41-29-139(a) (1), except for a
755 charge under said provision when the controlled substance involved
756 is one (1) ounce or less of marijuana; (ii) with an offense



757 pertaining to the possession of one (1) kilogram or more of
758 marijuana as provided in Section 41-29-139(c)(2)(F) and (G); or
759 (iii) with an offense under the Mississippi Implied Consent Law.

760 (2) (a) Conditions which the circuit, county, justice or
761 municipal court may impose under subsection (1) of this section
762 shall consist of:

763 (i) Reasonable restitution to the victim of the
764 crime.

765 (ii) Performance of not more than nine hundred
766 sixty (960) hours of public service work approved by the court.

767 (iii) Payment of a fine not to exceed the
768 statutory limit.

769 (iv) Successful completion of drug, alcohol,
770 psychological or psychiatric treatment, successful completion of a
771 program designed to bring about the cessation of domestic abuse,
772 or any combination thereof, if the court deems * * * treatment
773 necessary.

774 (v) The circuit or county court, in its
775 discretion, may require the defendant to remain in the program
776 subject to good behavior for a period of time not to exceed five
777 (5) years. The justice or municipal court, in its discretion, may
778 require the defendant to remain in the program subject to good
779 behavior for a period of time not to exceed two (2) years.

780 (b) Conditions which the circuit or county court may
781 impose under subsection (1) of this section also include
782 successful completion of a regimented inmate discipline program.

783 (3) When the court has imposed upon the defendant the
784 conditions set out in this section, the court shall release the
785 bail bond, if any.

786 (4) Upon successful completion of the court-imposed
787 conditions permitted by subsection (2) of this section, the court
788 shall direct that the cause be dismissed and the case be closed.



789 (5) Upon petition therefor, the court shall expunge the
790 record of any case in which an arrest was made, the person
791 arrested was released and the case was dismissed or the charges
792 were dropped or there was no disposition of such case.

793 (6) This section shall take effect and be in force from and
794 after March 31, 1983.

795 **SECTION 13.** This act shall take effect and be in force from
796 and after July 1, 2012.

