

By: Representative Gipson

To: Judiciary B

HOUSE BILL NO. 556

1 AN ACT TO AMEND SECTIONS 99-3-7, 93-21-25 AND 97-3-7,
2 MISSISSIPPI CODE OF 1972, TO REVISE PROCEDURES REGARDING ARRESTS
3 FOR DOMESTIC VIOLENCE; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 99-3-7, Mississippi Code of 1972, is
6 amended as follows:

7 99-3-7. (1) An officer or private person may arrest any
8 person without warrant, for an indictable offense committed, or a
9 breach of the peace threatened or attempted in his presence; or
10 when a person has committed a felony, though not in his presence;
11 or when a felony has been committed, and he has reasonable ground
12 to suspect and believe the person proposed to be arrested to have
13 committed it; or on a charge, made upon reasonable cause, of the
14 commission of a felony by the party proposed to be arrested. And
15 in all cases of arrests without warrant, the person making such
16 arrest must inform the accused of the object and cause of the
17 arrest, except when he is in the actual commission of the offense,
18 or is arrested on pursuit.



19 (2) Any law enforcement officer may arrest any person on a
20 misdemeanor charge without having a warrant in his possession when
21 a warrant is in fact outstanding for that person's arrest and the
22 officer has knowledge through official channels that the warrant
23 is outstanding for that person's arrest. In all such cases, the
24 officer making the arrest must inform such person at the time of
25 the arrest the object and cause therefor. If the person arrested
26 so requests, the warrant shall be shown to him as soon as
27 practicable.

28 (3) (a) Any law enforcement officer shall arrest a person
29 with or without a warrant when he has probable cause to believe
30 that the person has, within twenty-four (24) hours of such arrest,
31 knowingly committed a misdemeanor or felony that is an act of
32 domestic violence or knowingly violated provisions of a criminal
33 protection order issued pursuant to Section 97-3-7(11), an ex
34 parte protective order, protective order after hearing or
35 court-approved consent agreement entered by a chancery, circuit,
36 county, justice or municipal court pursuant to the Protection from
37 Domestic Abuse Law, Sections 93-21-1 through 93-21-29, Mississippi
38 Code of 1972, or a restraining order entered by a foreign court of
39 competent jurisdiction to protect an applicant from domestic
40 violence.

41 (b) If a law enforcement officer has probable cause to
42 believe that two (2) or more persons committed an act of domestic
43 violence as defined herein, or if two (2) or more persons make



44 complaints of domestic violence to the officer, the officer shall
45 attempt to determine who was the principal aggressor. The term
46 principal aggressor is defined as the party who poses the most
47 serious ongoing threat, or who is the most significant, rather
48 than the first, aggressor. The officer shall presume that arrest
49 is not the appropriate response for the person or persons who were
50 not the principal aggressor. If the officer affirmatively finds
51 more than one (1) principal aggressor was involved, the officer
52 shall document those findings.

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

56 (i) Evidence from the persons involved in the
57 domestic abuse;

58 (ii) The history of domestic abuse between the
59 parties, the likelihood of future injury to each person, and the
60 intent of the law to protect victims of domestic violence from
61 continuing abuse;

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

64 (iv) Evidence from witnesses of the domestic
65 violence.

66 (d) A law enforcement officer shall not base the
67 decision of whether to arrest on the consent or request of the
68 victim.



69 (e) A law enforcement officer's determination regarding
70 the existence of probable cause or the lack of probable cause
71 shall not adversely affect the right of any party to independently
72 seek appropriate remedies.

73 (4) (a) Any person authorized by a court of law to
74 supervise or monitor a convicted offender who is under an
75 intensive supervision program may arrest the offender when the
76 offender is in violation of the terms or conditions of the
77 intensive supervision program, without having a warrant, provided
78 that the person making the arrest has been trained at the Law
79 Enforcement Officers Training Academy established under Section
80 45-5-1 et seq., or at a course approved by the Board on Law
81 Enforcement Officer Standards and Training.

82 (b) For the purposes of this subsection, the term
83 "intensive supervision program" means an intensive supervision
84 program of the Department of Corrections as described in Section
85 47-5-1001 et seq., or any similar program authorized by a court
86 for offenders who are not under jurisdiction of the Department of
87 Corrections.

88 (5) As used in subsection (3) of this section, the phrase
89 "misdemeanor or felony that is an act of domestic violence" shall
90 mean one or more of the following acts between current or former
91 spouses or a child of current or former spouses, persons living as
92 spouses or who formerly lived as spouses or a child of persons
93 living as spouses or who formerly lived as spouses, a parent,



94 grandparent, child, grandchild or someone similarly situated to
95 the defendant, persons who have a current or former dating
96 relationship, or persons who have a biological or legally adopted
97 child together:

98 (a) Simple or aggravated domestic violence within the
99 meaning of Section 97-3-7;

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

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

103 (6) Any arrest made pursuant to subsection (3) of this
104 section shall be designated as domestic assault or domestic
105 violence on both the arrest docket and the incident report. Any
106 officer investigating a complaint of a misdemeanor or felony that
107 is a crime of domestic violence who finds probable cause that such
108 an offense has occurred within the past twenty-four (24) hours
109 shall file an affidavit on behalf of the victim(s) of the crime,
110 regardless of whether an arrest is made within that time period.
111 If the crime is reported or investigated outside of that
112 twenty-four-hour period, the officer may file the affidavit on
113 behalf of the victim. In the event the officer does not file an
114 affidavit on behalf of the victim, the officer shall instruct the
115 victim of the procedure for filing on his or her own behalf.

116 (7) A law enforcement officer shall not be held liable in
117 any civil action for an arrest based on probable cause and in good
118 faith pursuant to subsection (3) of this section, or failure, in



119 good faith, to make an arrest pursuant to subsection (3) of this
120 section.

121 (8) The authority for the State Chief Deputy Fire Marshal
122 and deputy state fire marshals to make arrests shall be governed
123 by the provisions of Section 45-11-1.

124 **SECTION 2.** Section 93-21-25, Mississippi Code of 1972, is
125 amended as follows:

126 93-21-25. (1) In order to provide a statewide registry for
127 protection orders and to aid law enforcement, prosecutors and
128 courts in handling such matters, the Attorney General is
129 authorized to create and administer a Mississippi Protection Order
130 Registry. The Attorney General's office shall implement policies
131 and procedures governing access to the registry by authorized
132 users, which shall include provisions addressing the
133 confidentiality of any information which may tend to reveal the
134 location or identity of a victim of domestic abuse.

135 (2) All orders issued pursuant to * * * Sections 93-21-1
136 through 93-21-29, and 97-3-7(11) will be maintained in the
137 Mississippi Protection Order Registry. It shall be the duty of
138 the clerk of the issuing court to enter all civil and criminal
139 domestic abuse protection orders, including any modifications,
140 amendments or dismissals of such orders, into the Mississippi
141 Protection Order Registry within twenty-four (24) hours of
142 issuance with no exceptions for weekends or holidays. A separate
143 copy of any order shall be provided to the sheriff's department



144 TAC officers of the county of the issuing court. The copy may be
145 provided in electronic format. Each qualifying protection order
146 submitted to the Mississippi Protection Order Registry shall be
147 automatically transmitted to the National Criminal Information
148 Center Protection Order File. Failure of the clerk to enter the
149 order into the registry or to provide a copy of the order to law
150 enforcement shall have no effect on the validity or enforcement of
151 an otherwise valid protection order.

152 Any information regarding the registration of a domestic
153 violence protection order, the filing of a petition for a domestic
154 violence protection order, or the issuance of a domestic violence
155 protection order which is maintained in the Mississippi Protection
156 Order Registry which would tend to reveal the identity or location
157 of the protected person(s) shall not constitute a public record
158 and shall be exempt from disclosure pursuant to the Mississippi
159 Public Records Act of 1983. This information may be disclosed to
160 appropriate law enforcement, prosecutors or courts for protection
161 order enforcement purposes.

162 **SECTION 3.** Section 97-3-7, Mississippi Code of 1972, is
163 amended as follows:

164 97-3-7. (1) (a) A person is guilty of simple assault if he
165 (i) attempts to cause or purposely, knowingly or recklessly causes
166 bodily injury to another; (ii) negligently causes bodily injury to
167 another with a deadly weapon or other means likely to produce
168 death or serious bodily harm; or (iii) attempts by physical menace



169 to put another in fear of imminent serious bodily harm; and, upon
170 conviction, he shall be punished by a fine of not more than Five
171 Hundred Dollars (\$500.00) or by imprisonment in the county jail
172 for not more than six (6) months, or both.

173 (b) However, a person convicted of simple assault upon
174 any of the persons listed in subsection (14) of this section under
175 the circumstances enumerated in subsection (14) shall be punished
176 by a fine of not more than One Thousand Dollars (\$1,000.00) or by
177 imprisonment for not more than five (5) years, or both.

178 (2) (a) A person is guilty of aggravated assault if he (i)
179 attempts to cause serious bodily injury to another, or causes such
180 injury purposely, knowingly or recklessly under circumstances
181 manifesting extreme indifference to the value of human life; (ii)
182 attempts to cause or purposely or knowingly causes bodily injury
183 to another with a deadly weapon or other means likely to produce
184 death or serious bodily harm; or (iii) causes any injury to a
185 child who is in the process of boarding or exiting a school bus in
186 the course of a violation of Section 63-3-615; and, upon
187 conviction, he shall be punished by imprisonment in the county
188 jail for not more than one (1) year or in the Penitentiary for not
189 more than twenty (20) years.

190 (b) However, a person convicted of aggravated assault
191 upon any of the persons listed in subsection (14) of this section
192 under the circumstances enumerated in subsection (14) shall be
193 punished by a fine of not more than Five Thousand Dollars



194 (\$5,000.00) or by imprisonment for not more than thirty (30)
195 years, or both.

196 (3) (a) When the offense is committed against a current or
197 former spouse of the defendant or a child of that person, a person
198 living as a spouse or who formerly lived as a spouse with the
199 defendant or a child of that person, a parent, grandparent, child,
200 grandchild or someone similarly situated to the defendant, a
201 person who has a current or former dating relationship with the
202 defendant, or a person with whom the defendant has had a
203 biological or legally adopted child, a person is guilty of simple
204 domestic violence who:

205 (i) Attempts to cause or purposely, knowingly or
206 recklessly causes bodily injury to another;

207 (ii) Negligently causes bodily injury to another
208 with a deadly weapon or other means likely to produce death or
209 serious bodily harm; or

210 (iii) Attempts by physical menace to put another
211 in fear of imminent serious bodily harm.

212 Upon conviction, the defendant shall be punished by a fine of
213 not more than Five Hundred Dollars (\$500.00) or by imprisonment in
214 the county jail for not more than six (6) months, or both.

215 (b) **Simple domestic violence: third.** A person is
216 guilty of the felony of simple domestic violence third who commits
217 simple domestic violence as defined in this subsection (3) and
218 who, at the time of the commission of the offense in question, has



219 two (2) prior convictions, whether against the same or another
220 victim, within seven (7) years, for any combination of simple
221 domestic violence under this subsection (3) or aggravated domestic
222 violence as defined in subsection (4) of this section or
223 substantially similar offenses under the law of another state, of
224 the United States, or of a federally recognized Native American
225 tribe. Upon conviction, the defendant shall be sentenced to a
226 term of imprisonment not less than five (5) nor more than ten (10)
227 years.

228 (4) (a) When the offense is committed against a current or
229 former spouse of the defendant or a child of that person, a person
230 living as a spouse or who formerly lived as a spouse with the
231 defendant or a child of that person, a parent, grandparent, child,
232 grandchild or someone similarly situated to the defendant, a
233 person who has a current or former dating relationship with the
234 defendant, or a person with whom the defendant has had a
235 biological or legally adopted child, a person is guilty of
236 aggravated domestic violence who:

237 (i) Attempts to cause serious bodily injury to
238 another, or causes such an injury purposely, knowingly or
239 recklessly under circumstances manifesting extreme indifference to
240 the value of human life;

241 (ii) Attempts to cause or purposely or knowingly
242 causes bodily injury to another with a deadly weapon or other
243 means likely to produce death or serious bodily harm; or



244 (iii) Strangles, or attempts to strangle another.

245 Upon conviction, the defendant shall be punished by
246 imprisonment in the custody of the Department of Corrections for
247 not less than two (2) nor more than twenty (20) years.

248 (b) **Aggravated domestic violence; third.** A person is
249 guilty of aggravated domestic violence third who, at the time of
250 the commission of that offense, commits aggravated domestic
251 violence as defined in this subsection (4) and who has two (2)
252 prior convictions within the past seven (7) years, whether against
253 the same or another victim, for any combination of aggravated
254 domestic violence under this subsection (4) or simple domestic
255 violence third as defined in subsection (3) of this section, or
256 substantially similar offenses under the laws of another state, of
257 the United States, or of a federally recognized Native American
258 tribe. Upon conviction for aggravated domestic violence third,
259 the defendant shall be sentenced to a term of imprisonment of not
260 less than ten (10) nor more than twenty (20) years.

261 (5) **Sentencing for fourth or subsequent domestic violence**
262 **offense.** Any person who commits an offense defined in subsection
263 (3) or (4) of this section, and who, at the time of the commission
264 of that offense, has at least three (3) previous convictions,
265 whether against the same or different victims, for any combination
266 of offenses defined in subsections (3) and (4) of this section or
267 substantially similar offenses under the law of another state, of
268 the United States, or of a federally recognized Native American



269 tribe, shall, upon conviction, be sentenced to imprisonment for
270 not less than fifteen (15) years nor more than twenty (20) years.

271 (6) In sentencing under subsections (3), (4) and (5) of this
272 section, the court shall consider as an aggravating factor whether
273 the crime was committed in the physical presence or hearing of a
274 child under sixteen (16) years of age who was, at the time of the
275 offense, living within either the residence of the victim, the
276 residence of the perpetrator, or the residence where the offense
277 occurred.

278 (7) Reasonable discipline of a child, such as spanking, is
279 not an offense under subsections (3) and (4) of this section.

280 (8) A person convicted under subsection (4) or (5) of this
281 section shall not be eligible for parole under the provisions of
282 Section 47-7-3(1)(c) until he shall have served one (1) year of
283 his sentence.

284 (9) For the purposes of this section:

285 (a) "Strangle" means to restrict the flow of oxygen or
286 blood by intentionally applying pressure on the neck, throat or
287 chest of another person by any means or to intentionally block the
288 nose or mouth of another person by any means.

289 (b) "Dating relationship" means a social relationship
290 as defined in Section 93-21-3.

291 (10) Every conviction under subsection (3), (4) or (5) of
292 this section may require as a condition of any suspended sentence
293 that the defendant participate in counseling or treatment to bring



294 about the cessation of domestic abuse. The defendant may be
295 required to pay all or part of the cost of the counseling or
296 treatment, in the discretion of the court.

297 (11) (a) Upon conviction under subsection (3), (4) or (5)
298 of this section, the court shall be empowered to issue a criminal
299 protection order prohibiting the defendant from any contact with
300 the victim. The court may include in a criminal protection order
301 any other condition available under Section 93-21-15. The
302 duration of a criminal protection order shall be based upon the
303 seriousness of the facts before the court, the probability of
304 future violations, and the continued safety of the victim or
305 another person. However, municipal and justice courts may issue
306 criminal protection orders for a maximum period of time not to
307 exceed one (1) year. Circuit and county courts may issue a
308 criminal protection order for any period of time deemed necessary.
309 Upon issuance of a criminal protection order, the clerk of the
310 issuing court shall enter the order in the Mississippi Protection
311 Order Registry within twenty-four (24) hours of issuance with no
312 exceptions for weekends or holidays, pursuant to Section 93-21-25.

313 (b) A criminal protection order shall not be issued
314 against the defendant if the victim of the offense, or the
315 victim's lawful representative where the victim is a minor or
316 incompetent person, objects to its issuance, except in
317 circumstances where the court, in its discretion, finds that a



318 criminal protection order is necessary for the safety and
319 well-being of a victim who is a minor child or incompetent adult.

320 (c) Criminal protection orders shall be issued on the
321 standardized form developed by the Office of the Attorney General
322 and a copy provided to both the victim and the defendant.

323 (d) It shall be a misdemeanor to knowingly violate any
324 condition of a criminal protection order. Upon conviction for a
325 violation, the defendant shall be punished by a fine of not more
326 than Five Hundred Dollars (\$500.00) or by imprisonment in the
327 county jail for not more than six (6) months, or both.

328 (12) When investigating allegations of a violation of
329 subsection (3), (4), (5) or (11) of this section, whether or not
330 an arrest results, law enforcement officers shall utilize the form
331 prescribed for such purposes by the Office of the Attorney General
332 in consultation with the sheriff's and police chief's
333 associations. However, failure of law enforcement to utilize the
334 uniform offense report shall not be a defense to a crime charged
335 under this section. The uniform offense report shall not be
336 required if, upon investigation, the offense does not involve
337 persons in the relationships specified in subsections (3) and (4)
338 of this section.

339 (13) In any conviction under subsection (3), (4), (5) or
340 (11) of this section, the sentencing order shall include the
341 designation "domestic violence." The court clerk shall enter the



342 disposition of the matter into the corresponding uniform offense
343 report.

344 (14) Assault upon any of the following listed persons is an
345 aggravating circumstance for charging under subsections (1)(b) and
346 (2)(b) of this section if the person is:

347 (a) A statewide elected official; law enforcement
348 officer; fireman; emergency medical personnel; public health
349 personnel; social worker, family protection specialist or family
350 protection worker employed by the Department of Human Services or
351 another agency; youth detention center personnel; training school
352 juvenile care worker; any county or municipal jail officer;
353 superintendent, principal, teacher or other instructional
354 personnel, school attendance officer or school bus driver; a judge
355 of a circuit, chancery, county, justice, municipal or youth court
356 or a judge of the Court of Appeals or a justice of the Supreme
357 Court; district attorney or legal assistant to a district
358 attorney; county prosecutor or municipal prosecutor; court
359 reporter employed by a court, court administrator, clerk or deputy
360 clerk of the court; or public defender when that person is acting
361 within the scope of his duty, office or employment;

362 (b) A legislator while the Legislature is in regular or
363 extraordinary session or while otherwise acting within the scope
364 of his duty, office or employment; or



365 (c) A person who is sixty-five (65) years of age or
366 older or a person who is a vulnerable person, as defined in
367 Section 43-47-5.

368 **SECTION 4.** This act shall take effect and be in force from
369 and after July 1, 2015.

